



IOWA ADMINISTRATIVE BULLETIN

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Pages 3383 to 4260

CONTENTS IN THIS ISSUE

Pages 3886 to 4260 include **ARC 7127C** to **ARC 7195C**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Filed, Dairy innovation program, amendments to ch 52 ARC 7127C	4240
Filed, Weights and measures, ch 85 ARC 7129C	4243

ALL AGENCIES

Agency identification numbers	3395
Citation of administrative rules.	3387
Schedule for rulemaking	3388

CAPITAL INVESTMENT BOARD, IOWA[123]

Notice, Agency realignment, rescind chs 1 to 4 ARC 7195C	3886
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CITY DEVELOPMENT BOARD[263]

ECONOMIC DEVELOPMENT AUTHORITY[261]"umbrella"

Notice, Organization and administration, ch 1 ARC 7131C	3887
Notice, Agency procedure for rulemaking, ch 2 ARC 7132C	3889
Notice, Petitions for rulemaking, ch 3 ARC 7133C	3891
Notice, Declaratory orders, ch 4 ARC 7134C	3893
Notice, Fair information practices, ch 5 ARC 7135C	3895
Notice, Waiver rules, ch 6 ARC 7136C	3897
Notice, Voluntary annexation, ch 7 ARC 7137C	3900
Notice, Petitions for involuntary city development action, ch 8 ARC 7138C	3907
Notice, Committee proceedings on petitions for involuntary city development action, ch 9 ARC 7139C	3911

Notice, Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 ARC 7140C	3922
Notice, Islands—identification and annexation, rescind ch 11 ARC 7141C	3924

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Filed Emergency After Notice, Uniform policies; future ready Iowa skilled workforce grant program; workforce grant and incentive program, amend ch 10; adopt chs 16, 34 ARC 7130C	4233
--	------

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Notice, Complaints, investigations, contested case hearings—confidentiality, 11.4(9), 11.5 ARC 7194C	3926
Notice, Renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 ARC 7193C	3928

EDUCATION DEPARTMENT[281]

Regulatory Analysis, Public records and fair information practices, ch 5	3397
Regulatory Analysis, Unsafe school choice option; open enrollment and other enrollment options, rescind ch 11; adopt ch 17	3404
Regulatory Analysis, General accreditation standards, ch 12	3415
Regulatory Analysis, School health services, ch 14.	3434

EDUCATION DEPARTMENT[281] (Cont'd)

Regulatory Analysis, Online and virtual learning, ch 15.	3451	Notice, General accreditation standards—age-appropriate instruction, library programs, compliance with legislation, parental rights, amendments to ch 12 ARC 7169C	3929
Regulatory Analysis, Community colleges; community college accreditation, adopt ch 21; rescind ch 24	3458	Notice, Pathways for academic career and employment program; gap tuition assistance program, ch 25 ARC 7158C	3933
Regulatory Analysis, Senior year plus program, ch 22	3481	Notice, Workforce training and economic development funds, ch 27 ARC 7159C	3937
Regulatory Analysis, Private instruction and dual enrollment, ch 31	3490	Notice, High school equivalency diplomas, ch 32 ARC 7160C	3940
Regulatory Analysis, Funding for children residing in state institutions or mental health institute, ch 34	3496	Notice, Educational and program standards for children's residential facilities, ch 35 ARC 7162C	3944
Regulatory Analysis, Special education, ch 41	3502	Notice, Extracurricular interscholastic competition, ch 36 ARC 7161C	3947
Regulatory Analysis, Pupil transportation, ch 43	3611	Notice, Extracurricular athletic activity conference for member schools, ch 37 ARC 7163C	3958
Regulatory Analysis, School buses, ch 44	3621	Notice, Work-based learning; individualized career and academic plan, rescind ch 48; adopt ch 49 ARC 7164C ..	3960
Regulatory Analysis, Career and technical education, ch 46	3657	Notice, Iowa reading research center, ch 61 ARC 7165C	3965
Regulatory Analysis, State standards for progression in reading, ch 62	3671	Notice, Standards for teacher intern preparation programs; standards for practitioner and administrator preparation programs, rescind ch 77; adopt ch 79 ARC 7166C	3969
Regulatory Analysis, Educational programs and services for pupils in juvenile homes, ch 63	3677	Notice, Standards for paraeducator preparation programs, ch 80 ARC 7167C	3984
Regulatory Analysis, Child development coordinating council; educational support programs for parents of children aged birth through five years who are at risk, adopt ch 64; rescind ch 67.	3685	Notice, Teacher and administrator quality programs, ch 83 ARC 7168C	3988
Regulatory Analysis, Accreditation of area education agencies, ch 72	3694	EXECUTIVE COUNCIL[361]	
Regulatory Analysis, Standards for school business official preparation programs, ch 81	3700	Notice, Group insurance for state employees; deferred compensation program; health maintenance organizations, adopt ch 1; rescind chs 5, 6 ARC 7187C	4001
Regulatory Analysis, Statewide sales and services tax for school infrastructure, ch 96.	3708	Notice, Contingent fund—disaster aid; disaster contingency fund, adopt ch 2; rescind ch 7 ARC 7188C	4002
Regulatory Analysis, Supplementary weighting, ch 97	3715	Notice, Inheritance tax payments, adopt ch 3; rescind ch 11 ARC 7189C	4005
Regulatory Analysis, Financial management of categorical funding, ch 98.	3727	Notice, Disbursement of money from civil reparations trust fund, adopt ch 4; rescind ch 12 ARC 7190C	4008
Regulatory Analysis, Procedures for charging and investigating incidents of abuse of students by school employees, ch 102	3758	Notice, Agency realignment, rescind chs 8 to 10 ARC 7191C	4011
Regulatory Analysis, Corporal punishment, physical restraint, seclusion, and other physical contact with students, ch 103	3767		
Regulatory Analysis, Early ACCESS integrated system of early intervention services, ch 120	3776		

INSPECTIONS AND APPEALS**DEPARTMENT[481]**

Regulatory Analysis, Petitions for rulemaking, ch 2	3834
Regulatory Analysis, Declaratory orders, ch 3	3837
Regulatory Analysis, Agency procedure for rulemaking, ch 4	3841
Regulatory Analysis, Licensing and child support noncompliance, student loan repayment noncompliance, and nonpayment of state debt, ch 8	3845
Regulatory Analysis, Ambulatory surgical centers, ch 49	3850
Notice, Home food processing establishments, ch 34 ARC 7157C	4012

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Notice, Child labor, amendments to ch 32 ARC 7142C	4023
Notice, Request for extended inspection interval, 90.6(10) ARC 7143C	4034

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Standards of practice and principles of medical ethics—abortion, 13.17 ARC 7170C	4036
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PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed, Controlled substances, 10.39(6), 12.1(1) ARC 7128C	4250
--	------

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Regulatory Analysis, Licensure of social workers, ch 280	3857
Regulatory Analysis, Continuing education for social workers, ch 281	3866
Regulatory Analysis, Practice of social workers, ch 282	3872
Regulatory Analysis, Discipline for social workers, ch 283	3882
Notice, Licensure of podiatrists, ch 220 ARC 7175C	4040
Notice, Licensure of orthotists, prosthetists, and pedorthists, ch 221 ARC 7176C	4046
Notice, Continuing education for podiatrists, ch 222 ARC 7177C	4051
Notice, Practice of podiatry, ch 223 ARC 7178C	4055

Notice, Discipline for podiatrists, orthotists, prosthetists, and pedorthists, ch 224 ARC 7179C	4058
Notice, Continuing education for orthotists, prosthetists, and pedorthists, ch 225 ARC 7180C	4060

PUBLIC HEARINGS

Summarized list	3389
-----------------------	------

REVENUE DEPARTMENT[701]

Notice of electric and natural gas delivery tax rates and municipal electric and natural gas transfer replacement tax rates for each competitive service area	4064
Notice, Collection of tax debt and debt owed to other state agencies, chs 20 to 25, 27 ARC 7181C	4075
Notice, Definitions, ch 200 ARC 7144C	4084
Notice, Sales and use tax permits, ch 201 ARC 7171C	4087
Notice, Elements included in and excluded from a taxable sale and sales price, ch 203 ARC 7145C	4092
Notice, Rules necessary to implement the streamlined sales and use tax agreement, ch 204 ARC 7146C	4099
Notice, Sourcing of taxable services, tangible personal property, and specified digital products, ch 205 ARC 7147C	4102
Notice, Bundled transactions, ch 206 ARC 7148C	4114
Notice, Remote sales and marketplace sales, ch 207 ARC 7172C	4118
Notice, Multilevel marketer agreements, ch 208 ARC 7173C	4123
Notice, Agricultural rules, ch 214 ARC 7174C ..	4128
Notice, Exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215 ARC 7182C ...	4150
Notice, Telecommunication services, ch 217 ARC 7183C	4174
Notice, Resale and processing exemptions primarily of benefit to retailers, ch 225 ARC 7149C	4185
Notice, Local option sales and services tax, ch 270 ARC 7150C	4197
Notice, New school infrastructure local option sales and services tax, rescind ch 271 ARC 7151C	4208

REVENUE DEPARTMENT[701] (Cont'd)

Notice, Flood mitigation program, ch 272 ARC 7184C	4209	Notice, Refunds for eligible businesses under economic development authority programs, ch 278 ARC 7155C	4228
Notice, Reinvestment districts program, ch 273 ARC 7185C	4212	Notice, Underground storage tank rules incorporated by reference, rescind ch 289 ARC 7156C	4231
Notice, Local option sales tax urban renewal projects, ch 274 ARC 7152C	4215	Filed, Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700, 900; adopt ch 19 ARC 7192C	4252
Notice, Rebate of Iowa sales tax paid, ch 275 ARC 7186C	4218		
Notice, Facilitating business rapid response to state-declared disasters, ch 276 ARC 7153C	4224		
Notice, Sales and use tax refund for biodiesel production, ch 277 ARC 7154C	4226		

PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking 2023

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
14	Wednesday, December 20, 2023	January 10, 2024
15	Wednesday, January 3, 2024	January 24, 2024
16	Friday, January 19, 2024	February 7, 2024

PLEASE NOTE:

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

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

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

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

BANKING DIVISION[187]

Required fees, 2.19
IAB 11/15/23
Regulatory Analysis

Iowa Division of Banking
200 East Grand Ave., Ste. 300
Des Moines, Iowa

December 13, 2023
9 a.m.

CAPITAL INVESTMENT BOARD, IOWA[123]

Agency realignment, rescind
chs 1 to 4
IAB 12/13/23 **ARC 7195C**

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

January 3, 2024
9 to 9:30 a.m.
(If requested)

January 3, 2024
2 to 2:30 p.m.
(If requested)

CITY DEVELOPMENT BOARD[263]

Organization and administration,
ch 1
IAB 12/13/23 **ARC 7131C**

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

January 2, 2024
12:30 to 12:45 p.m.

January 9, 2024
8:30 to 8:45 a.m.

Agency procedure for rulemaking,
ch 2
IAB 12/13/23 **ARC 7132C**

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

January 2, 2024
12:45 to 1 p.m.

January 9, 2024
8:45 to 9 a.m.

Petitions for rulemaking, ch 3
IAB 12/13/23 **ARC 7133C**

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

January 2, 2024
1 to 1:15 p.m.

January 9, 2024
9 to 9:15 a.m.

Declaratory orders, ch 4
IAB 12/13/23 **ARC 7134C**

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

January 2, 2024
1:15 to 1:30 p.m.

January 9, 2024
9:15 to 9:30 a.m.

Fair information practices, ch 5
IAB 12/13/23 **ARC 7135C**

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

January 2, 2024
1:30 to 1:45 p.m.

January 9, 2024
9:30 to 9:45 a.m.

Waiver rules, ch 6
IAB 12/13/23 **ARC 7136C**

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

January 2, 2024
1:45 to 2 p.m.

January 9, 2024
9:45 to 10 a.m.

Voluntary annexation, ch 7
IAB 12/13/23 **ARC 7137C**

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

January 2, 2024
2 to 2:30 p.m.

January 9, 2024
10 to 10:30 a.m.

CITY DEVELOPMENT BOARD[263](cont'd)

Petitions for involuntary city development action, ch 8 IAB 12/13/23 ARC 7138C	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 2:30 to 3 p.m. January 9, 2024 10:30 to 11 a.m.
Committee proceedings on petitions for involuntary city development action, ch 9 IAB 12/13/23 ARC 7139C	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 3 to 3:30 p.m. January 9, 2024 11 to 11:30 a.m.
Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 IAB 12/13/23 ARC 7140C	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 3:30 to 4 p.m. January 9, 2024 11:30 a.m. to 12 noon

EDUCATIONAL EXAMINERS BOARD[282]

Complaints, investigations, contested case hearings—confidentiality, 11.4(9), 11.5; renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 IAB 12/13/23 ARCs 7193C; 7194C	Board Room 701 E. Court Ave., Ste. A Des Moines, Iowa	January 31, 2024 1 to 2 p.m.
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EDUCATION DEPARTMENT[281]

General accreditation standards—age-appropriate instruction, library programs, compliance with legislation, parental rights, amendments to ch 12 IAB 12/13/23 ARC 7169C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 2:30 to 3 p.m. January 4, 2024 10:30 to 11 a.m.
Pathways for academic career and employment program; gap tuition assistance program, ch 25; workforce training and economic development funds, ch 27; high school equivalency diplomas, ch 32 IAB 12/13/23 ARC 7158C to ARC 7160C	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa	January 3, 2024 1 to 1:30 p.m. January 4, 2024 9 to 9:30 a.m.

EDUCATION DEPARTMENT[281](cont'd)

Educational and program standards for children's residential facilities, ch 35; Extracurricular interscholastic competition, ch 36; Extracurricular athletic activity conference for member schools, ch 37 IAB 12/13/23 ARC 7161C to ARC 7163C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 1:30 to 2 p.m. January 4, 2024 9:30 to 10 a.m.
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Work-based learning, individualized career and academic plan, rescind ch 48, adopt ch 49; Iowa reading research center, ch 61; standards for teacher intern preparation programs, standards for practitioner and administrator preparation programs, rescind ch 77, adopt ch 79; standards for paraeducator preparation programs, ch 80; teacher and administrator quality programs, ch 83 IAB 12/13/23 ARC 7164C to ARC 7168C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 2 to 2:30 p.m. January 4, 2024 10 to 10:30 a.m.
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EXECUTIVE COUNCIL[361]

Group insurance for state employees; deferred compensation program; health maintenance organizations, adopt ch 1; rescind chs 5, 6 IAB 12/13/23 ARC 7187C	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 11:30 a.m. to 12 noon January 5, 2024 11:30 a.m. to 12 noon
Contingent fund—disaster aid; disaster contingency fund, adopt ch 2; rescind ch 7 IAB 12/13/23 ARC 7188C	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 11:45 a.m. to 12 noon January 5, 2024 11:45 a.m. to 12 noon
Inheritance tax payments, adopt ch 3; rescind ch 11 IAB 12/13/23 ARC 7189C	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 12 noon to 12:15 p.m. January 5, 2024 12 noon to 12:15 p.m.
Disbursement of money from civil reparations trust fund, adopt ch 4; rescind ch 12 IAB 12/13/23 ARC 7190C	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 12:15 to 12:30 p.m. January 5, 2024 12:15 to 12:30 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Hospitals, ch 51
IAB 11/29/23
Regulatory Analysis

6200 Park Ave.
Des Moines, Iowa

December 20, 2023
9 a.m.

Home food processing
establishments, ch 34
IAB 12/13/23 **ARC 7157C**

6200 Park Ave., Ste. 100
Des Moines, Iowa

January 3, 2024
9:30 to 10 a.m.

January 8, 2024
10 to 10:30 a.m.

LABOR SERVICES DIVISION[875]

Child labor, amendments to ch 32
IAB 12/13/23 **ARC 7142C**

Room 126
6200 Park Ave.
Des Moines, Iowa
Dial: 312.626.6799
Meeting ID number: 813 6327 9319
Passcode: 590253

January 3, 2024
9 to 9:30 a.m.
(If requested)

MEDICINE BOARD[653]

Standards of practice and
principles of medical
ethics—abortion, 13.17
IAB 12/13/23 **ARC 7170C**

6200 Park Ave.
Des Moines, Iowa

January 4, 2024
10 a.m. to 12 noon

PROFESSIONAL LICENSURE DIVISION[645]

Licensure of podiatrists, ch 220;
licensure of orthotists,
prosthetists, and pedorthists,
ch 221; continuing education
for podiatrists, ch 222; practice
of podiatry, ch 223; continuing
education for orthotists,
prosthetists, and pedorthists,
ch 225
IAB 12/13/23 **ARC 7175C to
ARC 7180C**

6200 Park Ave.
Des Moines, Iowa
Via video/conference call:
meet.google.com/jji-jaoj-uqy
Or dial: 1.402.921.2210
PIN: 744 558 427#

January 30, 2024
10 to 10:20 a.m.

January 31, 2024
10 to 10:20 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Establishment of new certificate
of live birth following adoption,
95.6(1)“b,” 99.14
IAB 11/29/23
Regulatory Analysis

Via video/conference call:
meet.google.com/fpq-bkvo-ypn

December 20, 2023
10 a.m. to 12 noon

State-funded family medicine
obstetrics fellowship program,
ch 106
IAB 11/29/23
Regulatory Analysis

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

December 20, 2023
10 a.m. to 12 noon

REVENUE DEPARTMENT[701]

Tax debt, chs 20 to 25, 27; definitions, ch 200; sales and use tax permits, ch 201; elements included in and excluded from a taxable sale and sales price, ch 203; rules necessary to implement the streamlined sales and use tax agreement, ch 204; sourcing of taxable services, tangible personal property, and specified digital products, ch 205; bundled transactions, ch 206; remote sales and marketplace sales, ch 207; multilevel marketer agreements, ch 208; agricultural rules, ch 214; Exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215; telecommunication services, ch 217; resale and processing exemptions primarily of benefit to retailers, ch 225; local option sales and services tax, ch 270; new school infrastructure local option sales and services tax, rescind ch 271; flood mitigation program, ch 272; reinvestment districts program, ch 273; local option sales tax urban renewal projects, ch 274; rebate of Iowa sales tax paid, ch 275; facilitating business rapid response to state-declared disasters, ch 276; sales and use tax refund for biodiesel production, ch 277; refunds for eligible businesses under economic development authority programs, ch 278; underground storage tank rules incorporated by reference, rescind ch 289

IAB 12/13/23 **ARCs 7144C to 7156C; 7171C to 7174C; 7181C to 7186C**

Via video/conference call
Contact Nick Behlke
Email: nick.behlke@iowa.gov

January 3, 2024
9 to 11 a.m.

January 3, 2024
1 to 3 p.m.

UTILITIES DIVISION[199]

Procedure for determining the competitiveness of a communications service or facility, rescind ch 5
IAB 11/29/23 **ARC 7125C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

December 19, 2023
9 to 10 a.m.

December 20, 2023
9 to 10 a.m.

UTILITIES DIVISION[199](cont'd)

Complaint procedures, ch 6
IAB 11/29/23 **ARC 7124C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

December 19, 2023
9 to 10 a.m.

January 8, 2024
1 to 2 p.m.

Utility records, ch 18
IAB 11/29/23 **ARC 7123C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

December 19, 2023
2 to 3 p.m.

January 3, 2024
9 to 10 a.m.

Nonutility
services—recordkeeping and
cost allocations, ch 33
IAB 11/15/23 **ARC 7111C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

January 23, 2024
9 to 11 a.m.

Nonutility service, ch 34
IAB 11/15/23 **ARC 7112C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

January 23, 2024
9 to 11 a.m.

The following list will be updated as changes occur.

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

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

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

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

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

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 5
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 22

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 5 regarding fair information practices. This proposed rulemaking updates statutory references, removes unnecessary language, and removes references to obsolete programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The Department bears the cost of compliance, and individuals who seek information from the Department are assessed a proposed fee.
 - Classes of persons that will benefit from the proposed rulemaking:
Individuals who seek information from the Department will benefit from a clearer process and chapter of rules.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no discernible quantitative impact.
 - Qualitative description of impact:
There is no discernible qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The enforcement of this chapter is based on the number of requests received and defrayed by the fee specified in the chapter.

- Anticipated effect on state revenues:

There is no discernable impact on state revenues.

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

Inaction is not an option because of the large amount of obsolete matter in the current chapter.

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

There is no less costly method. The statute requires rules, and the Department seeks to make these rules as user-friendly as possible within statutory constraints.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no discernible effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of education hereby adopts, with the following exceptions and amendments, Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website. Rule 281—5.1(22,256) sets forth the exceptions and additions to rules, numbered X.1(17A,22) through X.8(17A,22), in the uniform rules chapter in roughly the order in which they appear. Rules 281—5.2(22,256) through 281—5.6(22,256) are additional rules specific to the department.

281—5.1(22,256) Exceptions and additions.

5.1(1) *Definition of “Agency.”* In lieu of the words “(official or body issuing these rules)” in uniform rule X.1, insert “department of education”.

5.1(2) *Request for access to record.* In subrule X.3(1), replace the paragraph with “Requests for access to records of the Iowa department of education are to be directed to the Grimes State Office Building, Des Moines, Iowa 50319-0146, regardless of where those records are located.”

5.1(3) *Office hours.* In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)” in subrule X.3(2), insert “8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays”.

5.1(4) *Fees.* In paragraph X.3(7) “c,” in lieu of the words “(specify time period)”, insert “one hour”. The fee will be \$60 per hour.

5.1(5) *Procedure by which additions, dissents, or objections may be entered into certain records.* In rule X.6, in lieu of the words “(designate office)”, insert “the office of the director of the agency”.

5.1(6) *Consent to disclosure by the subject of a confidential record.* In rule X.7, add the following paragraphs:

X.7(1) A letter from a subject of a confidential record to a public official who seeks the official’s intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

X.7(2) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 281—5.6(22,256). However, the agency need not release records to the subject in the following circumstances:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers’ investigative reports may be withheld from the subject, except as provided by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

X.7(3) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

281—5.2(22,256) Disclosures without the consent of the subject.

5.2(1) Records that are not confidential are routinely disclosed without the consent of the subject.

5.2(2) Records that are confidential will be disclosed outside of the department only with the consent of the subject of the record or in circumstances in which consent of the subject is not legally necessary.

281—5.3(22,256) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law. The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule X.4(17A,22). If the agency initially determines that it will release these records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in this chapter.

281—5.4(22,256) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule X.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and indicates whether a data processing system

matches, collates, or permits the comparison of personally identifiable information in one record system with that in another record system. The record systems maintained by the agency include:

5.4(1) *Staff records of the basic educational data survey.* Records of employees of area educational agencies, merged area schools, and approved public and private schools, whose positions require an Iowa teacher's certificate and contain such personally identifiable information as name, Iowa teacher's certificate number, and social security number. Other data collected are date of birth, teaching experience, sex, current position and assignments. This information is collected pursuant to Iowa Code section 256.9(18). Data processing systems match, collate, and compare the personally identifiable information of the staff records with that of teacher certification records.

5.4(2) *Driver education records.* Driver education records contain personally identifiable information such as name, driver's license number, and Iowa teacher's certificate number collected pursuant to Iowa Code section 321.178. Data processing systems match, collate, and compare the personally identifiable information of the driver education records with that of the teacher certification records and BEDS staff records.

5.4(3) *Bus driver permit records.* Bus driver permit records contain personally identifiable information such as name, social security number, driver's license number, and bus driver's permit number collected pursuant to Iowa Code sections 321.376 and 285.11(10) and 281—Chapter 43. Data processing systems match, collate, and compare the personally identifiable information of the bus driver permit numbers with that of bus accident records.

5.4(4) *Teacher certification records.* Teacher certification records contain information about each individual issued an Iowa teacher's certificate. These records contain such personally identifiable information as name, teacher's certificate number and social security number. Other data collected are date of birth, type and source of degree, completion of mandatory postgraduation coursework, experience, and the subjects and grade level authorized to teach. This information is collected pursuant to Iowa Code section 256.7(3) and 256.7(5). Data processing systems match, collate, and compare the personally identifiable information of the teacher certification records with that of BEDS staff records, driver education records, and career education records.

5.4(5) *Exceptional child survey.* These records are exempt from disclosure under Iowa Code section 22.7(1). The information gathered by this system relates to children and youth eligible for special education. Each student record contains a code derived from the child's name and birth date. The coded identifier is the personally identifiable information. Information in each record pertains to the child's condition and the special education instructional and support-related services provided to the child. Each record may also contain the child's teacher's name and teaching certificate number. This information is collected pursuant to Iowa Code chapter 256B and 34 CFR Parts 300 and 303. Procedures for protection of and access to this information are set forth in this state's plan under 20 U.S.C. §1401 et seq. These policies and procedures comply with the Family Educational Rights and Privacy Act of 1974 (34 CFR Part 90) and 34 CFR Part 300.

This information is stored in an automated data processing system that does not match, collate, or compare the personally identifiable information of the exceptional child survey records with the personally identifiable information of other records systems.

5.4(6) *Department approval—special education placements.* These are requests for approval to place a pupil eligible for special education in an out-of-state educational program and would contain personally identifiable information such as the pupil's name, birth date, residence, condition and other information relative to the identified special education needs of the pupil. Response to these requests for department approval would contain similar information.

This information is collected pursuant to Iowa Code section 273.3(5). Data processing systems do not match, collate, or compare the personally identifiable information with other records. All personally identifiable information gathered through this effort is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(7) *Special education complaint management system.* Information gathered in this record system is utilized as documentation of concerns or complaints related to special education programs and services to children with disabilities under the provisions of 34 CFR Part 300. Personally identifiable information

includes the student's name, parent's name, and the nature of the concern or complaint being registered. Data processing systems do not match, collate, or compare personally identifiable information from these records with personally identifiable information of other records systems. Personally identifiable information gathered by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(8) *Deaf-blind student registry.* This data collection system gathers information related to deaf-blind children and youth in Iowa. Personally identifiable information items would include the child's name, birth date, location, and services being provided to the child. Information is utilized to plan programs and services for all deaf-blind children and their families in the state. Data processing systems do not compare, collate or match personally identifiable information in this system with personally identifiable information in other data systems. Personally identifiable information gathered and maintained by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(9) *Career education records.* Career education records contain personally identifiable information such as the names and certificate numbers of staff members employed to conduct career education programs. Other data collected concern approvals, reimbursements, enrollments, expenditures, and student characteristics, and completion status relating to career education programs. This information is collected pursuant to Iowa Code chapter 258. Data processing systems match, collate, and compare the personally identifiable information of career education records with that of teacher certification records.

5.4(10) *Drinking driver course records.* These records contain such personally identifiable information as name, address, birth date and social security number. Other data collected are the driver's pre- and post-test scores. This information is collected pursuant to Iowa Code chapter 321J. Data processing systems in this agency do not match, collate, or compare the personally identifiable information of drinking driver records with other record systems.

5.4(11) *Personnel records.* The agency has records concerning individual agency employees, some of which may contain confidential information under Iowa Code section 22.7(11) and other legal provisions. Personnel records may be subject to the rules of the department of administrative services.

5.4(12) *Special project applications.* Applications from public school districts may contain personally identifiable information about qualifications of project staff members. No personally identifiable student data are collected. This information is collected pursuant to Iowa Code sections 442.31 to 442.35.

5.4(13) *Grants/awards/projects.* Records of persons or agencies applying for grants, awards, or funds for projects may contain information about individuals collected pursuant to specific federal or state statutes or regulations. This information may be stored in an automated data processing system.

5.4(14) *Appeal records.* These records contain data supplied by persons or entities appealing to the agency and may contain personally identifiable information such as student name, age, scholastic and disciplinary record, and status as regular or special education pupil. This information is collected pursuant to Iowa Code chapters 256B, 260, 275, 280, 282, and 285. The personally identifiable information is not matched, collated, or compared with data in other record systems.

5.4(15) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

281—5.5(22,256) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 281—5.1(22,256). These records are routinely available to the public. However, the agency's files of these records may contain confidential information, which will be addressed as provided in this chapter. The records listed may contain information about individuals.

5.5(1) *Rulemaking.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4, and 17A.7. These records are stored on paper and not in an automated data processing system.

5.5(2) *State board records.* Records contain agendas, minutes, and materials presented to the board. Records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). State board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. State board records are not stored in an automated data processing system.

5.5(3) *Publications.* Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

5.5(4) *Statistical reports.* Periodic reports of various agency programs are available from the department of education. Statistical reports are not stored in an automated data processing system.

5.5(5) *Address lists/directories.* The names and mailing addresses of members of councils, working groups, program participants and members of the general public evidencing interest in particular programs/events of the agency are maintained in order to provide mailing labels for mass distribution of literature. This information is collected under the provisions of Iowa Code chapter 256.

5.5(6) *Appeal decisions and declaratory rulings.* All final orders, decisions and rulings are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects of the appeals or rulings. This information is collected pursuant to Iowa Code chapters 17A, 256B, 280, 282, 282A, 285, and 290 and 281—Chapters 6, 7 and 41 and is also available on the department's web page.

5.5(7) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.5(8) *Basic educational data survey system records.* Curriculum, address, policy and procedures, and enrollment records of the basic educational data survey system contain data concerning the curriculum, building, policy and procedures, and enrollment of merged area schools, area education agencies, and approved public and private K-12 educational agencies.

Address records contain the addresses of buildings in which educational agencies are located and the names of the chief administrators of those agencies collected pursuant to Iowa Code sections 256.7 and 256.9.

5.5(9) *Secretary's annual report.* This record contains information related to public school districts' attendance figures, revenues and expenditures.

5.5(10) *Certified enrollment records.* Public school district records with enrollments of resident students in district schools; resident students enrolled in another district; nonresident and out-of-state students enrolled in district schools; and full-time equivalent (FTE) enrollment of shared time, part-time and area school students of high school age. These records do not contain student names or other personally identifiable information.

5.5(11) *School lunch program records.* Records of public and private schools participating in the national school lunch program. Records contain information relating to funds available for reimbursements, advance payments, claims, and reimbursements made to schools; dates that participating schools were inspected; and individual employees of school food services of agencies participating in child nutrition programs. The personally identifiable information is collected pursuant to 7 CFR Section 210.9.

5.5(12) *Commodity distribution records.* Records of the allocation and delivery of federally provided commodities to participating schools.

5.5(13) *Transportation records.* Transportation records contain operational data for school buses.

5.5(14) *Facilities' records.* Records of buildings and additions to buildings owned by public and private K-12 educational agencies.

5.5(15) *Child care food program records.* Records contain information concerning advance payments made to institutions participating in the federal child care food program, agreements between institutions and their sites with program administrators, claims and reimbursements for meals served, and inspections of programs. The name of each program administrator is included in agreement records collected pursuant to 7 CFR Section 226.6(e)(1).

5.5(16) *Career information system.* Records of a project that stores and utilizes occupational and educational data for student use in career decision making.

5.5(17) *Merged area school records.* These records contain data concerning equipment (inventory), enrollment (by sex and residence), and the number of pupils completing programs.

5.5(18) *High school equivalency diploma records.* General equivalency diploma (GED) records contain the names, addresses, social security numbers, and test scores of individuals granted an Iowa high school equivalency diploma. This information is collected pursuant to Iowa Code chapter 259A.

5.5(19) *Area education agency budget records.* These records contain data used by the state board of education to approve AEA annual budgets.

5.5(20) *Area education agency annual financial report records.* These records contain data relating to revenue, expenditures, and balances as well as the number of AEA employees in each program.

5.5(21) *Juvenile home records.* The juvenile home educational program budget and claim documents collect financial, employee, and student operation data. Budget records are used by the agency for program approval. Claim records are used for approving reimbursements and program results.

5.5(22) *Nonpublic school pupil textbook services records.* These records contain data on public school per pupil textbook expenditures, number of resident nonpublic school pupils requesting textbook services and the cost of providing textbook services for nonpublic school pupils.

5.5(23) *Nonpublic school pupils transportation services claims.* These records contain data on expenditures for providing transportation to pupils attending approved nonpublic schools and requests for reimbursement.

281—5.6(22,256) Applicability. This chapter does not:

1. Compel the agency to create a record that does not otherwise exist.
2. Require the agency to index or retrieve records that contain information about individuals by that person's name or other personal identifier.
3. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.
4. Govern the maintenance or disclosure of, notification of or access to records in the possession of the agency that are governed by the rules of another agency. This chapter applies to all records of the department of education. This chapter does not apply to the records of the following agencies under the department that have their own rulemaking authority: college student aid commission, educational examiners board, and school budget review committee.
5. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
6. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings is governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapters 11 and 17
“Open Enrollment and Other Enrollment Options”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 282.18
State or federal law(s) implemented by the rulemaking: Iowa Code sections 279.82 and 282.18 and
20 U.S.C. §7912

Public Hearing

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

January 2, 2024
9 to 9:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This chapter is intended to benefit Iowa students who choose to attend school outside of their resident districts or buildings and their families.

The Department proposes removing obsolete language (including language remaining from when there was an open enrollment deadline), removing language that merely restates statutory requirements, removing restrictive terms that do not add value, and consolidating a similar chapter on intra-district choice concerning persistently dangerous schools. The Department has also included a division implementing the intra-district choice provisions of 2023 Iowa Acts, Senate File 496. Even with that division, the proposed chapter provides regulatory relief.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students who choose to attend another public school district or building and their families will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.

- Qualitative description of impact:

Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **281—Chapter 11**.

ITEM 2. Rescind 281—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17 OPEN ENROLLMENT AND OTHER ENROLLMENT OPTIONS

DIVISION I
OPEN ENROLLMENT

281—17.1(282) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

“Alternative receiving district” means a district to which a parent/guardian petitions for the open enrollment of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

“Attendance center” means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

“Court-ordered desegregation plan” means a decree, judgment, or order entered by a court in response to a case or controversy alleging the district engaged in unlawful segregation. A desegregation plan is not “court-ordered” merely because a school district seeks approval of a voluntarily developed desegregation plan.

“Department” means the department of education.

“Director” means the director of the department or the director’s designee.

“Open enrollment” is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost to the parent.

“Receiving district” is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

“Resident district” is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil will be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

“Sending district” is synonymous with the term resident district.

“Sibling” means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by adoption, blood or marriage to the child for whom an open enrollment request is filed. “Sibling” also includes a foster child who is placed in the same household as the child for whom an open enrollment request is filed.

281—17.2(282) Application process. The following procedure is to be used by parents/guardians and school districts in processing open enrollment applications.

17.2(1) Parent/guardian responsibilities. Iowa Code section 282.18 governs the application process and responsibilities for parents/guardians and school districts. An application completed and submitted under this rule will include all information set forth in Iowa Code section 282.18(2) “a.”

17.2(2) Petition for attendance in an alternative receiving district. Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The timelines and notification provisions for such a request are the same as outlined in subrule 17.2(3).

17.2(3) School district responsibilities.

a. The board of the resident district takes no action on an open enrollment request except for a request made under rule 281—17.3(282). The parent/guardian may withdraw an open enrollment request any time prior to the board’s action on the application.

b. The board of the receiving district will act on an open enrollment request as outlined in Iowa Code section 282.18(2) “b.”

c. The board of the receiving district will comply with the provisions of rule 281—17.10(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

d. If the application is a request to attend in an alternate receiving district, the alternative district will send notice of this action to the parent/guardian, to the original receiving district, and to the resident district of the pupil. Petitions for change will be for not less than one year. A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

e. Notification to parents.

(1) By September 30 of each school year, all districts must notify parents of the following:

1. Transportation assistance; and
2. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a website, or a parent handbook provided to all patrons of the district. This information will also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

17.2(4) *Exception to process when resident district is under court-ordered desegregation.* If the resident district has a court-ordered desegregation plan, the superintendent of the resident district may act upon the request for transfer as outlined in Iowa Code section 282.18(3) “a.” A denial by the superintendent may be appealed following the procedures outlined in Iowa Code section 282.18(3) “b.”

281—17.3(282) Court-ordered desegregation plans.

17.3(1) *Applicability.* These rules govern only the components of a court-ordered desegregation plan as the plan affects open enrollment requests.

17.3(2) *Nature of court-ordered desegregation plan.* The language of the court order outlines a district’s implementation of open enrollment. The district will notify the department of any court-ordered desegregation plan and any court-ordered modifications to that plan.

281—17.4(282) Open enrollment for kindergarten or certain prekindergarten programs. A parent/guardian of a kindergarten pupil or a parent/guardian of a prekindergarten student enrolled in a special education program and eligible to be included in the resident school district’s basic enrollment under Iowa Code section 257.6(1) “a”(1) may request to enroll the pupil or student in a district other than the district of residence. In considering an application under this rule, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the provisions of rule 281—17.11(282), or the provisions of a desegregation order. As an alternative procedure, the receiving board may, by policy, authorize the superintendent to approve, but not deny, applications filed under this rule.

281—17.5(282) Open enrollment and online coursework.

17.5(1) *General.* A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18. However, if a student’s participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district will, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

17.5(2) *Participation in activities in the resident district.* A pupil participating in open enrollment for purposes of receiving educational instruction and course content primarily over the Internet in accordance with Iowa Code section 256.7(32) may participate in any cocurricular or extracurricular activities offered to children in the pupil’s grade or group and sponsored by the district of residence under the same conditions and requirements as the pupils enrolled in the district of residence. The pupil may participate in not more than two cocurricular or extracurricular activities during a school year unless the resident district approves the student’s participation in additional activities. The student will comply with the eligibility, conduct, and other requirements relating to the activity that are established by the district of residence for any student who applies to participate or who is participating in the activity.

281—17.6(282) Limitations on open enrollment requests. A district board may apply the following provisions related to open enrollment requests:

17.6(1) *Court-ordered desegregation plans.* If the resident district has a court-ordered desegregation plan, the superintendent of the resident district may act upon the request for transfer as outlined in Iowa Code section 282.18(3) “a.” A denial by the superintendent may be appealed following the procedures outlined in Iowa Code section 282.18(3) “b.”

17.6(2) *Policy on insufficient classroom space.* No receiving district is required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board must adopt a policy which defines the term “insufficient classroom space” for that district. This policy will establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but is not limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, special education class size or caseload established pursuant to rule 281—41.408(256B,273,34CFR300), or board-adopted district educational goals and objectives. This policy will be reviewed annually by the district board.

17.6(3) *Designation of attendance center.* The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to “determine the particular school which each child shall attend.” In the application process, however, the parent or guardian may request an attendance center of preference.

17.6(4) *Expelled or suspended students.* A pupil who has been suspended or expelled by action of the administration or board of the resident district is not permitted to enroll if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for open enrollment will be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied enrollment by the receiving district board until the pupil is reinstated for school attendance by the resident district. The provisions of this subrule also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.2(3).

17.6(5) *Participation in interscholastic athletic contests and competitions.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student’s parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity-level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil’s district of residence due to the pupil’s academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil will be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence.

a. The period of ineligibility does not apply if the board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period or under any reason outlined in Iowa Code section 282.18(9).

b. The resident district may charge the receiving district for participation in cocurricular or extracurricular activities in accordance with Iowa Code section 282.18(5).

281—17.7(282) Provisions applicable to parents/guardians and students.

17.7(1) *Renewal of an open enrollment agreement.* An open enrollment agreement remains in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.7(5).

17.7(2) *Change in residence when participating in open enrollment.* If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian has the option to leave the pupil in the receiving district under open

enrollment or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian will write a letter, delivered by mail, by hand, or by electronic means, to notify the original resident district, the new resident district, and the receiving district of this decision. Requests under this rule shall not be denied. If the request is for a high school pupil, the pupil is not subject to the initial 90-school-day ineligibility period of subrule 17.6(5).

17.7(3) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program. The parent/guardian exercising this option will file an open enrollment request form with the new district of residence for processing and record purposes. Requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil is not subject to the initial 90-school-day ineligibility period of subrule 17.6(5). If the move is on or after the date specified in Iowa Code section 257.6(1), the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

a. This subrule applies in the following circumstances: a change in family residence, a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program.

b. This rule applies to the following children:

- (1) A child who is enrolled in any grade from kindergarten through grade 12.
- (2) A prekindergarten student who is enrolled in a special education program at the time of the request and is not currently using any provision of open enrollment.

17.7(4) *Pupil governance.* An open enrollment pupil, and where applicable the pupil's parent/guardian, is governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district will be initially directed to the board of directors of that district in compliance with the policy of that district.

17.7(5) *Open enrollment termination.* Open enrollment ends when:

a. The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

EXCEPTIONS: This rule does not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

b. The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice will be given as outlined in the provisions of subrule 17.2(3).

281—17.8(282) Transportation.

17.8(1) *Parent responsibilities.* The parent/guardian of a pupil who has been accepted for open enrollment is to be responsible to transport the pupil without reimbursement, except as provided in subrule 17.8(2), to a point on a regular school bus route of the receiving district as defined in Iowa Code section 282.18(8) "*a.*" A receiving district may send buses into a resident district solely for the purpose of transporting an open enrollment pupil if the boards of both the sending and receiving districts agree to this arrangement. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code section 285.9(3), may be used to transport open enrollment pupils if boards of directors of the resident and receiving

districts have both acted to approve such an arrangement. Bus routes that have been established by the receiving district for the purpose of transporting nonpublic school or special education pupils that operate in the resident district of an open enrollment pupil cannot be utilized for the transportation of such pupil for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both acted to approve such an arrangement. Bus routes transporting pupils for the purpose of whole-grade sharing cannot be used to transport open enrollment pupils for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both acted to approve such an arrangement.

17.8(2) *Economic qualifications, eligibility and provisions for transportation assistance.* Open enrollment pupils that meet the economic eligibility provisions established by the department of education will receive transportation assistance from their resident district under the terms and conditions established by the department and state board of education as outlined in Iowa Code section 282.18(8) “c.” The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount.

281—17.9(282) Method of finance. Open enrollment options are available for pupils at no instructional cost to their parents/guardians. Open enrollment pupils are considered enrolled resident pupils in the resident district and are included in the certified enrollment count of that district for the purposes of generating school foundation aid.

17.9(1) *Full-time pupils.* The resident district will pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received pursuant to Iowa Code section 282.18(7) “b”(1). If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district will pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

17.9(2) *Dual enrolled pupils.* For pupils who receive competent private instruction and are dual enrolled, the resident district will pay each year to the receiving district an amount equal to 0.1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of English learner weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades 9 through 12 will be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1) “c.”

17.9(3) *Home school assistance program pupils.* For pupils who receive competent private instruction and are registered for a home school assistance program, the resident district will pay each year to the receiving district an amount equal to 0.3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of English learner weighting provided by Iowa Code section 280.4.

17.9(4) *Transportation assistance.* The resident district may deduct any transportation assistance funds for which the pupil is eligible as provided by subrule 17.8(2).

17.9(5) *Method of payment.* These moneys will be paid to the receiving district by the resident district during the period of open enrollment according to the timeline in Iowa Code section 282.20(3). The district cost per pupil for nonspecial education students will be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students are outlined in rule 281—17.10(282).

17.9(6) *Partial-year situations.* If a pupil participating in open enrollment attends school in the receiving district for any reason for less than a full school year, payment from the district of residence at the time of open enrollment to the receiving district is prorated on a per diem basis.

17.9(7) *Supplemental weighting.* A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—Chapter 97 for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the Iowa communications network (ICN), or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college. An open enrolled student who is under competent

private instruction (CPI) will be weighted in the student's receiving district, and no tuition will be billed to the resident district. An open enrolled student who is not under CPI will be weighted in the resident district, and the funding will be sent to the receiving district in addition to open enrollment tuition.

a. If the open enrolled student is present in the resident district on October 1 of the school year, the resident district will count the student, excluding a student under CPI, for supplementary weighting.

b. The concurrent enrollment course needs to qualify for supplementary weighting in the receiving district pursuant to 281—Chapter 97, and the PLTW course needs to qualify for supplementary weighting in the receiving district pursuant to the same chapter.

c. The resident district will forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

d. The receiving district will pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

281—17.10(282) Special education students. If a parent or guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B and 281—Chapter 41, this request will receive consideration under the following conditions.

17.10(1) Appropriateness of program. The request will be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with 281—Chapter 41. This determination will be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil will remain enrolled in the program of the resident district until a final determination is made, unless all parties otherwise agree, as provided in 281—Chapter 41. If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program will be the responsibility of the child's individualized education program team, which must include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards under 281—Chapter 41.

17.10(2) Class size and caseload. The provisions of subrule 17.6(2) apply to requests for open enrollment for a child with a disability. The following conditions apply:

a. The enrollment of the child in the receiving district's program would not cause the size of the class or caseload in that special education instructional program in the receiving district to exceed the maximum class size or caseload set forth in subrule 17.6(2).

b. If the child would be assigned to a general education class, there is sufficient classroom space, as established in subrule 17.6(2), for the general education class to which the child would be assigned.

17.10(3) Transportation. District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil is available as provided by rules 281—17.8(282) and 281—41.412(256B,34CFR300).

17.10(4) Finance. The district of residence, as determined on the date specified in Iowa Code section 257.6(1), will pay according to the timeline in Iowa Code section 282.20(3) to the receiving district the actual costs incurred by the receiving district in providing the appropriate special education program. These costs will be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil rests with the resident district. The receiving district and the receiving area education agency director will provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district will provide notice to the resident district of all staffings scheduled for each open enrollment

pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil will be forwarded to the receiving district's area education agency. For children requiring special education, the receiving district will complete and provide to the district of residence the documentation necessary to seek Medicaid reimbursement for eligible services.

This division is intended to implement Iowa Code section 282.18.

DIVISION II
INTRA-DISTRICT SCHOOL CHOICE UNDER IOWA LAW

281—17.11(279) General. Subject to Iowa Code section 279.82 as enacted by 2023 Iowa Acts, Senate File 496, a school district may permit parents or guardians of students to transfer to other attendance centers operated by the district. Such transfers are at the discretion of the district, subject to terms that the district adopts.

281—17.12(279) Intra-district transfers due to bullying and harassment. If a school district determines that a student has been bullied or harassed, then the school will permit the student to transfer under the provisions of Iowa Code section 279.82 as enacted by 2023 Iowa Acts, House File 496. For purposes of this rule, “harassment” and “bullying” mean the same as defined in Iowa Code section 280.28. Subrule 17.6(2) and rule 281—17.10(282) apply to transfers under this rule. A student who is enrolled in another attendance center within the same school district pursuant to this rule is eligible to participate immediately in varsity interscholastic athletic contests and athletic competitions as a member of a team from the receiving attendance center, notwithstanding any local policy on intra-district transfers and athletic eligibility.

This division is intended to implement Iowa Code section 279.82 as enacted by 2023 Iowa Acts, Senate File 496.

DIVISION III
UNSAFE SCHOOL CHOICE OPTION UNDER FEDERAL LAW

281—17.13(20USC7912) Definitions. For purposes of this chapter, the following definitions apply:

“Department” means the Iowa department of education.

“Forcible felony” means any crime defined in Iowa Code section 702.11. This includes felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree. Forcible felonies are not willful injury in violation of Iowa Code section 708.4(2); sexual abuse in the third degree committed between spouses; sexual abuse in violation of Iowa Code section 709.4(2) “c”(4); or sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

“School” means an attendance center within a school district.

“School district” means a public school district in Iowa.

“School year” means from July 1 until June 30 of the following year.

281—17.14(20USC7912) Whole school option. Any student attending a persistently dangerous school as defined in this rule is eligible to transfer to a different school within the district. Transportation for students electing to transfer will be provided according to the district's transportation policy. The transfers may be temporary or permanent, but will be in effect as long as the student's original school is identified as persistently dangerous.

In making the determination of whether a transfer should be temporary or permanent, the district will consider the educational needs of the student, as well as other factors affecting the student's ability to succeed in the student's new school environment. The district is encouraged to explore other appropriate

options such as an agreement with a contiguous school district to accept students if there is no safe school within the transferring district.

17.14(1) A persistently dangerous school is one that meets the following criteria for three consecutive school years:

a. The school has violence-related, long-term suspensions or expulsions for more than 1 percent of the student population. Long-term suspensions or expulsions are more than ten days in length and require the action of the local school board. For purposes of this subrule, a violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury to a student while the student is in the school building or on the grounds of the attendance center during the hours of the regular school day or while the student is in attendance at school-sponsored activities that occur during the hours before or after the regular school day under one of the following:

- (1) A forcible felony as defined in rule 281—17.13(20USC7912);
- (2) Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;
- (3) Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;
- (4) Extortion under Iowa Code section 711.4;
- (5) Use of incendiary or explosive devices such as bombs under Iowa Code section 712.5;
- (6) Criminal gang activity under Iowa Code chapter 723A;
- (7) Carrying or using a weapon under Iowa Code sections 724.3 and 724.4.

b. The school has two or more students expelled for violating the federal gun-free school laws.

c. The school has 1 percent of the enrolled student population or five students, whichever is greater, who exercised the individual student option defined in rule 281—17.15(20USC7912).

17.14(2) For the school year starting July 1, 2003, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1) “a” through “c” for one year will be given a warning by the department. The school will review the school’s safety plan and prevention activities.

17.14(3) For the school year starting July 1, 2004, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1) “a” through “c” for two consecutive years will develop and implement a remedial plan. The plan will include schoolwide efforts to support positive student behavior and improve student discipline. The department will conduct a site visit to the school.

17.14(4) For the school year starting July 1, 2005, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1) “a” through “c” for three consecutive years is eligible to be designated as a persistently dangerous school by the department. Prior to the department’s assigning the designation, the district may submit information to the department including:

- a.* The school’s safety plan;
- b.* Local efforts to address the school’s safety concerns;
- c.* The school safety data reported to the state consistent with requirements of the federal Safe and Drug-Free Schools and Communities Program;
- d.* More current data that the school may have available but has not yet reported; and
- e.* Any other information deemed relevant.

17.14(5) Within 30 days of receipt and review of the information, the department may determine that the school demonstrates improvement and may delay the designation for one year. By July 31, the department may, upon review of information that demonstrates improvement, delay the designation for one year. The department will determine whether the district has made sufficient progress to warrant further consideration as a persistently dangerous school.

17.14(6) Upon designation, the district will adopt a corrective action plan, to be approved by the department. The department will monitor the district’s timely completion of the approved plan. The department will annually assess the school using the criteria listed in paragraphs 17.14(1) “a” through “c” by July 31 to determine whether the school will remain identified as a persistently dangerous school for the following school year.

17.14(7) At minimum, a district that has one or more schools identified as persistently dangerous will, within 14 days of the designation, notify parents of each student attending the school that the school

has been identified by the department as persistently dangerous. The district must offer students the opportunity to transfer to a safe public school within the district; and for those students who accept the offer, the district will complete the transfer. A district may deny the transfer if space at the requested school is unavailable. A district will offer the parent other available options within the district, when available.

281—17.15(20USC7912) Individual student option.

17.15(1) Any student who becomes a victim of a violent criminal offense will, to the extent feasible, be permitted to transfer to another school within the district. For purposes of this rule, a victim of a violent criminal offense is a student who is physically injured or threatened with physical injury as a result of the commission of one or more of the following crimes against the student while the student is in the school building or on the grounds of the attendance center:

- a.* A forcible felony as defined in rule 281—17.13(20USC7912);
- b.* Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;
- c.* Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;
- d.* Extortion under Iowa Code section 711.4.

17.15(2) Within ten calendar days following the date of the request, a local school district will offer an opportunity to transfer to the parent/guardian of a student who meets the definition of a victim of a violent crime.

281—17.16(20USC7912) District reporting. For purposes of federal compliance, districts will report data and requested information related to this division in a manner prescribed by the department.

This division is intended to implement 20 U.S.C. section 7912.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 12
“General Accreditation Standards”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.11
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.11

Public Hearing

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

January 2, 2024
11 to 11:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This chapter is intended to ensure that all Iowa students have access to an accredited public or nonpublic education.

The current rules contain a substantial amount of verbatim statutory language, a substantial amount of restrictive terms that do not add value, and some obsolete requirements. The Department proposes removing them. The Department has also made some of the adjustments required by the last legislative session. The Department has removed the division structure since it was unnecessary. The Department may transfer proposed subrule 12.3(12) into 281—Chapter 102.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s schools and school districts will bear the costs of complying with the proposed chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students and their families will benefit from the proposed chapter.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
GENERAL ACCREDITATION STANDARDS

281—12.1(256) General standards.

12.1(1) *Schools and school districts governed by general accreditation standards.* To become or remain accredited, school districts and accredited nonpublic schools are to comply with Iowa Code section 256.11 and this chapter.

12.1(2) School board. Each school or school district shall be governed by an identifiable authority that exercises the functions necessary for the effective operation of the school and is referred to in these rules as the “board” and as referenced in Iowa Code sections 280.2 and 280.3.

12.1(3) Application for accreditation.

a. The board of any school or school district that is not accredited on the effective date of these standards and that seeks accreditation shall file an application with the director of the department on or before the first day of January of the school year preceding the school year for which accreditation is sought.

b. The board of any school or school district that is not accredited on the effective date of these standards and that seeks accreditation from the department shall file an application with the director of the department on or before the first day of January of the school year preceding the school year for which accreditation is sought.

c. Nonpublic schools seeking accreditation under rule 281—12.10(256) shall provide evidence of accreditation by an organization approved under subrule 12.10(1) and such assurances of compliance with Iowa school law that the department may prescribe.

12.1(4) Accredited schools and school districts. Each school or school district receiving accreditation under the provisions of these standards will remain accredited except when by action of the state board of education it is removed from the list of accredited schools maintained by the department in accordance with Iowa Code sections 256.11(11) and 256.11(12).

12.1(5) When nonaccredited. A school district is nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. A nonpublic school is nonaccredited on the date established by the resolution of the state board, which will be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

12.1(6) Alternative provisions for accreditation. School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, nonresident students; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

12.1(7) Minimum school calendar. The minimum school calendar is set, either by a minimum number of hours or a minimum number of days, pursuant to Iowa Code sections 256.7(19), 279.10, and 279.11.

12.1(8) Kindergarten. The number of instructional days or hours within the school calendar and the length of the school day for kindergarten will be defined by the board or by authorities in charge of an accredited nonpublic school that operates a kindergarten program.

281—12.2(256) Definitions. For purposes of this chapter, the following definitions apply:

“*Annual improvement goals*” means the desired one-year rate of improvement for students. Data from multiple measures may be used to determine the rate of improvement.

“*Baseline data*” means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

“*Benchmarks*” means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

“*Board*” means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

“*Competency-based education*” means that learners advance through content or earn credit based on demonstration of proficiency of competencies. Proficiency for this context is the demonstrated skill or knowledge required to advance to and be successful in higher levels of learning in that content area. Some students may advance through more content or earn more credit than in a traditional school year while others might take more than a traditional school year to advance through the same content and to earn credit. A student must meet the requirements of subrule 12.5(13) to be awarded credit in a competency-based system of education.

“Curriculum” means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

“Department” means the department of education.

“Districtwide” means all attendance centers within a school district or accredited nonpublic school.

“Districtwide assessments” means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the comparison of the same group of students over time as they progress through the grades or the cross-sectional comparison of students at the same grades over multiple years.

“Districtwide progress” means the quantifiable change in school or school district student achievement and performance.

“Dropout” means a school-age student who is served by a public school district and enrolled in any of grades 7 through 12 and who does not attend school or withdraws from school for a reason other than death or transfer to another approved school or school district or has been expelled with no option to return.

“Educational program.” The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program will provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

“Enrolled student” means a person that has officially registered with the school or school district and is taking part in the educational program.

“Indicators” provide information about the general status, quality, or performance of an educational system.

“Library program” means an articulated sequential kindergarten through grade 12 library or media program that enhances student achievement and is integral to the school district’s curricula and instructional program. The library program is planned and implemented by a qualified teacher librarian working collaboratively with the district’s administration and instructional staff. The library program services provided to students and staff will include the following:

1. Support of the overall school curricula;
2. Collaborative planning and teaching;
3. Promotion of reading and literacy;
4. Information literacy instruction;
5. Access to a diverse and appropriate school library collection; and
6. Learning enhancement through technologies.

“Long-range goals” means desired targets to be reached over an extended period of time.

“Multiple assessment measures,” for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

“Performance levels.” The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels will describe what all students ought to know or be able to do if their achievement or performance is deemed proficient or advanced. The third level will describe students who are not yet performing at the proficient level. A school or school district may establish more than three performance levels that include all students for districtwide or other assessments.

“Prekindergarten program” includes a school district’s implementation of the preschool program pursuant to Iowa Code chapter 256C.

“Proficient,” as it relates to content standards, characterizes student performance at a level that is acceptable by the school or school district.

“School” means an accredited nonpublic school.

“School counseling program” means an articulated sequential kindergarten through grade 12 program that is comprehensive in scope, preventive in design, developmental in nature, driven by data, and integral to the school district’s curricula and instructional program. The program is implemented by

at least one school counselor, appropriately licensed by the board of educational examiners, who works collaboratively with the district's administration and instructional staff. The program standards are described in subrule 12.3(11). The program's delivery system components will include the following:

1. School guidance curriculum;
2. Support of the overall school curriculum;
3. Individual student planning;
4. Responsive services; and
5. System support.

"School district" means a public school district.

"School improvement advisory committee" means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership will include students, parents, teachers, administrators, and representatives from the local community that may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership is to have balanced representation of the following: race, gender, national origin, and disability. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

"Student learning goals" means general statements of expectations for all graduates.

"Students with disabilities" means students who have individualized education programs regardless of the disability.

"Subgroups" means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

281—12.3(256) Administration. The following standards apply to the administration of accredited schools and school districts.

12.3(1) Board records. Each board is to adopt by written policy a system for maintaining accurate records. The system will provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department. Financial records of school districts are to be maintained in a manner as to be easily audited according to accepted accounting procedures.

12.3(2) Policy manual. The board shall develop and maintain a policy manual that provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) Personnel evaluation. Each board will adopt evaluation criteria and procedures that conform to Iowa Code sections 279.14 and 279.23A for all contracted staff.

12.3(4) Student records. Each board will establish and maintain a system of student records, which will include for each student a permanent office record and a cumulative record.

The permanent office record serves as a historical record of official information concerning the student's education. The permanent office record is to be recorded and maintained under the student's legal name. At a minimum, the permanent office record will contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record provides a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record will be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board is to adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

12.3(5) *Requirements for graduation.* Each board providing a program through grade 12 will adopt a policy establishing the requirements students will meet for high school graduation. This policy will make provision for early graduation and be consistent with these requirements, Iowa Code sections 280.14 and 256.7(26).

12.3(6) *Student responsibility and discipline.* The board will adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board will involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies will relate to the educational purposes of the school or school district. The policies will include the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff as detailed in subrule 12.3(13); violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies will ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board will also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2, gender identity as defined in Iowa Code section 216.2, disability, religion, creed, or socioeconomic status.

The board will publicize its support of these policies, its support of the staff in enforcing them, and the staff's accountability for implementing them.

12.3(7) *Audit of school funds.* This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm will be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(8) *School or school district building grade-level organization.* The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code sections 279.39 and 280.3.

12.3(9) *Standards for school counseling programs.* Each school district will establish a kindergarten through grade 12 comprehensive school counseling program, driven by student data and based on standards in academic, career, personal, and social areas, which supports the student achievement goals of the total school curriculum and to which all students have equitable access.

a. A qualified school counselor, licensed by the board of educational examiners, who works collaboratively with students, teachers, support staff and administrators will direct the program and provide services and instruction in support of the curricular goals of each attendance center. The school counselor is the member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The school counselor and classroom teachers will collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on the following:

(1) Sequentially presented curriculum, programs, and responsive services that address growth and development of all students; and

(2) Attainment of student competencies in academic, career, personal, and social areas.

b. The program will be regularly reviewed and revised and designed to provide all of the following:

(1) Curriculum that is embedded throughout the district's overall curriculum and systemically delivered by the school counselor in collaboration with instructional staff through classroom and group activities and that consists of structured lessons to help students achieve desired competencies and to provide all students with the knowledge and skills appropriate for their developmental levels;

(2) Individual student planning through ongoing systemic activities designed to help students establish educational and career goals to develop future plans;

(3) Responsive services through intervention and curriculum that meet students' immediate and future needs as occasioned by events and conditions in students' lives and that may require any of the following: individual or group counseling; consultation with parents, teachers, and other educators; referrals to other school support services or community resources; peer helping; and information; and

(4) Systemic support through management activities that establish, maintain, and enhance the total school counseling program, including professional development, consultation, collaboration, program management, and operations.

12.3(10) *Standards for library programs.* The board of directors of each school district shall establish a kindergarten through grade 12 library program to support the student achievement goals of the total school curriculum as referenced in Iowa Code section 256.11(9). The board of directors of each school district will adopt policies to address selection and reconsideration of school library materials; confidentiality of student library records; and legal and ethical use of information resources, including plagiarism and intellectual property rights.

12.3(11) *Policy declaring harassment and bullying against state and school policy.* Each school and school district will adopt a policy declaring harassment and bullying against state and school policy and complying with the terms of Iowa Code section 280.28.

12.3(12) *Policy prohibiting the aiding and abetting of sexual abuse.*

a. General. The department and each public school district and area education agency shall adopt policies that prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

b. Exception. The requirements of paragraph 12.3(12) "a" do not apply if all of the following conditions are met.

(1) The information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations.

(2) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct have investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law; or the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of, the alleged misconduct; or the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within four years of the date on which the information was reported to a law enforcement agency.

12.3(13) *Display of United States flag, Iowa state flag, Pledge of Allegiance.* Iowa Code section 280.5 is incorporated by this reference.

281—12.4(256) School personnel. License/certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of educational examiners as referenced in Iowa Code chapter 272. The following standards apply to personnel employed in accredited schools:

12.4(1) *Instructional professional staff.* Each person who holds a license/certificate endorsed for the service for which that person is employed is eligible for classification as a member of the instructional professional staff as referenced in Iowa Code section 279.13.

12.4(2) *Noninstructional professional staff.* A person who holds a statement of professional recognition, including a physician, dentist, nurse, speech therapist, or a person in one of the

other noninstructional professional areas designated by the state board of education, is eligible for classification as a member of the noninstructional professional staff.

12.4(3) *Basis for approval of professional staff.* Each member of the professional staff will be classified as either instructional or noninstructional. An instructional professional staff member will be regarded as approved when holding either an appropriate license/certificate with endorsement or endorsements, or a license/certificate with an endorsement statement, indicating the specific teaching assignments that may be given. A noninstructional professional staff member will be regarded as approved when holding a statement of professional recognition for the specific type of noninstructional professional school service for which employed.

12.4(4) *Required administrative personnel.* Each board that operates both an elementary school and a secondary school will employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this provision by contracting with its area education agency for “superintendency services” as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as an elementary principal or as a high school principal in that school or school district provided that the superintendent holds the proper licensure/certification. For purposes of this subrule, high school means a school that commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code section 279.23(4).

12.4(5) *Staffing policies—elementary schools.* The board operating an elementary school will develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school will employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements.

When grades 7 and 8 are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools apply. When grades 7 and 8 are part of an organized and administered middle school, the staffing policies adopted by the board for elementary schools apply.

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school will develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school will employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position may be combined with that of superintendent, but one person may not serve as elementary principal, secondary principal, and superintendent.

12.4(7) *Principal.* “Principal” means a licensed/certificated member of a school’s instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board’s policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school’s student activities program.

12.4(8) *Teacher.* A teacher is defined as a member of the instructional professional staff who holds a license/certificate endorsed for the type of position in which employed. A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school’s objectives, either singly or in concert with other professional staff members; shares responsibility with the total professional staff for developing educational procedures and student activities to be used in achieving the school’s objectives; supervises educational aides who assist in serving students for whom the teacher is responsible; and evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

12.4(9) *Educational assistant.* An educational assistant is defined as an employee who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

During the initial year of employment, an educational assistant will complete staff development approved by the board as provided in subrule 12.7(1).

12.4(10) *Record of license/certificate or statement of professional recognition.* The board shall require each administrator, teacher, support service staff member, and noninstructional professional staff member on its staff to supply evidence that each holds a license/certificate or statement of professional recognition that is in force and valid for the type of position in which the individual is employed.

12.4(11) *Record required regarding teacher and administrative assignments.* The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file will consist of official licenses/certificates or copies thereof for all members of the instructional professional staff, including substitute teachers, showing that they are eligible for the position in which employed. The official will also maintain on file an official license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records will be on file at the beginning of and throughout each school year and updated annually to reflect all professional growth.

On December 1 of each year, the official will verify to the department the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report will be on forms provided by the department and identify all persons holding authorizations and their specific assignment(s) with the authorization(s).

12.4(12) *Nurses.* The board of each school district shall employ a school nurse and require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).

12.4(13) *Prekindergarten staff.* Prekindergarten teachers shall hold a license/certificate valid for the prekindergarten level. The board will employ personnel as necessary to provide effective supervision and instruction in the prekindergarten program as referenced in Iowa Code sections 256.11(1) and 256.11(2).

12.4(14) *Support staff.* The board shall develop and implement procedures for the use of educational support staff to augment classroom instruction and to meet individual student needs. These staff members may be employed by the board or by the area education agency.

12.4(15) *Volunteer.* A volunteer is defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the school or school district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

281—12.5(256) Education program. The following education program standards shall be met by schools and school districts for accreditation:

12.5(1) *Prekindergarten program.* Iowa Code section 256.11(1) is incorporated by this reference.

12.5(2) *Kindergarten program.* Iowa Code section 256.11(2) is incorporated by this reference. Any classroom serving students at least five years of age by September 15 is considered kindergarten.

12.5(3) *Elementary program, grades 1 through 6.* Iowa Code section 256.11(3) is incorporated by this reference. All content areas may be taught by the general education teacher in the teacher's own classroom. In implementing the elementary program standards, the following general curriculum definitions apply. It is locally determined how to incorporate these content specifications into relevant standards and benchmarks.

a. English-language arts. English-language arts are as referenced in Iowa Code sections 256.7(28) and 256.9(49) "a."

b. Social studies. Social studies are as referenced in Iowa Code section 256.7(26) "a"(3).

c. Mathematics. Mathematics instruction is as referenced in Iowa Code section 256.7(28).

- d. *Science*. Science instruction is as referenced in Iowa Code section 256.7(28).
- e. *Health*. Health instruction is as referenced in Iowa Code sections 256.7(26) “a”(3) and 279.50.
- f. *Physical education*. Physical education instruction will include movement experiences and body mechanics; fitness activities; rhythmic activities; stunts and tumbling; simple games and relays; sports skills and activities; and water safety.
- g. *Traffic safety*. Traffic safety instruction will include pedestrian safety; bicycle safety; auto passenger safety; school bus passenger safety; seat belt use; substance education; and the application of legal responsibility and risk management to these concepts.
- h. *Music*. Music instruction will include skills, knowledge, and attitudes and will include singing and playing music; listening to and using music; reading and writing music; recognizing the value of the world’s musical heritage; respecting individual musical aspirations and values; and preparing for consuming, performing, or composing.
- i. *Visual art*. Visual art instruction will include perceiving, comprehending, and evaluating the visual world; viewing and understanding the visual arts; developing and communicating imaginative and inventive ideas; and making art.
- j. *Computer science*. Computer science instruction incorporating the standards established under Iowa Code sections 256.7(26) “a”(4) and 256.9(61) is to be offered in at least one grade level.

12.5(4) Grades 7 and 8. The following will be taught in grades 7 and 8 pursuant to Iowa Code section 256.11(4). If grade 6 is configured with grades 7 and 8, the grade 7 and 8 requirements apply. It is a local decision whether all students are required to take visual arts or music. In implementing the grade 7 and 8 program standards, the following general curriculum definitions apply. It is locally determined how to incorporate the content specifications into relevant standards and benchmarks.

- a. *English-language arts*. English-language arts instruction is as referenced in Iowa Code section 256.7(28).
- b. *Social studies*. Social studies are as referenced in Iowa Code section 256.7(26) “a”(3).
- c. *Mathematics*. Mathematics instruction is as referenced in Iowa Code section 256.7(28).
- d. *Science*. Science instruction is as referenced in Iowa Code section 256.7(28).
- e. *Health*. Health instruction is as referenced in Iowa Code sections 256.7(26) “a”(3) and 279.50.
- f. *Physical education*. Physical education will include the physical fitness activities that increase cardiovascular endurance, muscular strength, and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; and leisure and lifetime activities.
- g. *Music*. Paragraph 12.5(3) “h” applies, with the addition of using music as an avocation or vocation.
- h. *Visual art*. Paragraph 12.5(3) “i” applies, with the addition of using visual arts as an avocation or vocation.
- i. *Career education*. Career education instruction will include exploration of employment opportunities, experiences in career decision making, and experiences to help students integrate work values and work skills into their lives. This paragraph does not apply to nonpublic schools. However, nonpublic schools will comply with subrule 12.5(7).
- j. *Computer science*. Computer science instruction incorporating the standards established under Iowa Code section 256.7(26) “a”(4) will be offered in at least one grade level.
- k. *Secondary credit*. Secondary credit will be awarded as referenced in Iowa Code section 256.7(26) “a”(1).

12.5(5) High school program, grades 9 through 12. In grades 9 through 12, a unit is a course or equivalent related components or partial units taught throughout the academic year as defined in subrule 12.5(13). The following will be offered and taught as the minimum program as referenced in Iowa Code section 256.11(5). All students in schools and school districts shall satisfactorily complete requirements as referenced in Iowa Code sections 256.7(26), 256.11(5) “b” and “g,” and 256.11(6) “c” in order to graduate. It is locally determined how to incorporate the content specifications into relevant standards and benchmarks.

In implementing the high school program standards, the following curriculum standards apply:

a. *English-language arts (six units)*. English-language arts instruction is as referenced in Iowa Code section 256.7(28).

b. *Social studies (five units)*. Social studies is as referenced in Iowa Code sections 256.7(26) “a”(3), 256.11(5) “b,” and 280.9A.

c. *Mathematics (six units)*. Mathematics instruction is as referenced in Iowa Code sections 256.7(28) and 256.11(5) “d” through “e,” including:

- (1) Four sequential units that are preparatory to postsecondary educational programs.
- (2) Two additional units.

d. *Science (five units)*. Science instruction is as referenced in Iowa Code sections 256.7(28) and 256.11(5) “a.”

e. *Health (one unit)*. Health instruction is as referenced in Iowa Code sections 256.7(26) “a”(3), 256.11(5) “j,” and 279.50.

f. *Physical education (one unit)*. Physical education, as well as any exemption or excusal, is as referenced in Iowa Code sections 256.11(5) “g” and 256.11(18).

g. *Fine arts (two units)*. Fine arts instruction will include at least two of the following:

(1) Dance. Dance instruction encompasses developing basic movement skills, elementary movement concepts, study of dance forms and dance heritage, participating in dance, evaluating dance as a creative art, and using dance as an avocation or vocation.

(2) Music. Music instruction include skills, knowledge, and attitudes and the singing and playing of music; listening to and using music; reading and writing music; recognizing the value of the world’s musical heritage; respecting individual musical aspirations and values; preparing for consuming, performing, or composing; and using music as an avocation or vocation.

(3) Theatre. Theatre instruction encompasses developing the internal and external resources used in the theatre process; creating theatre through artistic collaboration; relating theatre to its social context; forming aesthetic judgments; and using theatre as an avocation or vocation.

(4) Visual art. Visual art instruction includes developing concepts and values about natural and created environments; critiquing works of art; evaluating relationships between art and societies; analyzing, abstracting, and synthesizing visual forms to express ideas; making art; and using visual art as an avocation or vocation.

h. *World language (two units)*. The world language program will be a two-unit sequence of uninterrupted study in at least one language, which may include American Sign Language.

i. *Career and technical education service areas—school districts (three units each in at least four of the six service areas)*. A minimum of three sequential units, of which only one may be a core unit, will be taught in four of the six service areas as referenced by Iowa Code section 256.11(5) “h,” Iowa Code chapter 258, and 281—Chapter 46.

j. *Vocational education/nonpublic schools (five units)*. A nonpublic school that provides an educational program that includes grades 9 through 12 will comply with Iowa Code section 256.11B.

k. *Personal finance literacy (one-half unit)*. Iowa Code section 256.11(5) “k” is incorporated by this reference.

l. *Computer science (one-half unit)*. Iowa Code section 256.7(26) “a”(4) is incorporated by this reference.

12.5(6) *Exemption from physical education course, health course, physical activity, or cardiopulmonary resuscitation course completion*. Exemptions from these activities are governed by Iowa Code section 256.11(5) “g” and 256.11(6).

12.5(7) *Career education*. Iowa Code sections 256.9(42), 279.61, and 280.9 are incorporated by this reference.

12.5(8) *Age-appropriate, multicultural and gender-fair approaches to the educational program*. Iowa Code section 256.11’s provisions for an age-appropriate, multicultural, and gender-fair program are incorporated by this reference.

12.5(9) *Special education*. The board of each school district shall provide special education programs and services for its resident children that comply with rules of the state board of education implementing Iowa Code chapters 256, 256B, 273, and 280.

12.5(10) *Global education.* Iowa Code section 256.11's provisions for a global education are incorporated by this reference.

12.5(11) *Provisions for gifted and talented students.* Iowa Code sections 257.42 through 257.49 are incorporated by this reference.

12.5(12) *Provisions for at-risk students.* Iowa Code sections 280.19 and 280.19A are incorporated by this reference.

12.5(13) *Unit.* A unit is a course that meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization; or it is an equated requirement as a part of a flexible student and school support program filed as prescribed in rule 281—12.9(256). A fractional unit will be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit, unless otherwise provided by Iowa Code section 256.11.

12.5(14) *Credit.* A student shall receive a credit or a partial credit upon successful completion of a course that meets one of the criteria in subrule 12.5(13). The board may award high school credit to a student who demonstrates required competencies for a course or content area in accordance with assessment methods approved by the local board.

12.5(15) *Subject offering.* Except as provided for under subrule 12.5(20), a subject is regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject. A subject is regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects that the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

12.5(16) *Twenty-first century learning skills.* Twenty-first century learning skills are as referenced in Iowa Code section 256.7(26)“a”(3).

12.5(17) *Early intervention program.* Iowa Code section 279.50(8) is incorporated by this reference.

12.5(18) *Physical activity.*

a. Iowa Code sections 256.11(6) and 256.11(18) are incorporated by this reference. In no event may a school or school district reduce the regular instructional time, as defined by “unit” in subrule 12.5(13), for any pupil to enable the pupil to meet the physical activity requirement. However, this requirement may be met by physical education classes, activities at recess or during class time, and before- or after-school activities.

b. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.

12.5(19) *Cardiopulmonary resuscitation course completion.* Cardiopulmonary resuscitation course completion requirements are as referenced in Iowa Code section 256.11(6).

12.5(20) *Contracted courses used to meet school or school district requirements.* Contracted courses used to meet school or school district requirements are as referenced in Iowa Code section 279.50A.

281—12.6(256) Activity program. The following standards apply to the activity program of accredited schools and school districts.

12.6(1) *General guidelines.* Each board will sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The program will be supervised by qualified professional staff and designed to meet the needs and interests and challenge the abilities of all pupils consistent with their individual stages of development; contribute to the physical, mental, athletic, civic, social, moral, and emotional growth of all pupils; offer opportunities for both individual and group

activities; be integrated with the instructional program; and provide balance so a limited number of activities will not be perpetuated at the expense of others.

12.6(2) *Supervised intramural sports.* If the board sponsors a voluntary program of supervised intramural sports for pupils in grades 7 through 12, qualified personnel and adequate facilities, equipment, and supplies will be provided. Middle school grades below grade 7 may also participate.

281—12.7(256,284,284A) Professional development.

12.7(1) The standards set forth in the following Iowa Code sections apply to staff development for accredited schools and school districts: Iowa Code sections 256.7(3), 256.7(25), 256.9(47), 256.9(49), and 256.9(62) and chapter 284.

12.7(2) To meet the professional needs of all staff, professional development activities will align with district goals; will be based on student and staff information; will prepare all employees to work effectively with diverse learners and to implement age-appropriate, multicultural, gender-fair approaches to the educational program; and will adhere to the professional development standards in 281—paragraph 83.6(2) “b” to realize increased student achievement, learning, and performance.

281—12.8(256) Accountability for student achievement. Schools and school districts shall meet the following accountability provisions for increased student achievement. Area education agencies will provide technical assistance as required by 281—subrule 72.4(7).

12.8(1) *School improvement advisory committee.* Each school and school district will establish a school improvement advisory committee that is governed by Iowa Code section 280.12.

a. Community involvement.

(1) Local community. The school or school district will involve the local community in decision-making processes as appropriate. The school or school district will seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet provisions of Iowa Code section 280.12(2), the board will appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members’ analysis of the needs assessment data, the committee will make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals;
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement; and
4. Harassment or bullying prevention goals, programs, training, and other initiatives.

(3) At least annually, the school improvement advisory committee will also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);
2. Progress achieved with other locally determined core indicators; and
3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board will adopt a policy for conducting ongoing and long-range needs assessment processes. This policy will ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy will include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators and the methods a school district will use to inform kindergarten through grade 3 parents of their individual

child's performance biannually. The policy will describe how the school or school district will provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process is to include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process will include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;
2. Locally established student learning goals; and
3. Specific data collection required by federal and state programs.

Schools and school districts are to also collect information about additional factors influencing student achievement that may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, will adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process will include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, will adopt annual improvement goals based on data from at least one districtwide assessment. The goals will describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule 12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board will adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy will describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board will adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Included in the local standards and benchmarks are the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act. Standards and benchmarks may be adopted for other curriculum areas defined in rule 281—12.5(256).

d. Determination and implementation of actions to meet the needs. The school or school district will specify actions it will take in order to accomplish its long-range and annual improvement goals as established in Iowa Code section 280.12(1) "b."

(1) Actions will include addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18).

(2) A school or school district will document consolidation of state and federal resources and requirements. State and federal resources will be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans.

e. Evaluation of plan. A school or school district will develop strategies to collect data and information to determine if it is accomplishing the goals it set.

f. Assessment of student progress. Each school or school district will provide for districtwide assessment of student progress for all students. It will identify valid and reliable student assessments aligned with local content standards, which include the core content standards referenced in subparagraph 12.8(1) "c"(2). These assessments are not limited to commercially developed measures. School districts

receiving early intervention funding described in subrule 12.5(18) will provide for diagnostic reading assessments for kindergarten through grade 3 students.

(1) State indicators. Using at least one districtwide assessment, a school or school district will assess student progress on the state indicators in reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment will allow for the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science.

(2) Performance levels. A school or school district will establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 10 or use the achievement levels as established by the Iowa testing program to meet the intent of this subparagraph.

g. Assurances and support. A school or school district will provide evidence that its board has approved and supports the actions under this rule. This assurance includes the commitment for ongoing improvement of the educational system.

h. Statewide summative assessment.

(1) For purposes of this chapter, the statewide summative assessment of student progress administered by school districts for purposes of the core academic indicators is the summative assessment developed by the Iowa testing program within the University of Iowa college of education and administered by the Iowa testing program's designee. The department may require the Iowa testing program to enter into agreements with such designee to ensure the department is able to comply with Iowa Code chapter 256; this chapter; the provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95; the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; and any other applicable state or federal law.

(2) For the school year beginning July 1, 2018, and each succeeding school year, the statewide summative assessment referred in this paragraph is to meet all of the following provisions:

1. All students enrolled in school districts in grades 3 through 11 will be administered an assessment in mathematics and English language arts, including reading and writing, during the last quarter of the school year, and all students enrolled in school districts in grades 5, 8, and 10 will be administered an assessment in science during the last quarter of the school year.

2. The assessment, at a minimum, will assess the core academic indicators identified in Iowa Code section 256.7(21) "b"; be aligned with the Iowa common core standards in both content and rigor; accurately describe student achievement and growth for purposes of the school, the school district, and state accountability systems; provide valid, reliable, and fair measures of student progress toward college or career readiness; and meet the summative assessment provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95.

3. The assessment will be available for administration in both paper-and-pencil and computer-based formats and include assessments in mathematics, science, and English language arts, including reading and writing.

4. The assessment will be peer-reviewed by an independent third-party evaluator to determine that the assessment is aligned with the Iowa core academic standards, provides a measurement of student growth and student proficiency, and meets the summative assessment provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95. The assessment developed by the Iowa testing service within the University of Iowa college of education will make any necessary adjustments as determined by the peer review to meet the provisions of this paragraph.

5. The costs of complying with this paragraph will be borne by the Iowa testing program within the University of Iowa college of education.

12.8(2) Annual reporting. A school or school district will, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district will collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(3) The percentage of all eighth and tenth grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, students with disabilities, and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district will submit an annual progress report to its local community, its respective area education agency, and the department. That report will be submitted to the department by September 15 of each year. The report will include the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district will compare the annual data collected with the baseline data. A school or school district is not to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district will report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this provision.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading, mathematics, and science.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds will report to the department the progress toward achieving their early intervention goals.

(8) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(3) Accreditation, monitoring, and enforcement. Accreditation, monitoring, and enforcement is as referenced in Iowa Code section 256.11(10) and 256.11(11).

281—12.9(256) Flexible student and school support program.

12.9(1) General. The flexible student and school support program is as referenced by Iowa Code section 256.11(8). Applications are due to the department on May 31 prior to the school year the

application will be implemented. Each school district or nonpublic school approved to participate in the flexible student and school support program will file an annual report with the department on the status of the program in a format prescribed by the department by May 31. Participation in the flexible student and school support program may be renewed for additional periods of years, each not to exceed three years. The director may revoke approval of all or part of any application or approved education program if the annual report or any other information available to the department indicates that conditions no longer warrant use of an exemption or funding from the school district's flexibility account under Iowa Code section 298A.2(2). Notice of revocation must be provided by the director to the school district or nonpublic school prior to the beginning of the school year for which participation is revoked.

12.9(2) *Annual report to the department.* Each school district or nonpublic school approved to participate in the flexible student and school support program will file an annual report with the department on the status of the program in a format prescribed by the department by May 31.

281—12.10(256) Independent accrediting agencies. Notwithstanding Iowa Code section 256.11(1) through 256.11(12) and this chapter, a nonpublic school may be accredited by an independent accrediting agency that appears on a list maintained by the state board of education instead of being accredited by the state board.

12.10(1) *Compliance required by a nonpublic school.* Iowa Code section 256.11(16) is incorporated by this reference. New accrediting agencies must apply by November 1. New schools shall notify the department by April 1 if they wish to be included in the independently accredited list for the following school year. Each year the department will contact the approved accrediting agencies requesting an updated list of the schools that are accredited or in the accrediting process for the upcoming school year. This list is due to the department by April 1. A nonpublic school that participates in the accreditation process offered by an independent accrediting agency on the approved list published pursuant to this rule is deemed to meet the education standards of Iowa Code section 256.11 and this chapter. However, such a school shall comply with statutory health and safety requirements for school facilities. A nonpublic school accredited under this chapter shall abide by all state and federal laws and regulations. Notwithstanding Iowa Code section 256.11, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(2) *List maintained by state board.* The state board will maintain a list of approved independent accrediting agencies comprised of at least six regional or national nonprofit, nongovernmental agencies recognized as reliable authorities concerning the quality of education offered by a school and shall publish the list of independent accrediting agencies on the department's Internet site. The list will include accrediting agencies that, as of January 1, 2013, accredited a nonpublic school in this state that was concurrently accredited under this rule and include any agency that has a formalized partnership agreement with another agency on the list and has member schools in this state as of January 1, 2013. Agencies that met this standard as of November 20, 2013, are the Independent Schools Association of the Central States (ISACS), Christian Schools International (CSI), Cognia, the National Lutheran Schools Association (NLSA), and the Association of Christian Schools International (ASCI).

12.10(3) *Criteria for recognizing an agency as a "reliable authority concerning the quality of education offered by a school."* In any decision to add an agency to the list maintained pursuant to subrule 12.10(1) or to remove an agency from the list pursuant to subrule 12.10(2), the following criteria may be applied:

- a. Whether the agency's accreditation standards require a school to set high academic and nonacademic standards for all students, including preparation of students for postsecondary success.
- b. Whether the agency's accreditation standards require a school to monitor and assess all students' progress toward high academic and nonacademic standards.
- c. Whether the agency's accreditation standards require a school to recruit and retain properly licensed quality professional staff, and provide those staff members with ongoing professional development.
- d. Whether the agency's accreditation standards set requirements for fiscal, data, and contract management.

- e.* Whether the agency monitors compliance with its standards and takes appropriate corrective action when standards are not met.
- f.* Whether the agency itself has appropriate fiscal, data, and contract management policies and procedures.
- g.* Any uncorrected citation of noncompliance by any governmental or nongovernmental agency or organization with jurisdiction or oversight of an accrediting agency listed pursuant to subrule 12.10(1).
- h.* Any uncorrected negative audit finding of an accrediting agency listed pursuant to subrule 12.10(1).
- i.* Any judgments, orders, decrees, consent decrees, settlement agreements, or verdicts concerning the agency listed pursuant to subrule 12.10(1) entered by any state or federal court of competent jurisdiction.
- j.* Whether the agency listed pursuant to subrule 12.10(1) continues to retain its nonprofit status.
- k.* Whether the agency listed pursuant to subrule 12.10(1) has received any form of recognition for innovation or excellence concerning its work.
- l.* Any other criterion used by the agency to determine accreditation.
- m.* Any other reports or findings sent to the nonpublic school regarding accreditation, including findings related to Iowa Code section 256.11.

12.10(4) *Removal of agency from approved independent accrediting agencies.* If the state board takes preliminary action to remove an agency from the approved list published on the department's Internet site pursuant to subrule 12.10(1), the department will, at least one year prior to removing the agency from the approved list, notify the nonpublic schools participating in the accreditation process offered by the agency of the state board's intent to remove the accrediting agency from its approved list of independent accrediting agencies. The department will give notice to the independent accrediting agency, along with an opportunity to respond. The notice will also be posted on the department's Internet site and contain the proposed date of removal. If a nonpublic school receives notice pursuant to this subrule and it chooses to remain accredited, the nonpublic school is to attain accreditation under this rule or otherwise attain accreditation in a manner provided by this chapter or Iowa Code section 256.11, not later than one year following the date on which the state board removes the agency from its list of independent accrediting agencies.

12.10(5) *Rule of construction: "at least six."* The obligation to maintain a list of at least six agencies in subrule 12.10(1) will not be construed to require the list to contain an agency that is not a regional or national nonprofit, nongovernmental agency recognized as a reliable authority concerning the quality of education offered by a school.

12.10(6) *Adoption by the department of standard procedures.* The department will adopt standard procedures, schedules, and forms for the implementation of this rule, including procedures for adding independent accrediting agencies from the list maintained by the state board pursuant to subrule 12.10(1) and removing agencies from that list pursuant to subrule 12.10(4).

281—12.11(256) High-quality standards for computer science. Iowa Code sections 256.7(26) and 256.9(61) are incorporated by this reference. A computer science professional development incentive fund is established in the state treasury under the control of the department. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal moneys, for deposit in the fund. The department may disburse moneys contained in the fund for professional development activities or tuition reimbursement. Notwithstanding Iowa Code section 8.33, moneys in the computer science professional development incentive fund that remain unencumbered or unobligated at the close of the fiscal year will not revert but remain available for expenditure for the purposes designated until the close of the succeeding fiscal year. The department may disburse those moneys in the following ways:

1. A school district or accredited nonpublic school, or a collaborative of one or more school districts, accredited nonpublic schools, and area education agencies, may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide proven professional development activities for Iowa teachers in the area of computer science education.

2. A school district or accredited nonpublic school may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide tuition reimbursement for Iowa teachers seeking endorsements or authorizations for computer science under Iowa Code section 272.2(20).

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 14
“School Health Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135.185, 256.7(33), 279.70 and 280.16
State or federal law(s) implemented by the rulemaking: Iowa Code sections 135.185, 256.7(33),
279.70 and 280.16

Public Hearing

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

January 2, 2024
9 to 9:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

The intent of this proposed chapter is to protect Iowa students with health needs. The Department proposes deleting restrictive terms that do not add value and deleting language where a statutory cross-reference would suffice.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Schools and school districts will bear the costs of this proposed chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
Students with special health needs and their families will benefit from this proposed chapter.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14 SCHOOL HEALTH SERVICES

DIVISION I IN GENERAL

281—14.1(256) Medication administration. Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

14.1(1) A statement on administration of prescription and nonprescription medication.

14.1(2) A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

14.1(3) A statement that authorized persons administering medication include licensed health personnel working under the auspices of the school, such as licensed registered nurses, physicians, physician assistants, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals may self-administer asthma or other airway constricting disease medication, use a bronchodilator canister or bronchodilator canister and spacer, or possess and have use of an epinephrine auto-injector with parent and physician (or physician assistant) consent on file for each school year, without the necessity of demonstrating competency to self-administer these medications. If a student misuses this privilege, it may be withdrawn. For purposes of this chapter, “self-administration” and “medication” mean the same as defined in Iowa Code section 280.16(1).

14.1(4) A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with licensed health personnel. Licensed health personnel working under the auspices of the school who delegate medication administration within their scope of practice will conduct the course. A record of course completion will be maintained by the school.

14.1(5) A provision that the individual’s parent provide a signed and dated written statement requesting medication administration at school.

14.1(6) A statement that medication will be in the original labeled container either as dispensed or in the manufacturer’s container.

14.1(7) A provision that a written medication administration record is to be on file at the school and include:

- a. Date.
- b. Individual’s name.
- c. Prescriber or person authorizing administration.
- d. Medication name and purpose, including the use of a bronchodilator canister or a bronchodilator canister and spacer or the use of an epinephrine auto-injector.
- e. Medication dosage.
- f. Administration time.
- g. Administration method.
- h. Signature and title of the person administering medication.
- i. Any unusual circumstances, actions or omissions.

14.1(8) A statement that medication shall be stored in a secured area unless an alternate provision is documented.

14.1(9) A provision for a written statement by the individual’s parent or guardian requesting the individual’s co-administration of medication, when competency is demonstrated.

14.1(10) A provision for emergency protocols for medication-related reactions.

14.1(11) A statement regarding confidentiality of information.

281—14.2(256) Special health services. Some individuals need special health services to participate in an educational program. These individuals will receive special health services along with their educational program.

14.2(1) Definitions. The following definitions are used in this rule, unless the context otherwise demands:

“Assignment and delegation.” “Assignment” means the routine health care, activities and health procedures that are within the licensed health personnel’s authorized scope of practice as defined by state law. “Delegation” means the process within the licensed health personnel’s scope of practice in transferring a task, skill, or procedure of the licensed health personnel to qualified designated personnel. Primary consideration is given to the recommendation of the licensed health personnel and health instruction competence of the delegate is documented to perform a specific activity, skill, or procedure that is beyond the qualified personnel’s traditional role and not routinely performed.

“Co-administration” means the eligible individual’s participation in the planning, management and implementation of the individual’s special health service and demonstration of proficiency to licensed health personnel.

“Educational program” includes all school curricular programs and activities both on and off school grounds.

“Education team” may include the individual, the individual’s parent, administrator, teacher, licensed health personnel, and others involved in the individual’s educational program. The education team may be the team under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

“Health assessment” means the systematic collection of data collected by the licensed health personnel to determine the student’s health status and initial plan of care, to identify any actual or potential health problems, or upon any significant change in the student’s status relating to the individual’s education program.

“Health instruction” means education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual’s health plan. Documentation of education and periodic updates will be on file at school.

“Individual health plan” means the documented plan of care utilizing the nursing process as defined in 655—Chapter 6 for evidence-based management of the student’s ongoing special health service in the educational program. The school nurse may develop this plan in collaboration with the education team. The plan also includes a provision for emergencies to provide direction in managing an individual’s health condition (stable or unstable). Documentation of evaluation and updates to the plan are completed as needed and at least annually.

“Licensed health personnel” means a licensed registered nurse, licensed physician, licensed physician assistant, or other licensed health personnel legally authorized to delegate or provide special health services and medications under the auspices of the school.

“Prescriber” means licensed health personnel legally authorized to prescribe special health services and medications.

“Qualified designated personnel” means individuals who perform delegated tasks, activities and procedures beyond their traditional role who are instructed, supervised, and competent in implementing the eligible individual’s health plan or delegation of special health services.

“Special health services” includes services for eligible individuals whose health status (stable or unstable) necessitates:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

“Supervision” means the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

14.2(2) *Special health services policy.* Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines will address the following:

a. Licensed health personnel provide special health services under the auspices of the school. Duties of the licensed health personnel include:

- (1) Participating as a member of the education team.
- (2) Providing the health assessment.
- (3) Planning, implementing and evaluating the written individual health plan.
- (4) Planning, implementing and evaluating special emergency health services.

(5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.

(6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintaining a record of special health services. The documentation includes the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Reporting unusual circumstances to the parent, school administration, and prescriber.

(9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.

(10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of ongoing special health services, the following are to be on file:

(1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) A written statement by the individual's parent requesting the provision of the ongoing special health service.

(3) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable, for ongoing health services and documentation of the education team meeting.

c. Licensed health personnel delegating health services, in collaboration with the education team, determine the special health services to be provided designated qualified personnel. The documented rationale will include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the scope of the licensed personnel's practice, the student's needs and the qualifications of school personnel performing health services.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.

d. Licensed health personnel supervise the delegated special health services, define the level of frequency of supervision and document the supervision.

e. Licensed health personnel instruct qualified designated personnel to deliver and perform delegated special health services. Documentation of instruction, written consent of personnel pursuant to Iowa Code section 280.23 and evaluations are to be on file at the school.

f. Parents provide the usual equipment, supplies, and necessary maintenance of the equipment, unless the school is required to provide the equipment, supplies, and maintenance under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973. The equipment will be stored in a secure area. The individual health plan is to designate the responsibilities roles of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

14.2(3) Relationship between this rule and other laws and rules. In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973, the school health services is to comply with any additional or differing provisions of those laws based on a specific child's needs.

281—14.3(256) School district and accredited nonpublic school stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer voluntary supply.

14.3(1) Definitions. For the purpose of this rule, the following definitions apply:

"Act" means 2015 Iowa Acts, Senate File 462, which amended Iowa Code section 280.16 and created Iowa Code section 280.16A.

“Bronchodilator” means the same as defined in Iowa Code section 280.16(1) *“a.”*

“Bronchodilator canister” means the same as defined in Iowa Code section 280.16(1) *“b.”*

“Department” means the department of education.

“Epinephrine auto-injector” means the same as defined in Iowa Code section 280.16(1) *“c.”*

“Licensed health care professional” means the same as defined in Iowa Code section 280.16(1) *“d.”*

“Medication administration course” means a course approved or provided by the department that includes safe storage of medication, handling of medication, general principles, procedural aspects, skills demonstration and documentation requirements of safe medication administration in schools.

“Medication error” means the failure to administer an epinephrine auto-injector to a student or individual by proper route, failure to administer the correct dosage, or failure to administer an epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer according to generally accepted standards of practice.

“Medication incident” means accidental injection of an epinephrine auto-injector into a digit of the authorized personnel administering the medication.

“Personnel authorized to administer epinephrine or a bronchodilator” means the same as defined in Iowa Code section 280.16A(1) *“e.”*

“School building” means each attendance center within a school district or accredited nonpublic school where students or other individuals are present.

“School nurse” means the same as defined in Iowa Code section 280.16A(1) *“f.”*

“Spacer” means the same as defined in Iowa Code section 280.16A(1) *“g.”*

14.3(2) Applicability. This rule applies to and permits:

a. A licensed health care professional to prescribe a stock epinephrine auto-injector, a bronchodilator canister, or a bronchodilator canister and spacer in the name of a school district or accredited nonpublic school for use in accordance with the Act and this rule;

b. A pharmacist to dispense a stock supply pursuant to paragraph 14.3(2) *“a”*; and

c. A school district or accredited nonpublic school to acquire and maintain a stock supply pursuant to paragraphs 14.3(2) *“a”* and 14.3(2) *“b.”*

14.3(3) Prescription for stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers. A school district or accredited nonpublic school may obtain a prescription for epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers from a licensed health care professional annually in the name of the school district or accredited nonpublic school for administration to a student or individual who may be experiencing an anaphylactic reaction or may need treatment for respiratory distress, asthma, or other airway constricting disease. The school district or accredited nonpublic school is to maintain the supply of such auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers according to manufacturer instructions. If a school district or accredited nonpublic school obtains a prescription pursuant to the Act and these rules for epinephrine auto-injectors, the school district or accredited nonpublic school will stock a minimum of one pediatric dose and one adult dose for each school building. A school district or accredited nonpublic school may obtain a prescription for more than the minimum and may maintain a supply in other buildings.

14.3(4) Authorized personnel and stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer administration. A school nurse or personnel trained and authorized may provide or administer an epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer from a school supply to a student or individual in circumstances authorized by Iowa Code section 280.16.

a. Pursuant to Iowa Code section 280.23, authorized personnel will submit a signed statement to the school nurse stating that the authorized personnel agree to perform the service of administering a stock epinephrine auto-injector to a student or individual who may be experiencing an anaphylactic reaction or administering a bronchodilator canister or a bronchodilator canister and spacer to a student or individual experiencing respiratory distress, asthma, or other airway constricting disease.

b. Emergency medical services (911) will be contacted immediately after a stock epinephrine auto-injector is administered to a student or individual, and the school nurse or authorized personnel

will remain with the student or individual until emergency medical services arrive. In the event of administration of a stock bronchodilator or bronchodilator canister and spacer to a student or individual, the school nurse will be contacted and will determine, based on professional judgment, the necessary care of a student or individual.

c. The administration of an epinephrine auto-injector, a bronchodilator, or a bronchodilator canister and spacer in accordance with this rule is not the practice of medicine.

14.3(5) *Stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer training.* School employees may obtain a signed certificate to become authorized personnel.

a. Training to obtain a signed certificate may be accomplished by:

(1) Successfully completing, every five years, the medication administration course provided by the department;

(2) Annually demonstrating to the school nurse a procedural return-skills check on medication administration;

(3) Annually completing an anaphylaxis, asthma, or airway constricting disease training program approved by the department;

(4) Demonstrating to the school nurse a procedural return-skills check on the use of an epinephrine auto-injector, bronchodilator canister, and bronchodilator canister and spacer using information from the training, using authorized prescriber instructions, and as directed by the prescription manufacturing label; and

(5) Providing to the school nurse a signed statement, pursuant to Iowa Code section 280.23, that the person agrees to perform one or more of the services described in this rule.

b. Training required after a medication error or medication incident. Authorized personnel or the school nurse directly involved with a medication error or medication incident involving the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers are required to follow the medication error or medication incident protocol adopted by the board of directors of the school district or authorities in charge of the school district or accredited nonpublic school. To retain authorization to administer stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers in the school setting, authorized personnel directly involved with a medication error or medication incident will be required to provide a procedural skills demonstration to the school nurse demonstrating competency in the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

14.3(6) *Procurement and maintenance of stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer supplies.* A school district or accredited nonpublic school may obtain a prescription to stock, possess, and maintain epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

a. Stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers will be stored in a secure, easily accessible area for an emergency within the school building, or in addition to other locations as determined by the school district or accredited nonpublic school, and in accordance with the manufacturing label of the stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer.

b. A school district or school will designate an employee to routinely check stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers and document the following in a log monthly throughout the calendar year:

(1) The expiration date;

(2) Any visualized particles or color change, for epinephrine auto-injectors; or

(3) Bronchodilator canister damage.

c. The school district or school will develop a protocol to replace as soon as reasonably possible any logged epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer that is used, is damaged, is close to expiration, or is discolored or has particles visible in the epinephrine auto-injector liquid.

14.3(7) *Disposal of used stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.* The school district or school that administers epinephrine auto-injectors,

bronchodilators, or bronchodilator canisters and spacers shall dispose of used cartridge injectors as infectious waste pursuant to the department's medication waste guidance and bronchodilators or bronchodilator canisters and spacers pursuant to the department's medication waste guidance. For purposes of this rule, a multiuse bronchodilator canister is considered "used" when it no longer contains sufficient active ingredient to be medically useful.

14.3(8) Reporting. A school district or school that obtains a prescription for stock medications under this rule will report to the department within 48 hours, using the reporting format approved by the department, each medication incident or error with the administration of a stock epinephrine injector, bronchodilator canister, or bronchodilator canister and spacer or administration of a stock epinephrine auto-injector.

14.3(9) School district or accredited nonpublic school policy. A school district or school may stock epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. The board of directors in charge of the school district or authorities in charge of the accredited nonpublic school that stocks epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers shall establish a policy and procedure for the administration of a stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer, which is to comply with the minimum provisions of this rule.

14.3(10) Rule of construction. This rule will not be construed to require school districts or accredited nonpublic schools to maintain a stock of epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. An election not to maintain such a stock is not to be considered negligence.

14.3(11) Opioid antagonists. A school district may obtain a valid prescription for an opioid antagonist and maintain a supply of opioid antagonists in a secure location at each location where a student may be present for use as provided in this rule. Any school district that does so is to comply with rules and procedures adopted by the department of health and human services.

281—14.4(279) Suicide prevention, identification of adverse childhood experiences, and strategies to mitigate toxic stress response. Iowa Code section 279.70 is incorporated by this reference.

281—14.5(256,280) Severability. If any provisions of this chapter or the application thereof to any person or circumstance are held invalid, such invalidity does not affect the provisions or application of this chapter that can be given effect, and to this end the provisions of this chapter are declared to be severable.

This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

DIVISION II COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments. The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers under Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

281—14.7(279) Definitions. For the purposes of this division:

“Assault” means the same as defined in Iowa Code section 708.1.

“Bodily injury” or *“injury”* means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury is to be the result of intentional act and not accidental and a physical injury to a person’s body that is apparent within 24 hours after the incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

“Classroom clear” means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase “classroom clear” to be covered by this division. The mere use of the term “classroom clear” does not bring that activity within the coverage of this division. Using another term for a “classroom clear” does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student’s dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

“Classroom management” means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

“Department” means the Iowa department of education.

“Evidence-based” means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or interventions with strong or moderate evidence should be prioritized.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means the same as defined in rule 281—103.2(256B,280).

“Property damage” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following will be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“Reasonable and necessary force” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration needed to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School district” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“Social-emotional-behavioral health” or *“SEBH”* means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness, self-management, responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“Therapeutic classroom” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

281—14.8(279) Classroom clears.

14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student is not considered seclusion.

14.8(3) The limitations on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school’s or district’s crisis response plan, the school or district will also follow the additional provisions of Iowa Code section 279.51A and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors apply:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student’s behavior;
- c. The presence of a weapon or material that can be weaponized;
- d. The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e. The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) General. If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a. The school principal will, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b. The notification will not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c. The principal will request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) Students with disabilities. When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention plan (BIP), the classroom teacher will call for and be included in a review and potential revision of the student’s IEP or BIP by the student’s IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student’s IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies are to provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) Students without disabilities.

- a. If a student does not have an IEP or a BIP, the meeting will include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.

b. If a student has a BIP but does not have an IEP, the classroom teacher will call for and be included in a review and potential revision of the student's behavioral intervention plan.

c. If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) Parent input. The team is to consider parent input in identifying supports to address behaviors that caused the classroom clear.

a. If the parent of a student with an IEP chooses not to participate in the meeting, the school will follow procedures to document efforts to invite the parent, as required by rule 281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, pursuant to rule 281—41.503(256B,34CFR300).

b. If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) Additional provisions. When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student's behavior intervention plan, individual health plan, safety plan, or educational placement is to be made in accordance with the procedures required for amending said plan or changing said placement.

281—14.10(279) Documentation and reporting.

14.10(1) General. A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. For purposes of this rule, "attending students" includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.13(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) Contents of report. The report will include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data needed by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

14.10(3) Reporting by the department. The department of education will compile and summarize the data it receives under this rule and submit a report to the general assembly each year by November 1.

281—14.11(256) Crisis response.

14.11(1) General. The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

a. Responses are to include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.

b. Crisis response strategies are to include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.

c. When possible, response strategies are to use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) Use of reasonable force. Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter

103. If physical force is used, school employees shall comply with any provisions of 281—Chapter 103 and this chapter.

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, are to be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports will:

- a.* Include universal support for all students that foster the emotional well-being of students through schoolwide safe and supportive environments.
- b.* Be culturally responsive.
- c.* Be trauma responsive.
- d.* Include positive school discipline practices.
- e.* Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.
- f.* Include proactive strategies that enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.
- g.* Include classroom management practices that include the following evidence-based practices:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- h.* Engage parents and guardians as partners in identifying appropriate supports for the students.
- i.* Support student development of social-emotional competencies and skills through planned universal instruction.
- j.* Have a set of specific supplemental interventions and intensive intervention supports that:
 - (1) Are for students whose behaviors are unresponsive to low-intensity strategies.
 - (2) Are based on functional behavior assessment (FBA).
 - (3) Are supported by individuals trained to handle such issues.
 - (4) Involve parents in development and ongoing review.

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district's or building's tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student's ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student's current education environment, with or without supports, including but not limited to the general education classroom. A placement in a therapeutic classroom shall not be permanent or indefinite but will be reviewed periodically as called for in this rule. For the purpose of this chapter, the word "classroom" is a descriptor of an educational set of services that create the educational environment that may include a separate physical setting from other students.

14.13(1) *Continuum of programming.* Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district's tiers of SEBH supports.

14.13(2) *Therapeutic classrooms.* For state cost reimbursement and reporting purposes, a therapeutic classroom will:

- a.* Include the following therapeutic components:
 - (1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual

qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;

- (2) Practices that enhance positive childhood experiences;
- (3) Clearly articulated and taught behavioral expectations and routines;
- (4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;
- (5) Individualized BIPs developed based on FBAs and trauma-informed practice;
- (6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;
- (7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with similar age/grade peers.

- b.* Be operated by and housed in the school district seeking reimbursement.
- c.* Have appropriately licensed and certified teacher(s).
- d.* Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:

- (1) Preschool programs follow preschool program standards, as specified in 281—Chapter 16;
- (2) Prekindergarten through twelfth grade programs follow 281—Chapter 12;
- (3) Programs that serve students with IEPs also follow 281—Chapter 41.
- e.* Not solely consist of any one of the following:
 - (1) Calming room/space;
 - (2) Single strategy or program without individualization;
 - (3) Space/location for disciplinary action;
 - (4) Seclusion room.

14.13(3) *General education students.* When general education students are served through a therapeutic classroom, the following must occur:

- a.* The therapeutic classroom has have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,
- b.* Each general education student has an individualized BIP developed based on an FBA,
- c.* When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family will review the BIP every 60 days to consider the need for transition to more or less intensive programming,
- d.* If, at any point, public agencies suspect a disability, the public agencies are to request consent for a full and individual evaluation for special education from the parent pursuant to 281—Chapter 41.

14.13(4) *Special education students.* Districts operating therapeutic classrooms that serve learners with IEPs will follow 281—Chapter 41, including provisions for education in the least restrictive environment.

14.13(5) *Consortium agreements.* A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

- a.* The therapeutic classroom is to be housed within the district's boundaries;
- b.* The district seeking reimbursement is fiscally responsible for the therapeutic classroom;
- c.* The district seeking reimbursement is responsible for operating the therapeutic classroom.

14.13(6) *Rule of construction.* A school district is not required to operate a therapeutic classroom; however, a school district is required to ensure therapeutic services are available, whether in-district or otherwise, to students who need those services to access or benefit from an education.

281—14.14(256) *Therapeutic classroom—claims.* A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule and Iowa Code section 256.25A.

14.14(1) *Reimbursement of transportation services.* If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic school and located more than 30 miles from the student's designated school or accredited nonpublic school.

a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.

b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.

c. Claims will be made to the department of education using an invoice supplied by the department and completed by the school district providing transportation during the school year.

d. Claims include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) *Claims for reimbursement of services.*

a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.

b. By July 1 of each year, the department will draw warrants payable to school districts for such claims.

c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP weighting. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.

d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.

e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student will be counted as a shared-time student in the district in which the nonpublic school of attendance is located.

f. Reimbursement will be prorated if claims exceed the amount appropriated.

g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP and does not have a weighted IEP for the period claimed, number of days served and the number of days in the school district's calendar.

h. The costs of providing transportation to nonpublic school pupils as provided in this rule will not be included in the computation of district cost under Iowa Code chapter 257 but will be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils does not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. "General education classroom" is not synonymous with "least restrictive environment." Training will include the process and procedures for:

a. Making placement decisions based on individual student performance data and participation with peers without disabilities; and

b. Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner's least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed regularly, but no less frequently than once every three school years, and cover the following topics:

- a.* The rules of this chapter;
- b.* The school's specific policies and procedures regarding the rules of this chapter;
- c.* Training on recognizing and responding to incidents that are an imminent threat of bodily injury;
- d.* Student, parent/guardian, and staff notifications and parent follow-up requirements;
- e.* Reporting requirements for incidents of assault and violence resulting in injury or property damage;
- f.* Reporting requirements for referral and transfer to therapeutic classroom(s);
- g.* The school's specific crisis response plan for incidents of imminent threat;
- h.* Staff supports following a crisis or significant event.

14.15(4) Within one year of beginning employment in a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

- a.* The school's specific policies and procedures for creating learning environments that are safe and supportive.
- b.* Evidence-based culturally responsive approaches to student discipline.
- c.* Evidence-based classroom management strategies that include:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- d.* Universal instruction of social-emotional competencies.
- e.* Engaging families as partners in identifying appropriate supports for learner success.
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

- a.* FBAs;
- b.* Using FBAs to design BIPs;
- c.* Individual safety plans;
- d.* Supports for student reentry to learning following a significant event;
- e.* Supports for teacher implementation of BIPs;
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279) that are culturally responsive and trauma responsive;
- g.* Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;
- h.* Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department will develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and

expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department's continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director will consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

This division is intended to implement Iowa Code chapters 256, 279 and 280.

281—14.17 to 14.19 Reserved.

DIVISION III
SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

281—14.20(256B,280A) Definitions. For the purposes of this division, the definitions contained in Iowa Code section 280A.1 are incorporated by this reference.

281—14.21(280A) Behavioral health screenings in school settings.

14.21(1) A school district, an accredited nonpublic school, or an AEA may contract with a mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following paragraphs apply:

a. The screenings will be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of health and human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings will obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student's written consent prior to the student's participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.21(2) The parental consent is to allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

14.21(3) The school district or AEA will ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.21(4) The school district or AEA will have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.21(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

- a.* Notifies the parent or guardian of the student of the results of the screening.
- b.* May notify the student's primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.
- c.* May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

281—14.22(280A) Establishment of provider-patient relationship for telehealth in school setting.

14.22(1) Iowa Code section 280A.3(1), 280A.3(3), and 280A.3(4) are incorporated by this reference.

14.22(2) If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional will first establish a valid provider-patient relationship. The provider-patient relationship is established when:

- a.* The student, with the consent of the student's parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;
- b.* The mental health professional agrees to provide treatment of the student; and
- c.* The student's parent or guardian agrees to have the student treated by the mental health professional.

14.22(3) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent will be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and is necessary each academic year that the student receives telehealth services.

281—14.23(280A) Behavioral health services provided via telehealth in a school setting. Iowa Code section 280A.4 is incorporated by this reference.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 15
“Online and Virtual Learning”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(32)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 256.7(32), 256.9(55),
256.11(17), 256.41 and 256.43

Public Hearing

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

January 2, 2024
9 to 9:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to benefit students and teachers who participate in online, remote, or virtual learning.

The Department proposes removing restrictive terms that do not add value, removing rule text that may be addressed by a cross-reference to statutory provisions, and providing additional flexibility for approved schools and providers (e.g., a five-year cycle versus a three-year cycle).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Schools and providers of online and virtual education services will bear the costs of this proposed chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa students who participate in remote learning, as well as their teachers and families, will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
ONLINE AND VIRTUAL LEARNING

281—15.1(256) Definitions.

“Accredited nonpublic school” means a nonpublic school accredited pursuant to Iowa Code section 256.11.

“Appropriately licensed and endorsed” or *“appropriately licensed”* means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

“Area education agency” or *“AEA”* refers to a political subdivision organized pursuant to Iowa Code chapter 273.

“Board of educational examiners” or *“BOEE”* refers to the body with the statutory responsibility to license Iowa educators.

“Delivered primarily over the Internet” means more than 50 percent of the course content or instruction or both is delivered using the Internet.

“Department” means the department of education.

“Director” means the director of the department of education.

“Exclusive instruction” means without the use of any other form of instructional delivery.

“Online learning” and *“online coursework”* mean educational instruction and content that are delivered primarily over the Internet. *“Online learning”* and *“online coursework”* do not include print-based correspondence education, broadcast television or radio, videocassettes, or stand-alone educational software programs that do not have a significant Internet-based instructional component.

“Online learning platform” means a set of services by which students access course content and by which students and teachers connect and communicate.

“Online school” refers to a district or nonpublic school providing educational instruction and course content delivered primarily over the Internet for a group of students for whom this method of delivery is the primary method of education. *“Online school”* also refers to a school for which a district accepts open enrollment for the express purpose of attendance at the online school and that has received permission from the department to operate.

“Participating school district or accredited nonpublic school” means a school district or accredited nonpublic school that is providing online learning or online coursework.

“Private provider” means, for purposes of this chapter, any public or private entity that is not a school district, an accredited nonpublic school, or an AEA.

“School district” means a political subdivision organized pursuant to Iowa Code chapter 274.

“Telecommunications” means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. *“Telecommunications”* does not include online learning.

281—15.2(256) Telecommunications for instruction.

15.2(1) *Applicability.* This rule applies to all AEAs, school districts, accredited nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.2(2) *Course eligibility.* Telecommunications may be employed as a means to deliver any course, including a course necessary for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.2(3) *Appropriately licensed and endorsed teachers.* Instruction provided by telecommunications is to be taught by an appropriately licensed and endorsed teacher, in a manner provided by Iowa Code section 256.7(7)“a.”

281—15.3(256) Online learning—private providers.

15.3(1) *Online learning model established.* An online learning program model is established by the director, pursuant to Iowa Code section 256.9, that provides districts and accredited nonpublic schools with a list of approved online providers. Approved providers will meet criteria for approval in accordance with Iowa Code section 256.43(1)“a.”

15.3(2) *Use of approved private providers.* Courses developed by private providers may be utilized by a school district or school in implementing a high-quality online learning program in circumstances described in Iowa Code section 256.43(2)“a.”

15.3(3) Approval criteria. The department will maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meet the following provisions:

- a. Courses meet the standards of Iowa Code section 256.7(32) “c.”
- b. The provider supplies coursework customized to the needs of the student.
- c. The provider offers a means for a student to demonstrate competency in completed online coursework.
- d. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.3(4) Approval process. Private providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every five years on forms provided by the department. Applications to provide services may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved provider will also apply in each year that any of these alterations take place, which are substantial in nature:

- a. The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider altered the evaluation of student learning used in the system.
- d. The provider altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.4(256) Online learning provided by area education agencies.

15.4(1) Online learning program delivered by area education agencies. Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa’s secondary students, including students receiving competent private instruction under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

15.4(2) Student participation. To participate in an online learning program offered by an AEA, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving competent private instruction under Iowa Code chapter 299A.

15.4(3) District responsibility. The school district or accredited nonpublic school in which the student is enrolled is responsible for:

- a. Recording a student’s program coursework grades in the student’s permanent record.
- b. Awarding high school credit for program coursework.
- c. Issuing a high school diploma to a student enrolled in the district or school who participates and completes coursework under the program.
- d. Identifying a site coordinator to serve as a student advocate and as a liaison between the program staff and teachers and the school district or accredited nonpublic school.

15.4(4) Cost. School districts and accredited nonpublic schools will pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.4(5) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32) “c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.4(6) Competent private instruction. This rule applies to students receiving competent private instruction under Iowa Code chapter 299A. To participate in an online learning program offered by an area education agency, a student receiving competent private instruction under Iowa Code chapter 299A will take whatever steps are necessary to enroll with the student’s district of residence. The

coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher appropriately licensed by the BOEE who has online learning experience, and the course content must meet the provisions of Iowa Code section 256.7(32)“c.”

281—15.5(256) Online learning program provided by a school district—online schools.

15.5(1) *Online learning program provided by a school district.* A school district may provide an online learning program delivered primarily over the Internet that operates as an online school. Such a program is governed by Iowa Code section 256.41.

15.5(2) *Course content and delivery.* Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32)“c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.5(3) *Approval criteria.* The department will maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meet the provisions of subrule 15.5(2).

15.5(4) *Approval process.* School district providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every five years on forms provided by the department. If a school district is providing full-time online instruction only to its resident students and not to any other students, the school district need not seek approval; however, the school district must ensure it meets the provisions of subrules 15.5(1) and 15.5(2). Applications may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved district provider under this rule will also apply in each year that any of these alterations take place, which are substantial in nature:

- a.* The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b.* The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c.* The provider altered the evaluation of student learning used in the system.
- d.* The provider altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.6(256) Online learning provided by a school district or accredited nonpublic school—courses.

15.6(1) *Course content and delivery.* A school district or accredited nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32)“c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.6(2) *Use to meet general accreditation standards.* Any course that is not part of the offer-and-teach standards for grades 9 through 12 may be provided by an area education agency, by the school district or accredited nonpublic school, or through an online learning platform or online exchange offered by the department in collaboration with area education agencies, school districts, or accredited nonpublic schools. Online courses may be used to meet offer-and-teach standards for grades 9 through 12 in the circumstances described in Iowa Code section 256.11(17)“a.” Additionally, a school district or accredited nonpublic school may apply for an annual waiver of the standards for up to two specified subjects in the circumstances described in Iowa Code section 256.11(17)“b.”

15.6(3) *Delivery options for general accreditation standards.* Delivery of coursework used to meet general accreditation standards is governed by Iowa Code section 256.11(17)“c.”

15.6(4) *Competent private instruction.* The online learning platform described in subparagraph 15.8(3)“b”(3) may deliver distance education to students receiving competent private instruction under Iowa Code chapter 299A, provided such students register with the school district of residence and the

coursework offered by the online learning platform is taught and supervised by a teacher appropriately licensed by the BOEE who has online learning experience, and the course content meets the provisions of Iowa Code section 256.7(32)“c.”

15.6(5) *Coordination and costs.* The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 will coordinate to ensure the most effective use of resources and delivery of services. Federal or other funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.7(256) Open enrollment. Content and delivery provided online pursuant to rule 281—15.3(256), 281—15.4(256), 281—15.5(256) or 281—15.6(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(1) *Courses.* A school district may provide individual courses it developed, or any other courses developed pursuant to this chapter (including courses developed by private providers), delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(2) *Termination.* If a student’s participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district will, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.8(256) Online learning—access by students receiving competent private instruction. Students enrolled in competent private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.4(6) and 15.6(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) will receive the student’s score for completed program coursework.

281—15.9(256,256B) Online learning—students with disabilities.

15.9(1) Children with disabilities are not to be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.9(2) Whether an online course or online learning is appropriate to a child with a disability must be determined by the child’s needs, not by the child’s assigned weighting under Iowa Code section 256B.9. If a child’s individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

15.9(3) If a child’s IEP team determines that online learning is inappropriate to the child, the child’s parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

15.9(4) When a child with an IEP seeks open enrollment into an online learning program, the child’s IEP team will determine whether the child meets the open enrollment provisions of 281—Chapter 17. In addition, the child’s IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, will determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district’s program is appropriate will be resolved pursuant to 281—Chapter 17. The child is to remain in the child’s resident district while any dispute about the appropriateness of the receiving district’s program is pending.

281—15.10(256) Department general supervision of telecommunications and online learning.

15.10(1) *Nature of general supervision.* The department will exercise general supervision over compliance with this chapter and offer advice and technical assistance to foster compliance and improved outcomes. This will be accomplished by department staff.

15.10(2) *Data collection and reporting.*

a. Each school district and accredited nonpublic school will list and describe the online coursework offered by the school district or accredited nonpublic school in which the student is enrolled.

b. A school district providing educational instruction and course content delivered primarily over the Internet that is required to seek approval under subrule 15.5(4) will annually submit to the department, in the manner prescribed by the department, data sought by the department, including data specified in Iowa Code section 256.7(32)“*b*”(1).

c. The department will comply with the responsibilities set out in Iowa Code section 256.7(32)“*b*.”

15.10(3) Accreditation criteria. All online courses and programs shall meet existing accreditation standards.

15.10(4) Prohibited activities. A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

15.10(5) Rules of construction.

a. Nothing in this chapter will be construed to require a school district, accredited nonpublic school, or AEA to use a particular assessment, curricular material, online learning platform, provider, or textbook.

b. Unless otherwise prescribed by a state or federal law protecting students with disabilities, or in accordance with a proclamation of public health disaster emergency issued by the governor pursuant to Iowa Code section 29C.6, nothing in this chapter will be construed to require a school district or accredited nonpublic school to offer continuous remote learning, to maintain a program of continuous remote learning, to deliver instruction primarily over the Internet, to continue delivering instruction primarily over the Internet, or to become or remain an approved provider of online learning.

c. Schools may use virtual learning or online learning for days of inclement weather to count toward the minimum school calendar to the extent permitted by the Iowa Code.

d. The Iowa learning online (ILO) initiative was repealed by 2020 Iowa Acts, chapter 1107, section 10. Any remaining references to ILO in any department policy, document, or procedure will be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

e. This chapter will be broadly construed to allow school districts, accredited nonpublic schools, and AEAs to meet the needs of individual students and the local community.

15.10(6) Prohibition on offering a completely online educational program. Unless specifically authorized by statute or by a governor’s proclamation on a temporary basis, no school district, accredited nonpublic school, or AEA is authorized to provide a completely online educational program, including completely online instruction for a particular grade. All school districts, accredited nonpublic schools, and AEAs will maintain a physical presence for their educational programs.

These rules are intended to implement Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41, and 256.43.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapters 21 and 24
“Community Colleges”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 260C.49
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 260C

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

These proposed rules are intended to benefit community college students, community college employees, and the broader community. In the most recent reporting year, 116,979 individuals enrolled in community colleges for credit courses and 140,992 were enrolled for noncredit courses.

The Department proposes consolidating two chapters into one. This will allow common language across rules. The Department also proposes removing unnecessarily restrictive language, references to obsolete standards and degree types, and verbatim statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Community colleges will bear the costs of this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Community college students and those who employ them, presently or in the future, will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from these proposed rules.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 21 and adopt the following **new** chapter in lieu thereof:

TITLE III
COMMUNITY COLLEGES
CHAPTER 21
COMMUNITY COLLEGES
DIVISION I
APPROVAL STANDARDS

281—21.1(260C) Definitions. For purposes of this chapter, the indicated terms are defined as follows:

“Applied liberal arts and sciences course” means a course that is classified as arts and sciences in Iowa’s common course numbering system and that primarily consists of hands-on or occupational skill development, including but not limited to accounting, ceramics, criminal investigation, dance, drama, music, photography, and physical education.

“Department” means the Iowa department of education.

“Director” means the director of the department.

“Field of instruction” means the discipline or occupational area within which an instructor teaches, which aligns with the content of the course being taught as indicated by the course prefix, title, or description.

“Full-time instructor” means an instructor who is considered to be full-time if the community college board of directors designates the instructor as full-time. Determination of full-time status is based on local board-approved contracts.

“Higher Learning Commission” means the regional accrediting authority recognized by the United States Department of Education. Iowa Code sections 260C.47 and 260C.48 require that the state accreditation process be integrated with that of the Higher Learning Commission.

“Joint enrollment” means any community college credit course offered to students enrolled in a secondary school. Courses offered for joint enrollment include courses delivered through contractual agreements between school districts and community colleges, courses delivered through the postsecondary enrollment options program, and college credit courses taken independently by tuition-paying secondary school students.

“Qualifying graduate field or major” means a qualifying graduate field or major that represents an academic discipline in which an instructor must have earned credit in order to teach courses in specified fields of instruction.

“Relevant tested experience” means the breadth, depth, and currency of work experience outside of the classroom in real-world situations relevant to the field of instruction.

281—21.2(260C) Administration.

21.2(1) *Policy manual.* A community college board of directors will develop and maintain a policy manual that adequately describes the official policies of the institution.

21.2(2) *Administrative staff.* A community college will develop an administrative staff appropriate to the size and the purpose of the institution and one that permits the institution to function effectively and efficiently. This administrative staff will provide effective leadership for the major divisions of the institution including administrative services, adult and continuing education, career and technical education, college parallel education, and student services.

21.2(3) *Chief executive officer.* A community college will have a chief executive officer who is also be the executive officer of the board of directors. The executive officer is responsible for the operation of the community college with respect to its educational program, its faculty and student services programs, and the use of its facilities. The executive officer may delegate to the staff all necessary administrative and supervisory responsibilities to ensure an efficient operation of the institution.

21.2(4) *Financial records and reports.* The community college will maintain accurate financial records and make reports in the form and pursuant to the timeline prescribed by the department and other state agencies.

21.2(5) *Enrollment.* A community college will meet minimum enrollment requirements if it offers instruction as authorized in Iowa Code chapter 260C, and if, to the satisfaction of the state board of education, it is able to provide classes of reasonable economic size as needed by students, meets the needs of the students, and shows by its past and present enrollment and placement record that it meets individual and employment needs.

21.2(6) *Catalog.* The catalog is the official publication of the community college. It will include accurate information on institutional policies, admissions requirements, procedures and fees, refund policies, residency requirements, program enrollment and degree requirements, due process procedures, affirmative action, and other information as recommended by the department. Students’ rights and responsibilities may be included in the catalog or in a separate document.

21.2(7) Admissions and program/course enrollment requirements. The community college will maintain an open-door admission policy for students of postsecondary age. This admission policy will recognize that students should demonstrate a reasonable prospect for success in the program in which they are admitted. Applicants who cannot demonstrate a reasonable prospect for success in the program for which they apply should be assisted to enroll in courses where deficiencies may be remediated or into programs appropriate to the individual's preparation and objectives. The community college may set reasonable requirements for student enrollment in specified programs and courses. Admissions and program enrollment requirements established by each community college will be published in the community college catalog.

21.2(8) Academic year. The academic year of the community college will consist of semester, trimester, or quarter terms, and will be a period of time beginning with the first day of the fall term and continuing through the day preceding the start of the next fall term as indicated in the official college calendar. A community college may offer instruction in units of length (i.e., days and weeks) consistent with the identified scope and depth of the instructional content.

21.2(9) Award requirements. The director will approve all new credit certificate, diploma, and degree award programs in accordance with Iowa Code section 260C.14. Awards from a community college will be certified by the issuance of appropriate recognition, pursuant to award approval requirement guidelines issued by the department, indicating the type of program the student has completed. The minimum number and maximum number of credit hours required for each award type contained within this subrule may be waived pursuant to paragraph 21.2(13) "i." Each award will meet the expectations of statewide articulation agreements between Iowa community colleges and public universities.

a. Associate of arts (AA). The degree is awarded upon completion of a college parallel (transfer) course of study that provides a strong general education component to satisfy the lower division general education liberal arts and sciences requirements for a baccalaureate degree. An associate of arts degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

b. Associate of science (AS). The degree is awarded upon completion of a course of study that requires a strong background in mathematics or science. The degree is intended to prepare students to transfer and initiate upper division work in baccalaureate programs. An associate of science degree awarded upon completion of an arts and sciences course of study consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

c. Associate of general studies (AGS). The degree is awarded upon completion of an individualized course of study that is primarily designed for the acquisition of a broad educational background rather than the pursuit of a specific college major or professional/technical program. The AGS is intended as a flexible course of study and may include specific curriculum in lower division transfer, occupational education, or professional-technical education. It will not include a marketed course of study. An associate of general studies degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program consists of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit hours of the required 15 general education credits may be documented through an integrated, embedded, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department. The technical core of the associate of applied science degree will constitute a minimum of 50 percent of the course credits.

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional

skills for employment in a specific field of work, such as arts, humanities, or graphic design. An associate of applied arts degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program will consist of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit hours of the required 15 general education credits may be documented through an integrated, embedded, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department. The technical core of the associate of applied arts degree will constitute a minimum of 50 percent of the course credits.

f. Associate of professional studies (APS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for transfer and upper division coursework in aligned baccalaureate programs or immediate entry into the workforce.

(1) To be eligible to offer this award type, a college shall demonstrate that other award types cannot meet needs and the associate of professional studies award is appropriate.

(2) An associate of professional studies degree will consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree will consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical core of the associate of professional studies degree will consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical core of the degree will also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

(3) An associate of professional studies degree program of study will have a minimum of three program-to-program articulation agreements with baccalaureate degree-granting institutions, at least one of which must be a public institution. A program will have a minimum of one articulation agreement effective prior to program implementation, provided all three agreements are effective within the program's first year of student enrollment. The agreements will provide for the application of no fewer than 60 semester (90 quarter) credit hours toward the graduation requirements of each articulated baccalaureate degree program.

g. Diploma. The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component will be from any of the following areas: communications, social science or humanities, and mathematics or science. The technical core of the diploma will constitute a minimum of 70 percent of the course credits. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

h. Certificate. The certificate is awarded upon completion of a state-approved program of study that is designed for entry-level employment and consists of a maximum of 48 semester (72 quarter) credit hours. A certificate may be a component of and apply toward subsequent completion of a diploma or associate of applied science or associate of applied arts degree and may be developed in rapid response to the needs of business and industry. A certificate may consist of only career and technical courses and no general education course requirements.

21.2(10) Academic records. The community college shall maintain in perpetuity for each student the complete academic record including every course attempted and grade received. An official transcript must be created at the time of course enrollment. The credit hour(s) and grade will be recorded on the student's official transcripts upon completion of a community college course. These records shall be kept

in disaster-resistant storage, unless other equivalent safeguards are used, such as maintaining duplicate files (electronic or otherwise) in separate facilities. The method of storage will be consistent with current technology to ensure the ability to retrieve records. The community college will implement a security plan that ensures the confidentiality of student records.

21.2(11) *Residency status and tuition.* A student who has been admitted to an Iowa community college will be classified as a resident or as a nonresident for admission, tuition, and fee purposes. A student classified as a resident will pay resident tuition costs. A student classified as a nonresident will pay nonresident tuition costs. Tuition rates are established by a community college's board of trustees pursuant to Iowa Code section 260C.14(2).

a. Tuition rates. Tuition rates adopted by a community college's board of trustees will be consistent with the following requirements.

(1) Resident tuition.

1. Tuition for residents will not exceed the lowest tuition rate per semester, or the equivalent, for a full-time student charged by an institution of higher education under the state board of regents.

2. For students of high school age enrolled in a course through a contractual agreement with a school district, the limit on resident tuition does not apply, and the amount of tuition will be determined by the community college's board of trustees with the consent of the school board.

3. Resident tuition rates do not require department approval.

(2) Nonresident tuition. Tuition for nonresidents will be not less than the marginal cost of instruction of a student attending the college. The establishment of nonresident tuition rates do not require department approval, with the exception of rates established pursuant to numbered paragraph 21.2(11) "a"(2) "2" and "3" and subparagraph 21.2(11) "a"(3).

1. International student tuition rates. A separate nonresident rate for international students is permissible, provided the rate is reasonable and reflects the cost of appropriate services.

2. Reciprocal agreements. A lower tuition rate for nonresidents is permitted under a reciprocal tuition agreement between a community college and an educational institution in another state, if the rate established in the agreement is approved by the department.

3. Other nonresident rates. Other nonresident tuition rates may be established for specific purposes provided the tuition rate is greater than the resident tuition rate, the tuition rate is not less than the marginal cost of instruction, and the arrangement is approved by the department.

(3) Consortia. A separate tuition rate for residents and nonresidents is permitted for courses delivered through a consortia agreement for online, distance education, or other coursework between Iowa community colleges, if the rate established in the agreement is approved by the department. Tuition will not be less than the lowest resident rate or higher than the highest nonresident rate of institutions within the consortium.

(4) Noncredit course tuition. Tuition for noncredit continuing education courses will be determined based on course costs and market demand. Tuition rates for courses that are not credit-bearing do not require department approval.

(5) Department approval. For tuition rates requiring department approval, the department will approve rates that comply with the requirements set forth in this chapter. Before a rate is adopted by a community college's board of trustees and charged to students, the community college will request and receive approval for a tuition rate.

(6) Reporting. A community college will annually report all tuition rates and mandatory fees in a manner prescribed by the department.

(7) Notification. A community college will inform all students about residency status determinations, the appeal process, and tuition policies. Information will be included in appropriate publications, such as the college's catalog, registration materials, Web site, and student handbook.

b. Determination of residency status. In determining a community college resident or nonresident classification, the primary determinant is the reason the student is in the state of Iowa. The second determinant is the length of time a student has resided in Iowa. If a student is in the state primarily for educational purposes, that student is considered a nonresident. The burden of establishing the reason a student is in Iowa for other than educational purposes rests with the student.

(1) Procedure. The registrar or officially designated community college office will require written documents, affidavits, or other related evidence deemed necessary to determine why a student is in Iowa. A student will be required to file at least two documents from different sources to determine residency status. Examples of acceptable documentation include: written and notarized documentation from an employer that the student is employed in Iowa or a signed and notarized statement from the student describing employment and sources of support; an Iowa state income tax return; an Iowa driver's license; an Iowa vehicle registration card; an Iowa voter registration card; or proof of Iowa Homestead credit on property taxes. In all events, to be determined a resident of Iowa, the student must document residing in the state of Iowa for at least 90 days prior to the beginning of the term for which the student is enrolling.

1. If a student gives misleading or incorrect information for the purpose of evading payment of nonresident tuition, the student must pay the nonresident tuition for each term the student was not officially classified as a nonresident.

2. The procedures described in paragraph 21.2(11)“b” will be administered by the registrar or staff designated by the community college.

(2) Residency of minor students. The domicile of a minor follows that of the parent with whom the minor resides, except where emancipation of said minor can be proven. The word “parent” includes legal guardian or others in cases where the lawful custody of a minor has been awarded to persons other than the minor's actual parents. A minor living with a resident of Iowa who is legally responsible for the minor shall be granted resident status if the minor has lived with the Iowa resident for at least 90 days immediately prior to enrollment. The residency status of an emancipated minor is based upon the same qualifications established for a student having attained majority.

(3) Residency of students who are not citizens of the United States. The residency status of students who are not citizens of the United States will be determined consistent with the following procedures.

1. A student who is a refugee or who is granted asylum by an appropriate agency of the United States must provide proof of certification of refugee or asylum grantee status. A student may be accorded resident status for admission and tuition purposes when the student comes directly, or within a reasonable time, to the state of Iowa from a refugee facility or port of debarkation and has not established domicile in another state.

2. A student who has immigrant status, and the student's spouse or dependents, may establish Iowa residency in the same manner as a United States citizen.

3. A student who has nonimmigrant status and who holds a nonstudent visa, and the student's spouse or dependents, may establish residency in the same manner as a United States citizen. An alien who has nonimmigrant status and whose primary purpose for being in Iowa is educational is classified as nonresident.

4. A student who is a resident of an Iowa sister state may be classified as a resident or nonresident, in accordance with rules adopted by the college's board of directors.

(4) Residency of federal personnel and dependents. A student, or the student's spouse or dependent child, who has moved into the state of Iowa as the result of military or civil orders from the federal government, and the minor children of such student, is immediately an Iowa resident.

(5) Residency of veterans and family members and individuals covered under Section 702 of the Veterans Access, Choice and Accountability Act of 2014. A veteran of a uniformed service, a member of the National Guard, or the veteran's or member's spouse or dependent child will be classified as an Iowa resident student and be eligible for resident tuition and fee amounts, if the veteran or national guard member meets the requirements of numbered paragraph 21.2(11)“b”(5)“1,” “2,” or “3.”

1. The veteran has separated from a uniformed service with an honorable or general discharge, is eligible for benefits, or has exhausted benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal authorizing veteran educational benefits program.

2. The individual is an active duty military person or activated or temporarily mobilized National Guard member.

3. The individual is a covered person under Section 702 of the Veterans Access, Choice and Accountability Act of 2014 or subsequent legislation.

(6) Reclassification of residency status. It is the responsibility of a student to request a reclassification of residency status. If a student is reclassified as a resident for tuition purposes, such classification is effective beginning with the next term for which the student enrolls. In no case will reclassification to residency status be made retroactive for tuition and fee purposes, even though the student could have previously qualified for residency status had the student applied.

(7) Appeal. The decision on the residency status of a student for admission, tuition, and fee purposes may be appealed to a review committee established by the community college. The findings of the review committee may be appealed to the community college's board of trustees, whose decision is a final administrative decision.

21.2(12) Credit hours. Credit hours will be determined consistent with the following procedures.

a. Specifically stated criteria are minimal requirements only, which institutions may exceed at their discretion.

b. Conventional instruction is subdivided into four instructional methods as herein defined.

(1) Classroom work — lecture and formalized classroom instruction under the supervision of an instructor.

(2) Laboratory work — experimentation and practice by students under the supervision of an instructor.

(3) Clinical practice — applied learning experience in a health agency or office under the supervision of an instructor.

(4) Work-based learning — employment-related experience planned and coordinated by an institutional representative and the employer, with control and supervision of the student on the job being the responsibility of the employer. Planned and supervised connections of classroom, laboratory and industry that prepare students for current and future careers.

c. No registration or orientation hours may be included when determining credit hours.

d. Institutions will take into account the soundness of the learning environment being created by the scheduling sequence and length of classroom, laboratory, clinical, and work-based learning sessions. However, the final decision on these matters is left to the institutional administration so long as minimal standards are met.

e. Only minutes for students officially registered for courses or programs, including audit registration, may be included when determining credit hours.

f. Each community college must establish a policy that defines its methods of equating alternative instruction to credit hours and the process for evaluating the effectiveness of the alternative instruction to meet or exceed the expected student outcomes as if the course were taught utilizing conventional methods in paragraph 21.2(12)“*b.*” Colleges will be held accountable for evaluating and maintaining high-quality programs, and their evaluations may be subject to department review. Students will be expected to meet all approved course requirements and will be expected to demonstrate the acquisition of knowledge and competencies/outcomes at the same level as those obtained in traditional classroom settings, in the time frames set by the institution. Alternative courses or programs of study must be approved by the college's review processes including faculty review and input. Courses will be listed in the college catalog. Instructional formats for which alternative methods of determining credit hours are applicable include the following:

(1) Accelerated courses (study, programs). Courses or programs of study that allow students to complete courses or programs at a faster pace than if offered by conventional methods. Courses and programs will be tailored to involve more student participation and self-directed study. Instructors may teach in traditional classroom settings or by alternative methods specified in this subrule.

(2) Distance education. Courses or programs of study taught over the Internet, Iowa Communications Network (ICN), or other electronic means that allow students to receive instruction in the classroom or other sites, over personal computers, television, or other electronic means. Courses may or may not be interactive with direct communication between the teacher and students. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

1. Correspondence courses. Courses offered outside the classroom setting in which the instruction is delivered indirectly to the student. Instruction is provided through another medium, such as written material, computer, television, or electronic means. Course materials are sent to a student who follows a detailed syllabus to complete assignments. Students correspond with and transmit assignments to the instructor by telephone, computer, mail, or electronic means. A third party may administer tests.

2. Television courses. Courses or programs delivered primarily via broadcast television, such as Iowa Public Television, digital video disc, or other media allowing students to receive instruction in a classroom or equipped remote location.

3. Video conference courses. Courses or programs delivered via a closed synchronous audio-video conferencing system, such as the Iowa Communications Network or similar system that allows students to receive instruction in a classroom or any equipped remote location via an audio-video feed to a television, computer, or other electronic device.

4. Online courses. Courses or programs delivered via the Internet. Courses may be taken using computers in a classroom setting or using personal computers or other electronic devices from the student's home or other location using an online learning management system or mixed-media methods. Students may be linked at times directly with the instructor or with other students electronically. Interaction may be direct (synchronous) or indirect (asynchronous) allowing students to participate during their own time frames.

5. In-class hybrid courses. Courses or programs that combine traditional classroom and computer-based instruction. In-class sessions are offered with online instructional activities to promote independent learning and reduce seat-time.

(3) Self-paced instruction. Courses or programs that permit a student to enter at variable times or progress at the student's own rate of speed. Start and end dates may or may not correspond to the official college calendar. Contact or credit hours for self-paced programs or courses will be computed by assigning to each registration the total number of credit or contact hours the student would have received if the student enrolled in a conventional program or course with stipulated beginning and ending dates.

(4) Arranged study. Instruction offered to students at times other than stated or scheduled class times to accommodate specific scheduling or program needs of students. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

(5) Multiformat nontraditional instruction. Instruction utilizing a variety of nontraditional methods that may incorporate self-paced learning, text, video, computer instructional delivery, accelerated training, independent study, Internet delivery, or other methods that do not follow standard classroom work guidelines. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

(6) Competency-based instruction. Programs delivered using an outcomes-based approach, where the curriculum is structured around specified competencies and satisfactory academic progress is expressed as the attainment or mastery of the identified competencies.

g. Individualized learning experiences for which an equivalent course is not offered will have the program length computed from records of attendance using such procedures as a time clock or sign-in records. Individualized learning experiences means independent study courses in which an equivalent course is not offered by the college or listed in the college catalog. Independent study permits in-depth or focused learning on special topics of particular interest to the student.

h. Each course must have a minimum length of one credit hour. A fractional unit of credit may be awarded, provided the course exceeds the minimum length of one credit hour.

i. Each credit hour shall consist of a minimum number of contact hours as defined in paragraphs 21.2(12) "h" to "m." One contact hour equals 50 minutes.

j. Classroom work.

(1) The minimum requirement for one semester hour of credit is 800 minutes (16 contact hours) of scheduled instruction.

(2) The minimum requirement for one quarter hour of credit is 533 minutes (10.7 contact hours) of scheduled instruction.

k. Laboratory work.

(1) The minimum requirement for one semester hour of credit is 1,600 minutes (32 contact hours) of scheduled laboratory work.

(2) The minimum requirement for one quarter hour of credit is 1,066 minutes (21.3 contact hours) of scheduled laboratory work.

l. Clinical practice.

(1) The minimum requirement for one semester hour of credit is 2,400 minutes (48 contact hours) of scheduled clinical practice.

(2) The minimum requirement for one quarter hour of credit is 1,599 minutes (32 contact hours) of scheduled clinical practice.

m. Work-based learning.

(1) The minimum requirement for one semester hour of credit is 3,200 minutes (64 contact hours) of scheduled work-based learning.

(2) The minimum requirement for one quarter hour of credit is 2,132 minutes (42.6 contact hours) of scheduled work-based learning.

21.2(13) Career and technical program length.

a. Program length for the associate of applied science (AAS) degree in career and technical education, for the associate of applied arts (AAA) degree, and for the associate of professional studies (APS) degree will consist of an academic program not to exceed two academic years. All required course offerings are to be available within two academic years. All required offerings in AAS and AAA degree programs will not exceed a maximum of 86 semester (129 quarter) credit hours unless the department has granted a waiver pursuant to paragraph 21.2(13)“i.” All required offerings in APS degree programs will not exceed a maximum of 68 credit hours. Programs will not exceed an average of 19 credit hours per regular term.

b. All credit-bearing courses required for program admittance or graduation, or both, will be included in the program length credit hour maximum, with the exception of developmental course credit hours. Prerequisites that provide an option to students for either credit or noncredit shall be counted toward the program parameters. Prerequisite options that are only offered for noncredit will not be counted toward program length parameters. A high school course prerequisite is permissible and will not count toward program length parameters, provided the prerequisite is reasonable. A high school course prerequisite is reasonable if a community college demonstrates that students entering the program predominantly meet the requirement without prior college coursework.

c. Associate of applied science (AAS) and associate of applied arts (AAA) programs that receive accreditation from nationally recognized accrediting bodies may appeal maximum credit hour length requirements to the department for consideration of a waiver. All AAS and AAA degree programs over the 86 semester (129 quarter) credit hour maximum must have approved program-length waivers pursuant to paragraph 21.2(13)“i.”

d. Associate of professional studies programs are not eligible for a program-length waiver pursuant to paragraph 21.2(13)“i.”

e. All credit certificate and diploma programs as defined in subrule 21.2(9) will not exceed 48 semester (72 quarter) credit hours.

f. Each course offered in the area of career and technical education will be taught in the shortest practical period of time at a standard consistent with the quality and quantity of work needed to prepare the student for successful employment in the occupation for which instruction is being offered.

g. A full-time student in career and technical education is defined as a student enrolling in 12 or more semester credit hours or the equivalent in career and technical education.

h. Curricula in full-time career and technical education programs will ordinarily be offered on the basis of student workload of 20 to 30 contact hours per week.

i. Waiver process. A college may petition the department to suspend in whole or in part a program-length requirement contained in paragraphs 21.2(13)“a” to “e” as applied to a specific program on the basis of the particular circumstances of that program.

(1) Waivers are issued at the director's sole discretion. Waivers will be narrowly tailored and granted for a period no longer than two academic years, after which reapplication is necessary. A waiver may be granted on a long-term basis, not to exceed ten years, if issuing the waiver for a shorter period is not practical.

(2) All petitions for waiver must be submitted in writing to the department and include the following information: specific waiver request including scope and duration, the relevant facts that the petitioner believes would justify a waiver, a detailed statement of the impact on student achievement, any information known regarding the department's treatment of similar cases, and any additional information deemed relevant by the petitioner. The department will acknowledge a petition upon receipt.

(3) The department will ensure that, within 30 calendar days, notice of pendency of the petition and a concise summary of its contents have been provided to a committee consisting of the chief academic officers of each community college. In addition, the department may give notice to other persons.

(4) A committee consisting of the chief academic officers of a majority of community colleges will review the waiver request and provide a recommendation to the department regarding whether approval should be granted. Within 90 calendar days of receiving the recommendation, the department will review the petition and issue a ruling. Failure of the department to grant or deny a petition within the required time period is deemed a denial of that petition. If a waiver is issued, the department will provide a description of the precise scope and operative period to all interested parties.

21.2(14) Faculty organization. The faculty shall be organized in such a way as to promote communication among administration, faculty and students and to encourage faculty participation in the development of the curriculum, instructional procedures, general policies, and such other matters as are appropriate.

281—21.3(260C) Associate of arts and associate of science transfer major programs.

21.3(1) General program. Each community college shall offer a general college parallel program of study leading to an associate of arts award or an associate of science award, pursuant to subrules 21.2(9) and 21.4(2). These programs shall offer courses equivalent to the first two years of a baccalaureate program and will not be discipline-specific.

21.3(2) Transfer majors. A community college may establish discipline-specific transfer major programs to improve student recruitment, advising, and success and enhance transferability of associate-level courses into aligned baccalaureate degree programs. The transfer major program will consist of discipline-relevant credits from an approved discipline framework that satisfies the requirements of paragraph 21.3(2) "b." A community college will ensure all students are appropriately advised regarding the availability, structure, purpose, and other pertinent information related to the transfer major program.

a. Degree option. A transfer major will be embedded within an associate of arts or associate of science degree that meets the requirements of this chapter and any applicable statewide transfer agreement between the Iowa community colleges and public universities. Credits within the transfer major may be utilized to fulfill the general education requirements of an associate of arts or associate of science degree, as appropriate.

b. Discipline framework. Each approved transfer major program will adhere to the appropriate adopted discipline framework to ensure transferability with the aligned baccalaureate program of study at one or more public universities in Iowa.

(1) A discipline framework consists of a minimum of 18 discipline-relevant semester credits (27 quarter credits) that align with a framework of elements based on accepted practices of an aligned baccalaureate degree program of study at a public university in Iowa.

(2) The courses within the discipline framework will articulate with a regionally accredited public university in Iowa so that the course credits are recognized by the university as fulfilling equivalent course requirements in at least one aligned baccalaureate degree program of study.

(3) If the provisions of subparagraph 21.3(2) "b"(2) cannot be achieved with at least one regionally accredited public university in Iowa, a request may be submitted to the department for articulation with

a regionally accredited public institution in a contiguous state or a group of no less than three regionally accredited private postsecondary institutions that confer baccalaureate degrees, are based in Iowa, and are approved under Iowa Code chapter 261 to operate in the state of Iowa.

(4) The discipline framework will be developed and adopted by a statewide committee convened by the department.

c. Use of term. Consistent with department guidance, each community college will exclusively use the term “transfer major” to record the completion of an approved transfer major program on the student’s official transcript and other academic records, publish in the college catalog, and market the transfer major program to current and potential students and the general public. A community college shall not transcript, catalog, or market an associate of arts or associate of science program using other terms that contain or are synonymous with the term “major” or “transfer” or that imply a specialization within a subject area.

21.3(3) Approval. Per Iowa Code section 260C.14, each transfer major program will be submitted to the department for approval utilizing the state system for program management. Approval will be obtained prior to the enrollment of students in the transfer major program. The approval process does not include components specific to career and technical education program approval, including advisory committees and labor market analysis.

21.3(4) Reporting. Each community college will comply with data reporting requirements established by the department. The department shall produce and make available a report detailing enrollment and outcomes of participants in transfer major programs.

281—21.4(260C) Curriculum and evaluation.

21.4(1) General education. General education is intended to provide breadth of learning to the community college experience. General education imparts common knowledge, promotes intellectual inquiry, and stimulates the examination of different perspectives, thus enabling people to function effectively in a complex and changing world. General education tends to emphasize oral and written communication, critical analysis of information, knowledge and appreciation of diverse cultures, ways of knowing and human expression, knowledge of mathematical processes and natural sciences investigations, and ethics. General education courses are not intended to be developmental in nature. Each community college is responsible for clarifying, articulating, publicizing, and assessing its general education program.

21.4(2) College parallel or transfer.

a. This program shall offer courses that are the equivalent of the first two years of a baccalaureate program and may also include such courses as may be necessary to develop skills that are prerequisite to other courses and objectives, specialized courses required to provide career options within the college parallel or transfer program, and approved transfer major programs meeting the requirements of rule 281—21.3(260C). College parallel or transfer programs are associate of arts and associate of science degree programs. General education courses in college parallel or transfer programs are required to be college transfer courses. Data will be collected and analyzed to determine how well students have succeeded and which adjustments in the curriculum, if any, need to be made.

b. Courses of a developmental or remedial nature or prefreshman level will not bear college transfer credit and will be clearly identified in the college catalog. Developmental courses on the transcript will be identifiable through the adoption of the community college common course numbering system.

21.4(3) Career and technical education. Instruction will be offered in career and technical education programs in no less than five different occupational fields as defined by the department. College parallel or transfer courses may be offered as needed in career and technical education programs. Career and technical education programs must meet program approval requirements set by the state board of education. The director’s approval of new career and technical education programs is necessary. Instruction will be offered in career and technical education programs, ensuring that they are competency-based, contain all minimum competencies required by the department, articulate with local school districts’ career and technical education programs, and comply with any applicable

requirements in Iowa Code chapter 258. The occupational fields in which instruction is offered will be determined by merged area and geographical area needs as identified by surveys in these areas. Occupational advisory committees may be used to assist in developing and maintaining instructional content, including leadership development.

21.4(4) *Developmental education.* Students who enter community colleges underprepared for postsecondary coursework are provided opportunities to improve their cognitive and noncognitive skills via developmental education academic and student support services. In an effort to enhance these opportunities, while respecting the local authority of Iowa's community colleges, each college will adopt proven developmental education strategies to identify and address the needs of students, shorten the time to completion, prepare students for academic success, and reduce the financial burden for students underprepared for postsecondary coursework. Such proven strategies include multiple measures of placement; accelerated and integrated strategies, such as co-requisite models; and support services that address students' cognitive and noncognitive needs. These reform efforts require collaboration among community colleges, school corporations, and education stakeholders to systemically expand proven strategies to prepare students for postsecondary success.

21.4(5) *Adult and continuing education.* Adult education shall be offered and may include adult basic education, adult continuing and general education, college parallel or transfer, high school completion, supplementary and preparatory career education programs, and other programs and experiences as may be required to meet the needs of people in the merged area.

21.4(6) *Continuing education.* The community colleges shall provide a program of community services designed to meet the needs of persons residing in the merged area. The purpose of the continuing education program is to foster agricultural, business, cultural, industrial, recreational and social development in the area.

281—21.5(260C) Nonreimbursable facilities. No facility intended primarily for events for which admission may be charged nor any facility specially designed for athletic or recreational activities, other than physical education, may be constructed with state-appropriated funds.

281—21.6 to 21.19 Reserved.

The rules in this division are intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 601.

DIVISION II INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

281—21.20(321J) Course.

21.20(1) A course provided in accordance with Division II of this chapter will be offered on a regular basis at each community college or by a substance abuse treatment program licensed under Iowa Code chapter 125. However, a community college is not required to offer the course if a substance abuse treatment program licensed under Iowa Code chapter 125 offers the course within the merged area served by the community college. A course provided in accordance with Division II of this chapter may be offered at a state correctional facility listed in Iowa Code section 904.102.

21.20(2) The department will maintain a listing of all providers of approved courses in the state and publish this listing on the department's website.

21.20(3) Individuals who reside outside the state of Iowa and who are required by the state of Iowa to take a course for drinking drivers will have the opportunity to take the course in another state, provided the out-of-state course is comparable to those courses approved to be offered in the state of Iowa.

21.20(4) Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17(2). Any person under the age of 18 who is required to attend the courses for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125.

21.20(5) An instructional course, including allowable delivery formats, will be approved by the department in consultation with the community colleges, substance abuse treatment programs licensed

under Iowa Code chapter 125, the Iowa department of health and human services, and the Iowa department of corrections. The course will consist of at least 12 hours of instructional time. In-person instruction will be delivered over a minimum of a two-day period in blocks not to exceed 4 hours with a minimum of a 30-minute break between blocks. Each student attending a course will be provided with the appropriate course materials necessary to complete the course, which will not be reused. The course will be taught by an instructor certified by the curriculum provider to teach the course. Each course of instruction will establish the following:

- a.* An understanding that alcohol-related problems could happen to anyone and that a person's drinking choices matter. The course illustrates common views of society that prevent people from taking drinking choices seriously. Research is presented to challenge common views with an understanding that alcohol problems are related to lifestyle choices.
- b.* An understanding that specific low-risk choices will help reduce the risk of experiencing alcohol-related problems at any point in life. The course presents research-based, low-risk guidelines.
- c.* Methods of providing support for making low-risk choices.
- d.* An accurate description of the progression of drinking to the development of alcoholism to help people weigh the risk involved with high-risk drinking and to see how high-risk choices may jeopardize their lives and the lives of others.
- e.* Opportunities to develop a specific plan of action to follow through with low-risk choices. A list of community resources is provided for ongoing support and treatment as needed.

281—21.21(321J) Tuition fee established.

21.21(1) Each person enrolled in an instructional course for drinking drivers will pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of \$140 for the approved 12-hour course, plus a reasonable course materials fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

21.21(2) A person will not be denied enrollment in a course by reason of a person's indigency. For court-ordered placement, the court will determine a person's indigency. In all other instances, the community college, substance abuse treatment program licensed under Iowa Code chapter 125, or state correctional facility will determine indigence upon application.

281—21.22(321J) Administrative fee established.

21.22(1) *Students enrolled in Iowa.* Each person enrolled in Iowa in an instructional course for drinking drivers under this chapter will be charged an administrative fee of \$15. This fee is in addition to tuition and will be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee will be forwarded to the department on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.22(2) *Students enrolled in another state.* Each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter will be charged an administrative fee of \$37.50. This fee is in addition to tuition and will be paid directly to the department of education by the student. Upon payment of the fee, the department shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department.

281—21.23(321J) Advisory committee. A drinking driver education advisory committee is established by the department to serve in an advisory capacity to the department in matters relevant to the instructional course for drinking drivers. Membership on this committee will include representatives from agencies currently offering the instructional course for drinking drivers and may include other stakeholders.

281—21.24 to 21.30 Reserved.

The rules in this division are intended to implement Iowa Code section 321J.22.

DIVISION III
STATE COMMUNITY COLLEGE FUNDING PLAN

281—21.31(260C) General. Funds appropriated by the general assembly to the department for general financial aid to community colleges shall be allocated to each community college in the manner defined in this chapter.

21.31(1) Distribution formula. Moneys appropriated by the general assembly from the general fund to the department for community college purposes for general state financial aid for a budget year shall be allocated to each community college by the department according to the provisions of Iowa Code section 260C.18C.

21.31(2) Each community college will provide student and financial information in the manner and form as determined by the department and before the deadline announced by the department. If the community college fails to provide the student or financial information as required, the department will estimate the full-time equivalent enrollment (FTEE) of that college that will be used in the state general aid distribution formula.

21.31(3) Each community college is required to hire an auditing firm to complete and submit the schedule of credit-hour and contact-hour enrollment and a letter certifying that specified department of education procedures were followed. These schedules will be used in calculating the college's FTEE utilized in the community college state general aid distribution formula.

281—21.32 to 21.40 Reserved.

The rules in this division are intended to implement Iowa Code section 260C.18C.

DIVISION IV
APPRENTICESHIP PROGRAM

281—21.41(260C) Definitions. For the purpose of Division IV, the following definitions apply:

“Apprentice” means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade or occupation under the standards of apprenticeship.

“Apprenticeable occupation” means a skilled trade that possesses all of the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
2. It is clearly identified and commonly recognized throughout an industry.
3. It involves manual, mechanical or technical skills and knowledge that require a minimum of 2,000 hours of on-the-job work experience.
4. It requires related instruction to supplement on-the-job training.

“Apprenticeship agreement” means a written agreement between an apprentice and the apprentice's employer, or an apprenticeship committee acting as the agent for the employer(s). The agreement contains the terms and conditions of the employment and training of the apprentice.

“Apprenticeship committee” means those persons designated by the sponsor to act for it in the administration of the program. A committee may be “joint,” i.e., composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), and is established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be “unilateral” or “nonjoint” and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

“Apprenticeship program” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as required under 29 CFR Parts 29 and 30, including the requirement for a written apprenticeship agreement.

“Cancellation” means the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

“Certification” or *“certificate”* means documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5;

2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

3. A registration agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or

5. A registration agency has determined that an individual has successfully completed an apprenticeship.

“Competency” means the attainment of manual or technical skill and knowledge as specified by an occupational standard.

“Employer” means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

“Office of Apprenticeship” mean the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

“Registration agency” shall mean the Office of Apprenticeship.

“Registration of an apprenticeship agreement” means the acceptance and recording of an apprenticeship agreement by the Office of Apprenticeship as evidence of the apprentice’s participation in a particular registered apprenticeship program.

“Related instruction” or *“related technical instruction”* means an organized and systematic form of instruction designed to provide the apprentice with the core knowledge of the theoretical and technical subjects related to the apprentice’s occupation. Such instruction may be given in a classroom through occupational or industrial courses, by correspondence courses of equivalent value, by electronic media, or by other forms of self-study approved by the registration agency.

“Sponsor” means any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

281—21.42(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, Office of Apprenticeship, and meet all requirements outlined in the National Apprenticeship Act, 29 U.S.C. §50, 29 CFR Parts 29 and 30 or as specified in Iowa Code chapter 84D as transferred by 2023 Iowa Acts, Senate File 514.

281—21.43 to 21.49 Reserved.

The rules in this division are intended to implement Iowa Code section 260C.44 and the National Apprenticeship Act, 29 U.S.C. §50, and 29 CFR Parts 29 and 30.

DIVISION V
MISCELLANEOUS PROVISIONS

281—21.50(260C,322) Used motor vehicle dealer education program. An applicant for a license from the department of transportation as a used motor vehicle dealer will complete a minimum of eight hours of prelicensing education program courses pursuant to Iowa Code section 322.7A, prior to submitting the application. The education program courses are provided by community colleges or by the Iowa Independent Automobile Dealers Association in conjunction with a community college. The reasonable

fee for both the prelicensing education program courses and continuing education courses will not exceed \$55 per contact hour of instruction, which includes course materials and administrative costs.

281—21.51 to 21.59 Reserved.

The rules in this division are intended to implement Iowa Code chapter 260C and section 322.7A.

DIVISION VI
COMMUNITY COLLEGE ACCREDITATION

281—21.60(260C) Scope. Each community college is subject to accreditation by the state board of education, as provided in Iowa Code section 260C.47. The state board of education will grant accreditation if a community college meets the standards established in this chapter.

281—21.61(260C) Accreditation components and criteria—Higher Learning Commission. To be accredited by the state board of education and maintain accreditation status, a community college must meet the accreditation criteria of the Higher Learning Commission and additional state standards. Documents and materials provided in accordance with the accreditation requirements of the Higher Learning Commission will also be provided to the department for the state accreditation process.

281—21.62(260C) Accreditation components and criteria—additional state standards. To be granted accreditation by the state board of education, an Iowa community college will also meet additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs and protected classes (Iowa Code section 260C.48(3)); career and technical education program evaluation (Iowa Code section 258.4(7)); facilities, parking lots and roads; strategic planning; quality faculty plan (Iowa Code section 260C.36); senior year plus programs (Iowa Code chapter 261E); as well as any other items referenced in this chapter.

21.62(1) Faculty.

a. Community college-employed instructors who teach college credit courses shall meet minimum standards and institutional quality faculty plan requirements. Standards will at a minimum require that all community college instructors meet the following requirements:

(1) Instructors teaching courses in the area of career and technical education will be registered, certified, or licensed in the occupational area in which the state requires registration, certification, or licensure and shall meet at least one of the following qualifications:

1. Possess a baccalaureate degree or higher in the field of instruction in which the instructor teaches classes, or possess a baccalaureate degree in any area of study if at least 18 of the credit hours completed were in the career and technical field of instruction in which the instructor teaches classes.

2. Possess an associate degree in the career and technical education field of instruction in which the instructor is teaching, if such degree is considered terminal for that field of instruction, and have at least 3,000 hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes.

3. Have special training and at least 6,000 hours of relevant tested experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree in the area or related area of study or occupational area in which the instructor is teaching classes and the instructor does not meet the requirements of subparagraph 21.62(1)“a”(2).

(2) For purposes of numbered paragraphs 21.62(1)“a”(1)“2” and “3,” if the instructor is a licensed practitioner who holds a career and technical endorsement under Iowa Code chapter 256, subchapter VII, part 3, as transferred by 2023 Iowa Acts, Senate File 514, section 2603, relevant work experience in the occupational area includes, but is not limited to, classroom instruction in a career and technical education subject area offered by a school district or accredited nonpublic school.

(3) Instructors in the area of arts and sciences shall meet one of the following qualifications:

1. Possess a master’s degree or higher from an accredited graduate school in each field of instruction in which the instructor is teaching classes.

2. Possess a master's degree or higher from an accredited graduate school and have completed a minimum of 18 graduate semester hours in a combination of the qualifying graduate fields identified as related to the field of instruction in which the instructor is teaching classes. These 18 graduate semester hours must include at least 6 credits in the specific course content being taught, with at least 12 credits required for courses that serve as prerequisites for junior-level courses at transfer institutions.

b. For courses identified as applied liberal arts and sciences, possess at least a bachelor's degree and a combination of formal training and professional tested experience equivalent to 6,000 hours. The instructor shall hold the appropriate registration, certification, or licensure in occupational areas in which such credential is necessary for practice.

c. Developmental education and noncredit instructors are not subject to standards under this subrule.

d. Adult education instructors will meet the minimum standards set forth in 877—Chapter 32. Instructional staff providing instruction in an adult education and literacy program to students must possess at minimum a bachelor's degree.

e. A faculty standards council will be convened by the department to review procedures for establishing and reviewing minimum instructor qualifications and definitions for "field of instruction," "applied liberal arts and sciences courses," "qualifying graduate field or major," and "relevant tested experience." Definitions will be based on accepted practices of regionally accredited two- and four-year institutions of higher education.

(1) The council will include faculty and academic administrators and meet at least annually. The council will make recommendations to a committee consisting of the chief academic officers of Iowa's 15 community colleges. The committee will adopt definitions and minimum faculty qualification standards to be utilized for the state accreditation process. Each community college will adhere to the adopted definitions and minimum faculty qualification standards.

(2) When utilizing relevant tested experience to qualify an instructor to teach classes within a specific field of instruction, each community college will maintain well-defined policies, procedures, and documentation in alignment with the adopted definitions and minimum faculty qualification standards. This documentation will demonstrate that the instructor possesses the experience and expertise necessary to teach in the specified field of instruction and is current in the instructor's discipline. When tested experience is assessed, an hour of relevant work is equal to 60 minutes and one full-time year of relevant work is equal to 2,000 hours.

f. Volunteer staff will possess at minimum a high school diploma or high school equivalency diploma.

21.62(2) Faculty load.

a. Arts and sciences. The full-time teaching load of an instructor in arts and sciences courses will be 15 credit hours within a traditional semester or the equivalent and will not exceed a maximum of 16 credit hours within a traditional semester or the equivalent. An instructor may also have an additional teaching assignment beyond the maximum academic workload, provided the instructor and the community college administration mutually consent to this additional assignment and the total workload does not exceed the equivalent of 22 credit hours within a traditional semester or the equivalent.

b. Career and technical education. The full-time teaching load of an instructor in career and technical education programs will not exceed an aggregate of 30 hours per week or the equivalent. An instructor may also teach the equivalent of an additional 3 credit hours, provided the instructor consents to this additional assignment. When the teaching assignment includes classroom subjects (nonlaboratory), consideration will be given to establishing the teaching load more in conformity with that of paragraph 21.62(2) "a."

21.62(3) Special needs and protected classes. Community colleges shall provide equal access to the full range of program offerings and services including recruitment, enrollment, and placement activities for students with special education needs or protected by state or federal civil rights regulations. Students with disabilities shall be given access to the full range of program offerings at a college through reasonable accommodations.

21.62(4) Career and technical education evaluation. The director of the department shall ensure that Iowa's community colleges annually review at least 20 percent of approved career and technical education programs. The community college career and technical program review and evaluation system must ensure that the programs meet requirements as specified in 281—Chapter 46.

21.62(5) Facilities, parking lots and roads.

a. Facilities master planning. Each community college shall present evidence of adequate planning, including a board-approved facilities plan. Planning includes tentative program approval, a master campus plan, written educational specifications, site plot showing location of proposed and existing facilities, elevations and floor plans.

b. Accessibility and safety. All new or remodeled facilities (buildings and programs offered in such facilities) and services in such facilities shall be made functional and usable for persons with special needs, comply with Iowa Code chapter 104A and the Americans With Disabilities Act, 42 U.S.C. §12101, and address issues of campus safety and security as required by Iowa Code chapter 260C and by the federal Clery Act, 20 U.S.C. §1092(f). All parking areas and roads will comply with all state and federal rules and regulations dealing with roads, parking ramps, and accessibility requirements.

c. Adequate facilities. All administrative facilities, classrooms, laboratories, and related facilities will be educationally adequate for the purpose for which they are designed.

d. Library or learning resource center. A library or learning resource center will be planned as part of the master campus plan and space made for library or learning resource center services within the initial construction.

(1) Facilities. Community college libraries or learning resource centers shall provide the facilities and resources needed to support the total educational program of the institution and shall show evidence that the facilities and the resources are being used effectively and efficiently. Adequate consideration shall be given to the seating, comfort, setting, and technology of the facility used to house the collection and learning resources.

(2) Staffing. The library or learning resource center will be adequately staffed with qualified professionals and skilled nonprofessional personnel.

(3) Collection. The library and learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including distance and satellite sites. The library and learning resource center materials collection will show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up to date through a planned program of acquisition and deletion. The library and learning resource center materials collection will contain a range and number of print and nonprint materials and appropriate electronic information resources.

(4) Expenditures. The budget of the library or learning resource center will be appropriate for the programs and services offered by the institution. New programs and new curricula will be reflected in library or learning resource center expenditures.

e. Student center. An area of the college will be provided where students may gather informally and where food is available.

f. Laboratories, equipment and supplies. Laboratories, equipment and supplies will be comparable with those used in the occupations for which instruction is offered. Similarly, college parallel or transfer courses will be supported in a manner comparable to those conditions that prevail in standard, regionally accredited colleges and universities to which students may wish to transfer college credits.

g. Physical plant. The site, buildings and equipment of the community college will be well maintained and in good condition. At a minimum, a five-year ongoing, systematic maintenance and facilities plan approved by the local community college board will be in evidence. The physical plant will be adequate in size and properly equipped for the program offered. All remodeling of existing

facilities will comply with Iowa Code chapter 104A and the federal Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

21.62(6) *Strategic planning.* At a minimum, the community college will prepare a high-quality, board-approved strategic plan at least once every five years, and that plan will be effectively implemented to guide the college and its decision-making.

21.62(7) *Quality faculty plan.* The community college will establish a quality faculty committee consisting of instructors and administrators to develop and maintain a plan for hiring and developing quality faculty. The committee will have equal representatives of arts and sciences and career and technical faculty with no more than a simple majority of members of the same gender. Faculty will be appointed by the certified employee organization representing faculty, if any, and administrators will be appointed by the college's administration. If no faculty-certified employee organization representing faculty exists, the faculty will be appointed by administration pursuant to Iowa Code section 260C.48(4). The committee will submit the plan to the board of directors for consideration, approval and submittal to the department. Standards relating to quality assurance of faculty and ongoing quality professional development will be the accreditation standards of similar accredited institutions of higher education that are consistent with the standards established pursuant to this rule and the faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. For purposes of this subrule, "accredited" means that an institution of higher education meets the standards established by an accrediting agency recognized under 34 CFR Part 602 and by Title IV of the federal Higher Education Opportunity Act, Pub. L. No. 110-315.

a. For purposes of this subrule, the following definitions apply:

"Counselor" means those who are classified as counselors as defined in the college's collective bargaining agreement or written policy.

"Media specialist" means those who are classified as media specialists as defined in the college's collective bargaining agreement or written policy.

b. The institutional quality faculty plan is applicable to all community college-employed faculty teaching college credit courses, counselors, and media specialists. The plan requirements may be differentiated for each type of employee. The plan will include, at a minimum, each of the following components:

(1) Plan maintenance. The quality faculty committee will submit proposed plan modifications to the board of directors for consideration and approval. It is recommended that the plan be updated at least annually.

(2) A determination of the faculty and staff to be included in the plan, including all instructors teaching college credit courses, counselors, and media specialists.

(3) Orientation for new faculty. It is recommended that new faculty orientation be initiated within six months from the hiring date. It is recommended that the orientation of new faculty be flexible to meet current and future needs and provide options other than structured college courses for faculty to improve teaching strategies, curriculum development and evaluation strategies. It is recommended that the college consider developing a faculty mentoring program.

(4) Continuing professional development for faculty. It is recommended that the plan clearly specify required components including time frame for continuing professional development for faculty. It is recommended that the plan include the number of hours, courses, workshops, professional and academic conferences or other experiences, such as industry internships, cooperatives and exchange programs that faculty may use for continuing professional development. It is recommended that the plan include prescribed and elective topics, such as discipline-specific content and educational trends and research. Examples of topics that may be considered include dealing with the complexities of learners, skills in teaching adults, curriculum development, assessment, evaluation, enhancing students' retention and success, reaching nontraditional and minority students, improving skills in implementing technology and applied learning, leadership development, and issues unique to a particular college. The institutional quality faculty plan will include continuing professional development components for all instructional staff, counselors, and media specialists, and may include reciprocity features that facilitate movement from one college to another.

(5) Procedures for accurate record keeping and documentation for plan monitoring. It is recommended that the plan identify the college officials or administrators responsible for the administration, record keeping and ongoing evaluation and monitoring of the plan. It is recommended the plan monitoring, evidence collected, and records maintained showing implementation of the plan be comprehensive in scope. It is recommended that the plan provide for the documentation that each faculty member appropriately possesses, attains or progresses toward attaining minimum competencies.

(6) Consortium arrangements where appropriate, cost-effective and mutually beneficial. It is recommended that the plan provide an outline of existing and potential consortium arrangements including a description of the benefits, cost-effectiveness, and method of evaluating consortium services.

(7) Specific activities that ensure that faculty attain and demonstrate instructional competencies and knowledge in their subject or technical areas. It is recommended that the plan identify faculty minimum competencies and explain the method or methods of determining and assessing competencies. It is recommended that the plan contain procedures for reporting faculty progress. It is recommended that faculty be notified at least once a year of their progress in attaining competencies.

(8) Procedures for collection and maintenance of records demonstrating that each faculty member has attained or documented progress toward attaining minimum competencies. It is recommended that the plan specify data collection procedures that demonstrate how each faculty member has attained or has documented progress toward attaining minimum competencies.

c. Compliance with the faculty accreditation standards of similar accredited institutions of higher education that are consistent with the standards established pursuant to Iowa Code section 260C.48 and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. For purposes of this paragraph, “accredited” means that an institution of higher education meets the standards established by an accrediting agency recognized under 34 CFR Part 602 and by Title IV of the federal Higher Education Opportunity Act, Pub. L. No. 110-315.

d. The department will review the plan during the state accreditation evaluations to ensure each community college’s compliance and progress in implementing a quality faculty plan as approved by the local board of directors. The department shall review the following:

(1) Documents submitted by the college that demonstrate that the plan includes each component required by paragraph 21.62(7) “b.”

(2) Documentation submitted by the college that the board of directors approved the plan.

(3) Documentation submitted by the college that the college is implementing the approved plan, including evidence of plan monitoring, evaluation and updating; evidence that the faculty has met minimum requirements of the quality faculty plan contained in Iowa Code section 260C.48; and evidence that faculty members have been notified of their progress toward attaining minimum requirements.

(4) Documentation that the college administration encourages the continued development of faculty potential as defined in Iowa Code section 260C.36.

(5) Documentation of the human resources report submitted by the college through the department’s community college management information system.

21.62(8) *Senior year plus.* The community college shall provide access to joint enrollment opportunities for high school age students. Each college will comply with the appropriate standards defined in Iowa Code chapter 261E.

21.62(9) *Student services.* A program of student services will be provided to meet the needs of students in the community college. The program of student services, at a minimum, will include the following functional areas:

- a. Orientation to college and career opportunities and requirements.
- b. Appraisal of individual potential.
- c. Consultation with students about their plans, progress and problems.
- d. Participation of students in activities that supplement classroom experiences.
- e. Regulation to provide an optimal climate for social and academic development.
- f. Services that facilitate community college attendance through a program of financial assistance, and facilitate transition to further education or employment.

g. Organization that provides for continuing articulation, evaluation and improvement of the student services program.

h. Campus safety and security as required by Iowa Code chapter 260C and the federal Clery Act, 20 U.S.C. §1092(f), 34 CFR Section 668.46.

281—21.63(260C) Accreditation process.

21.63(1) Components. The community college accreditation process includes the following components:

a. Each community college will submit information on an annual basis to the department of education to comply with program evaluation requirements adopted by the state board of education.

b. The department will conduct a comprehensive on-site accreditation evaluation of each community college on a ten-year interval. An interim evaluation midway between comprehensive evaluations will also be conducted. The department will prepare a staggered evaluation schedule that sets no more than three comprehensive or interim evaluations in any one year. No comprehensive or interim evaluation will be required for continued accreditation prior to a community college's first evaluation under the schedule. The department has the authority to conduct focused evaluation visits as needed.

21.63(2) Accreditation team. The size and composition of the accreditation team is determined by the director of the department, but the team will include members of the department staff and staff members from community colleges other than the community college being evaluated for accreditation, and any other technical experts as needed.

21.63(3) Accreditation team action. After a visit to a community college, the accreditation team shall evaluate whether the accreditation standards have been met and shall make a report to the director of the department and the state board of education, together with a recommendation as to whether the community college shall remain accredited. The accreditation team will report strengths and opportunities for improvement, if any, for each standard and criterion and will advise the community college of available resources and technical assistance to further enhance strengths and address areas for improvement. A community college may respond to the accreditation team's report.

21.63(4) State board of education consideration of accreditation. The state board of education will determine whether a community college remains accredited. Approval of accreditation for a community college by the state board of education will be based upon the recommendation of the director of the department after study of the factual and evaluative evidence on record pursuant to the standards and criteria described in this chapter, and based upon the timely submission of information required by the department in a format provided by the department. With the approval of the director of the department, a focused visit may be conducted if the situation at a particular college warrants such a visit.

a. *Accreditation granted.* Continuation of accreditation, if granted, will be for a ten-year term with a comprehensive evaluation occurring once every ten years and an interim evaluation midway between comprehensive evaluations; however, approval for a lesser term may be granted by the state board of education if the board determines that conditions so warrant.

b. *Accreditation denied or conditional accreditation.* If the state board of education denies accreditation or grants conditional accreditation, the director of the department, in cooperation with the board of directors of the community college, will establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards and criteria and will establish a deadline for correction of the deficiencies. The plan will be submitted to the director within 45 days following the notice of accreditation denial or conditional accreditation. The plan will include components that address correcting deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board of education or the accreditation team to allow the college to meet the accreditation standards and criteria.

c. *Implementation of plan.* During the time specified in the plan for its implementation, the community college remains accredited. The accreditation team will revisit the community college to evaluate whether the deficiencies in the standards or criteria have been corrected and will make a report and recommendation to the director and the state board of education. The state board of education will

review the report and recommendation, may request additional information and determine whether the deficiencies have been corrected.

d. Removal of accreditation. The director will give a community college that fails to meet accreditation standards, as determined by the state board of education, at least one year's notice prior to removal of accreditation. The notice will be sent by certified mail or restricted certified mail addressed to the chief executive officer of the community college and will specify the reasons for removal of accreditation. The notice will also be sent to each member of the board of directors of the community college. If, during the year, the community college remedies the reasons for removal of accreditation and satisfies the director that the community college will comply with the accreditation standards and criteria in the future, the director will continue the accreditation and will transmit notice of the action to the community college by certified mail or restricted certified mail.

e. Failure to correct deficiencies. If the deficiencies have not been corrected in a program of a community college, the community college board of directors will take one of the following actions within 60 days from removal of accreditation:

(1) Merge the deficient program or programs with a program or programs from another accredited community college.

(2) Contract with another accredited postsecondary educational institution for purposes of program delivery at the community college.

(3) Discontinue the program or programs that have been identified as deficient.

f. Appeal process provided. The action of the director to remove the state accreditation of a community college program may be appealed to the state board of education as provided in Iowa Code section 260C.47(7).

The rules in this division are intended to implement Iowa Code section 258.4(7) and chapters 260C and 261E.

ITEM 2. Rescind and reserve **281—Chapter 24.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 22
“Senior Year Plus Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 261E.6(3)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 261E

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to benefit Iowa’s students who participate in Senior Year Plus programming.

The Department has removed unduly restrictive rules language, removed outdated or obsolete programs, incorporated statutory language by reference when available, and renumbered rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Postsecondary institutions and school districts will bear the costs of compliance.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students seeking to pursue advanced learning opportunities will benefit from these proposed rules.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from these proposed rules.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of these rules.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Department enforces this chapter, with costs offset by its general state appropriation and a specific appropriation under Iowa Code section 261E.13.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

The proposed rules have no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22 SENIOR YEAR PLUS PROGRAM

DIVISION I GENERAL PROVISIONS

281—22.1(261E) Definitions. For the purposes of this chapter, the indicated terms are defined as follows:

“*Concurrent enrollment*” means the same as defined in Iowa Code section 261E.2(1).

“*Department*” means the department of education.

“Director” means the director of the department of education.

“Dually enrolled” means the status of a student who receives competent private instruction under Iowa Code chapter 299A and whose parent, guardian, or legal custodian has registered the student pursuant to Iowa Code section 299A.8 in a school district for any of the purposes listed therein, including, for purposes of these rules, participation in any part of the senior year plus program on the same basis as public school students but subject to the enrollment percentage limitation contained in 281—Chapter 33.

“Eligible postsecondary institution” means the same as defined in Iowa Code section 261E.2(4).

“Institution” means the same as defined in Iowa Code section 261E.2(5).

“School board” means the board of directors of a school district or a collaboration of boards of directors of school districts.

“State board” means the state board of education.

“Student” means the same as defined in Iowa Code section 261E.2(8).

281—22.2(261E) Student eligibility. A student is eligible if the student satisfies the provisions of Iowa Code section 261E.3(1). If the student was absent for the most recent administration of the statewide assessment, and such absence was not excused by the student’s school of enrollment, the student is deemed not to be proficient in any of the content areas. Measures of college readiness may be jointly agreed upon by the school board and the eligible postsecondary institution that allow a student to demonstrate competency in one or all of the required subject areas. Institutions will ensure the following:

22.2(1) The measures of college readiness align to the proficiency levels established for the statewide assessment and reflect the competence of entering first-year students at the postsecondary institution.

22.2(2) The measures of college readiness are specified in a contract entered into by the participating institutions.

281—22.3(261E) Teacher eligibility, responsibilities. A teacher employed to provide instruction under this chapter is eligible if the teacher satisfies the criteria and responsibilities of Iowa Code section 261E.3(2). The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility, an accredited nonpublic school facility, or a neutral site. For purposes of this rule, “neutral site” is defined in Iowa Code section 261E.3(2).

281—22.4(261E) Institutional eligibility, responsibilities.

22.4(1) General. Institutions are governed by the provisions of Iowa Code section 261E.3(3).

a. If a fee is charged to other students of the eligible postsecondary institution for any of the services specified in Iowa Code section 261E.3(3) “*b*,” that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

b. The institutions will provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

c. The institutions will provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph are locally determined.

22.4(2) Requirements of school district or accredited nonpublic school only.

a. Except as provided under Iowa Code sections 257.11(3) “*c*,” 279.50A and 261E.8(2) “*b*,” the school district or accredited nonpublic school shall certify annually to the department, as an assurance in the district’s or accredited nonpublic school’s basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district or accredited nonpublic school in which the student is enrolled. For purposes of these rules, to comply with the “supplement, not supplant” requirement, the content of a course provided to a high school student for postsecondary credit is not to consist of

substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school.

b. If the teacher or instructor is employed by an eligible postsecondary institution, the school district or accredited nonpublic school will pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

22.4(3) Requirements of eligible postsecondary institution only.

a. All eligible postsecondary institutions providing programming under this chapter will include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution's student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter will cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter are to collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

b. The eligible postsecondary institution will provide the teacher or instructor with ongoing communication and access to instructional resources and support, and encourage the teacher or instructor to participate in the postsecondary institution's academic departmental activities.

DIVISION II
ADVANCED PLACEMENT PROGRAM

281—22.5(261E) School district obligations. School districts will make advanced placement courses available to students under the terms of Iowa Code section 261E.4, including making such coursework available to a dually enrolled student under competent private instruction or to a student enrolled in an accredited nonpublic school located in the district if the student meets the same criteria as a regularly enrolled student of the district. An international baccalaureate program is not an advanced placement program.

281—22.6(261E) Obligations regarding registration for advanced placement examinations. The board of directors of a school district or authorities in charge of an accredited nonpublic school are governed by Iowa Code section 261E.5.

DIVISION III
CONCURRENT ENROLLMENT PROGRAM

281—22.7(261E) Applicability. The concurrent enrollment program, also known as district-to-community college sharing, is subject to the provisions of Iowa Code section 261E.8. A student enrolled in a career and technical course under this division does not have to meet the proficiency requirements set forth in Iowa Code section 261E.3(1)“e.”

22.7(1) “Auditing” not allowed. Students are not permitted to “audit” a concurrent enrollment course; the student is to take the course for credit.

22.7(2) Funding. Regardless of whether a district receives supplementary weighted funding, the district will not charge tuition of any of its students who participate in a concurrent enrollment course.

22.7(3) Data collection. Institutions participating in the program established by this rule will comply with data reporting and verification processes established by the department, including the data elements set forth in Iowa Code section 261E.8(9).

281—22.8(261E) Accredited nonpublic school concurrent enrollment option.

22.8(1) Authorization. In addition to enrollment through a school district as authorized under rule 281—22.7(261E), students enrolled at an accredited nonpublic school may access concurrent enrollment coursework through a direct contract between the authorities in charge of an accredited nonpublic school and a community college.

22.8(2) General. For any coursework delivered through a contract established pursuant to this rule, students, institutions, and instructors will meet the requirements for concurrent enrollment established under rule 281—22.7(261E). However, such coursework is not eligible for funding under that rule.

22.8(3) Funding. Subject to the appropriation of funds by the Iowa legislature for such purposes, coursework delivered through a contract between the authorities in charge of an accredited nonpublic school and a community college pursuant to this rule may be eligible for funding under rule 281—97.7(257).

22.8(4) Data collection. Institutions participating in a contract pursuant to this rule are to comply with data reporting and verification processes established by the department.

DIVISION IV
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

281—22.9(261E) Postsecondary enrollment options program—general. The postsecondary enrollment options (PSEO) program is established pursuant to the terms of Iowa Code section 261E.6. PSEO programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

281—22.10(261E) Student eligibility. Student eligibility is described in Iowa Code section 261E.6(6). Persons who have graduated from high school are not eligible for this program. Students who are not residents of Iowa are not eligible.

22.10(1) A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

22.10(2) A student under competent private instruction who meets the eligibility requirements in this chapter may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course.

22.10(3) Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course, which may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students must take the course for credit (no “auditing” of courses allowed) and meet all of the requirements of the course that are required of postsecondary students.

281—22.11(261E) Eligible postsecondary courses. These rules are intended to implement the policy of the state to promote rigorous academic pursuits.

22.11(1) Postsecondary courses eligible for students to enroll in under this division are limited to:

- a.* Nonsectarian courses;
- b.* Courses that are not comparable to courses offered by the school district where the student attends that are defined in rules adopted by the board of directors of the public school district. For purposes of these rules, “comparable” is not synonymous with “identical,” but means that the content of a course provided to a high school student for postsecondary credit does not consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school;
- c.* Credit-bearing courses that lead to an educational degree;
- d.* Courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C.

22.11(2) A school district or accredited nonpublic school will grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

22.11(3) A course is ineligible for purposes of this rule if the school district has a contractual agreement with the eligible postsecondary institution under Iowa Code section 261E.8 that meets the requirements of Iowa Code section 257.11(3) and if the course may be delivered through such an agreement in accordance with Iowa Code section 257.11(3).

22.11(4) Matters pertaining to the granting and awarding of credit are set forth in Iowa Code section 261E.6(4).

281—22.12(261E) Application process. The application process is set forth in Iowa Code section 261E.6(3).

281—22.13(261E) Transportation. The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division is solely responsible to furnish transportation to and from the postsecondary institution for the student.

281—22.14(261E) Payments, claims, and reimbursements. Payments, claims, and reimbursements, including reimbursements and adjustments, under this division are set forth in Iowa Code section 261E.7.

DIVISION V
CAREER ACADEMIES

281—22.15(261E) Career academies. A career academy is defined in Iowa Code section 258.6. Career academies are established and governed by Iowa Code section 261E.10, which is incorporated by this reference. A course offered by a career academy will not qualify as a regional academy course.

DIVISION VI
REGIONAL ACADEMIES

281—22.16(261E) Regional academies. A regional academy is a program established and governed by Iowa Code section 261E.9, which is incorporated by this reference. School districts participating in a regional academy pursuant to this rule are to comply with the application and verification processes established by the department.

DIVISION VII
INTERNET-BASED COURSEWORK

281—22.17(261E) Internet-based coursework. The programming in this chapter may be delivered as specified in Iowa Code section 261E.11.

DIVISION VIII
PROJECT LEAD THE WAY

281—22.18(261E) Project lead the way.

22.18(1) Program established. A project lead the way program is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits.

22.18(2) Notification. A school district shall provide descriptions of the project lead the way courses available to students using a course registration handbook. The handbook is to identify which courses, if successfully completed, generate college credit under the program. Information about available project lead the way courses is to be provided to every junior high school student or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

22.18(3) Access. Students from accredited nonpublic schools and students receiving competent private instruction under Iowa Code chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

22.18(4) Curriculum. A school district offering a project lead the way program will offer the curriculum developed by the national organization that administers the project lead the way program.

22.18(5) Instructor. A school district will ensure that a teacher or instructor employed to provide instruction under this rule meets the following additional criteria:

- a.* The teacher has successfully completed the training required by the national organization that administers the project lead the way program.
- b.* The teacher meets the minimum requirements of the national organization that administers the project lead the way program.
- c.* The teacher participates, on a regular basis, in available professional development provided by the national organization that administers the project lead the way program.

22.18(6) Accreditation standards.

- a.* A project lead the way course may apply toward high school program accreditation standards pursuant to 281—Chapter 12. To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.
- b.* If the project lead the way course being taught is within a career and technical education program or is one in a sequence of project lead the way courses that collectively are used to meet one of the career and technical education sequential unit requirements of 281—Chapter 12, the program must be approved by the department pursuant to 281—Chapter 46.

22.18(7) Collaborative project lead the way courses.

- a.* A collaborative program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits in partnership with a community college established under Iowa Code chapter 260C. The program is to be made available to all resident students in grades 9 through 12.
- b.* A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, is not offered by the school district or accredited nonpublic school the student attends.
- c.* A school district is to be certified by the national organization that administers the project lead the way program and have a signed agreement with that organization.
- d.* To be eligible, institutions, instructors, and students meet the provisions of Iowa Code section 261E.3.
- e.* A school district may set additional eligibility requirements to ensure student readiness to achieve success. All students in the shared course are to meet the expectations of the national organization that administers the project lead the way program and be registered for college credit.
- f.* A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for collaborative project lead the way career and technical education courses.

22.18(8) Credit.

- a.* The school district shall grant high school credit to a student enrolled in a project lead the way course not offered by a community college. At a school district's discretion, a project lead the way course may count toward a school district's graduation requirements provided that the teacher is licensed by the board of educational examiners and endorsed within the subject area of the graduation requirement.
- b.* The school district shall grant high school credit to a student enrolled in a project lead the way course for college credit under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to Iowa Code section 261E.8(3). If a student is not successful in completing a project lead the way course as determined by the community college, the student's high school transcript will reflect the failing grade. The board of directors of the school district determines the number of high school credits to be granted to a student who successfully completes a project lead the way course.
- c.* The school district may offer a project lead the way course as an articulated course. Articulated courses are offered through an agreement between the district and postsecondary institution that allows students to receive college credit at the postsecondary institution upon matriculation based on the

demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution.

DIVISION IX
SUMMER COLLEGE CREDIT PROGRAM

281—22.19(261E) Summer college credit program.

22.19(1) *Program established.* A summer college credit program is established to expand access for high school students to high-quality career and technical education experiences aligned with career pathways leading to postsecondary credentials and high-demand jobs. Programs approved under subrule 22.19(3) will be offered during the summer term of an eligible postsecondary institution.

22.19(2) *Type of coursework offered.* The following provisions apply to coursework delivered through an approved program under this rule:

a. Coursework eligible to be offered through an approved program under this rule will be technical core coursework within and prerequisite coursework for a career and technical education program approved under 281—subrule 21.4(3).

b. The career and technical education program is to be aligned to in-demand occupations identified by the state workforce development board and community colleges pursuant to Iowa Code section 84A.1B(14).

c. Coursework delivered under this rule shall comply with Iowa Code section 257.11(3). The course will not be eligible for supplementary weighting under that section.

22.19(3) *Program proposals.* The department will establish an annual process for the submission and review of proposals for summer college credit programs. A postsecondary institution eligible to offer programming under Division III of this chapter may submit program proposals to the department.

a. Minimum components. The proposal will detail the following components.

(1) A program description, including the course or courses to be made available through the program; total number of credit hours; additional cocurricular experiences and activities including project-, problem-, and work-based learning opportunities; additional support services to be made available through the program; and any other pertinent program information.

(2) The total number of students that the program is capable of serving.

(3) The start date and duration of the program.

b. Enrollment threshold. The postsecondary institution will propose, and the department will approve, a minimum program enrollment threshold. Programs that surpass the minimum enrollment threshold shall be eligible for funding under paragraph 22.19(4) “b.”

c. Review of proposals. The department will establish a review process to evaluate all program proposals. In reviewing proposals, the department will give priority consideration to program proposals that will ensure equitable geographic disbursement of approved programs. The department will consider additional criteria including number of students served; alignment to in-demand occupations; the inclusion of extracurricular experiences with an emphasis on project-, problem-, and work-based learning opportunities; and the inclusion of provisions that address and remove barriers to participation for nontraditional students, underrepresented minority students, and low-income students.

d. Funding of proposals. A program proposal approved under this rule is funded under paragraph 22.19(4) “a” for the amount described under paragraph 22.19(3) “a.”

22.19(4) *Disbursement of funds.* Subject to the appropriation of funds, the department will disburse funds to a postsecondary institution offering an approved program in the following manner. All funds received under this rule shall be used to support and sustain the approved program.

a. Base funding. The amount of funds reserved for base funding as specified in paragraph 22.19(4) “c” will be distributed equally between approved programs.

b. Enrollment. Any funds not distributed under paragraph 22.19(4) “a” will be distributed to postsecondary institutions offering an approved program with student enrollment greater than the minimum enrollment threshold.

(1) An approved program shall gather a count of students enrolled in the program on the third day following the start date of the program, and submit this count to the department in a manner prescribed by the department.

(2) Enrollment funding shall be calculated by the department for each program with enrollment greater than the minimum enrollment threshold. For purposes of this rule, the portion of enrollment funding to be received by a postsecondary institution offering an approved program is equal to the total student enrollment in the approved program divided by the total student enrollments statewide.

c. Subsequent years. In each of the subsequent three years following the implementation year, the portion of the allocation distributed based on enrollment will increase by 10 percent each year until the minimum amount awarded based on enrollment is equal to 80 percent of the total allocation.

22.19(5) Availability. A postsecondary institution offering an approved program shall enter into a contract with a school district interested in making the program available to eligible students of the school district. The program will be made available to any eligible student from a participating school district. An institution offering programming to a student under this rule will comply with Division III of this chapter.

a. Student eligibility. To participate in an approved program, a student will comply with the criteria established under rules 281—22.2(261E) and 281—22.7(261E).

b. Teacher eligibility. A teacher assigned to provide instruction under this rule will comply with the criteria established under rule 281—22.3(261E) and be a community college-employed instructor.

c. Institutional eligibility. Institutions offering an approved program under this rule will comply with the criteria established under rule 281—22.4(261E).

These rules are intended to implement Iowa Code chapter 261E.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 31
“Private Instruction and Dual Enrollment”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 299A.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 299A

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to benefit Iowa’s students in home instruction.

The Department has removed unduly restrictive rule language, removed inflexible rule language, and incorporated statutory language by reference when available.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa’s school districts bear the costs of compliance with the proposed rules. Additionally, these proposed rules impose requirements on parents of children in private instruction. Those requirements are required by the underlying statute.

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

These proposed rules benefit children in private instruction and their families.

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

- Quantitative description of impact:

There is no known quantitative impact from these proposed rules.

- Qualitative description of impact:

Removing unnecessary language is a qualitative benefit of these rules.

3. Costs to the State:

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

The Department enforces this chapter, with costs offset by its general state appropriation.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 31 and adopt the following **new** chapter in lieu thereof:

TITLE V NONTRADITIONAL STUDENTS

CHAPTER 31 PRIVATE INSTRUCTION AND DUAL ENROLLMENT

281—31.1(299,299A) General. Any parent, guardian, or legal custodian of a child of compulsory attendance age may place the child under competent private instruction or independent private instruction in adherence to all provisions within Iowa Code chapter 299A. This includes any child identified as requiring special education under Iowa Code chapter 256B. If a child's performance indicates a need for special education, the child will be referred and evaluated as indicated in Iowa Code section 299A.9.

281—31.2(299,299A) Definitions. For purposes of this chapter:

The following terms apply as defined in Iowa Code section 299A.1:

“Competent private instruction.”

“Independent private instruction.”

“Private instruction.”

The following term applies as defined in Iowa Code section 299A.6:

“Adequate progress.”

281—31.3(299,299A) Competent private instruction.

31.3(1) *By licensed practitioner.* Competent private instruction by a licensed practitioner complies with this chapter.

a. Instruction under this subrule may include a home-school assistance program. A home-school assistance program is provided by instructional assistance and supervision to a parent, guardian, or legal custodian providing instruction to a child through an accredited nonpublic school or public school district by an appropriately certified or licensed educator.

b. If instruction is provided through a public school district:

(1) The child will be enrolled and included in the basic enrollment of the school district.

(2) Iowa Code sections 299A.3 through 299A.7 do not apply in this circumstance with the exception of the reporting provision in Iowa Code section 299A.3(1).

c. If a person is a privately retained licensed practitioner (who possesses a valid Iowa teaching certificate or practitioner license, including a substitute teacher’s license or a substitute authorization that is appropriate to the grade level of the student), that practitioner may provide competent private instruction.

(1) The duties of a licensed teacher who instructs or provides instructional supervision of a student include the following:

1. Contact with the student and the student’s parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts will be face-to-face with the student.

2. Consulting with and advising the student’s parent, guardian, or legal or actual custodian as requested by the student’s parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

3. Providing formal and informal assessments of the student’s progress to the student and the student’s parent, guardian, or legal or actual custodian.

4. Annually maintaining a diary, record, or log of visitations and assistance provided.

5. Referring to the child’s district of residence for evaluation of a child who the practitioner has reason to believe may need special education.

(2) A licensed Iowa practitioner who is employed under this rule will not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher’s employment with a nonaccredited nonpublic entity.

A licensed practitioner may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions will be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the practitioner will continue to be met.

31.3(2) *By parent, guardian, or legal custodian.* A parent, guardian, or legal custodian without a current Iowa teaching license providing competent private instruction for any child of compulsory age will:

a. Provide a report to the school district of residence of the child within 30 days of commencing instruction under this rule, which report demonstrates compliance with Iowa Code chapter 299A and this chapter.

b. Annually evaluate the child to determine whether the child is making adequate progress.

c. Report the child's annual evaluation to the school district of residence of the child and to the department of education by August 1.

281—31.4(299,299A) Annual achievement evaluations.

31.4(1) General. Each child receiving competent private instruction will be evaluated annually by May 31 through the use of:

- a. A nationally recognized standardized achievement evaluation; or
- b. Other assessment tool selected by parent, guardian, or legal custodian from an approved list provided by the department of education, which will include:
 - (1) The costs and administration time of listed evaluations, and
 - (2) A process to approve new or alternate assessments that meet the provisions of Iowa Code chapter 299A.

31.4(2) Duties of educational agencies. The director of the department of education, or the director's designee, which may include a school district or an area education agency (AEA), will:

- a. Conduct annual evaluations at a time and place determined by the person responsible for conducting the evaluation, which includes but is not limited to purchasing of evaluation materials, giving the evaluations, scoring and interpreting the evaluations, and reporting the evaluation results; and
- b. Provide for the parent, guardian, or legal custodian of the child to be present when the child is evaluated.

31.4(3) Additional testing. If requested, the school district or AEA will conduct annual evaluations at no cost to the parent, guardian, or legal custodian. Further:

- a. The parent, guardian, or legal custodian under competent private instruction is not required to reimburse any of the evaluation costs; and
- b. The annual achievement evaluation does not meet dual enrollment purposes under Iowa Code section 299A.8.

31.4(4) Additional evidence of progress. A parent, guardian, or legal custodian of a child may submit, as evidence of adequate academic progress, completed assessment evaluations, other than the annual achievement evaluation, if assessment evaluations are administered as part of the competent private instruction.

a. A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 31.

(1) A single evaluator will be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified will be approved by the superintendent of the local school district or the superintendent's designee and will hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

(2) The child's portfolio will contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grades 1 through 5. For children in grades 6 through 12, the portfolio will contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

b. For a child subject to annual assessment under this rule who is enrolled as a student of a correspondence school that is a member of an accrediting association recognized by the federal Department of Education and accredited for elementary and secondary education, the district of residence and the department will accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required is deemed evidence of adequate progress for the purpose of annual assessment.

31.4(5) Reporting of evaluation results. Evaluation results will be handled pursuant to Iowa Code section 22.7(1) and reported by the evaluation administrator to the child's parent, guardian, or legal custodian; the school district of residence of the child; and the department of education.

31.4(6) *Failure to make adequate progress—notice to parents.* If annual evaluation results indicate the child has not made adequate progress:

a. The director of the department of education, or the director's designee, will notify the parent, guardian, or custodian of the child that the child is required to attend an accredited public or nonpublic school.

b. The child will attend an accredited public or nonpublic school at the start of the next school year until evaluation results indicate the child has made adequate progress, unless, before the beginning of the next school year, the director or director's designee grants approval for competent private instruction to continue under a plan for remediation.

31.4(7) *Rules of construction.*

a. Nothing in this section requires or prohibits testing in any way other than what is set forth in Iowa Code section 256.7(21) "b"(2).

b. The parent, guardian, or custodian of students who are receiving independent private instruction are responsible for the cost of annual assessment if requested, through the local school district or AEA.

c. The parent, guardian, or legal or actual custodian of a child subject to this rule and who has a physical or mental disability so significant that the results of a standardized test would not yield relevant results for assessment purposes may request the department's approval of an alternative evaluation.

281—31.5(299,299A) Dual enrollment.

31.5(1) If a parent, guardian, or legal custodian submits a request, the child will be registered in a public school for dual enrollment purposes and included in the public school's basic enrollment under Iowa Code section 257.6.

31.5(2) A child who is dual-enrolled will:

- a.* Be permitted to participate in any academic activities in the district;
- b.* Be permitted to participate in any extracurricular activities on the same basis as any public school child; and
- c.* Be counted under Iowa Code section 257.6(1) "a"(6); or
- d.* In the case of a child in grades 9 through 12, be counted in the same manner as a shared-time pupil under Iowa Code section 257.6(1) "a"(3).

31.5(3) Enrollment of a child solely for purposes of accessing the annual achievement evaluation does not constitute dual enrollment.

31.5(4) A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

281—31.6(299,299A) Home school assistance program. The board of directors of a school district will expend funds received pursuant to Iowa Code section 257.6(1) "a"(5), and amounts designated from the school district's flexibility account under Iowa Code section 298A.2(2), for providing a home school assistance program. Funds will be expended for intended purposes identified in Iowa Code sections 299A.12(2) through 299A.12(4). A district will not employ as a home school assistance program instructor a person who currently holds only a substitute authorization. A home school assistance program teacher will have contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts will be face-to-face with the student.

281—31.7(299,299A) Miscellaneous provisions.

31.7(1) *Special education.* Special education services to students in competent private instruction, including dual enrollment for special education services, are governed by Iowa Code section 299A.9.

31.7(2) *Open enrollment.* Open enrollment for a student under this chapter is governed by Iowa Code section 282.18. A receiving district may only bill a resident district if the receiving district complies with the provisions of this chapter.

31.7(3) *Instructional materials.*

a. A school district will not make monetary payments, including cash and cash equivalents, or give publicly funded resources, directly or indirectly, to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district will not purchase texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not appropriate for use by regularly enrolled students of the school district.

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students and will provide available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity.

c. The parent, guardian, or legal or actual custodian who provides competent private instruction to a child of compulsory attendance age may access the services and materials available from the AEA by requesting assistance through the school district of residence. The AEA will make services and materials available to the child on the same basis as they are available to regularly enrolled students of the district if the child is dual enrolled or enrolled in a home school assistance program. The district of residence will act as liaison between the parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction and the AEA.

31.7(4) *Driver education.* The public school district will offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education pursuant to Iowa Code section 321.178(1) “c.”

31.7(5) *Private instruction reporting exemption.* A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 may meet, but is not required to meet, the provisions of Iowa Code section 299A.3.

The reporting option provided in this subrule is not available to any parent, guardian, or legal or actual custodian who requests services from a school district or AEA under this chapter, including the provision of instructional materials, assistance from a home school assistance program, dual enrollment, open enrollment, or special education services. Parents who elect the reporting option under this subrule and who request testing assistance under or an approved course in driver education under subrule 31.5(6) need not complete any particular form, but must demonstrate that the child is receiving competent private instruction pursuant to this chapter.

31.7(6) *Independent private instruction: services available.* For students under independent private instruction, only the following services are available: an approved course in driver education and concurrent enrollment programs, also known as district-to-community college sharing, subject to the terms of Iowa Code section 261E.8.

31.7(7) *Student records confidential.* Personal information in records pursuant to this chapter will be kept confidential in compliance with district student directory policy in accordance with Iowa Code section 22.7(1).

These rules are intended to implement Iowa Code chapters 299 and 299A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 34
“Funding for Children Residing in State Institutions or Mental Health Institute”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(5)
State or federal law(s) implemented by the rulemaking: Iowa Code section 282.33

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

These proposed rules are intended to provide basic education for children in Department of Health and Human Services (HHS)-operated institutions.

The Department proposes removing an obsolete rule (current rule 281—34.13(218)), removing language that merely restates statutory language, and removing restrictive terms that do not add value.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
HHS will bear the costs of these proposed rules, which are met by an appropriation to HHS.
 - Classes of persons that will benefit from the proposed rulemaking:
Children residing at HHS institutions will benefit from these proposed rules.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact of these proposed rules.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of these rules.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34 FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS OR MENTAL HEALTH INSTITUTE

281—34.1(282) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in the following institutions under the jurisdiction of the director of the department of health and human services: the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

281—34.2(282) Definitions. For the purposes of these rules, the following definitions apply:

“*AEA*” means an area education agency.

“Aggregate days” means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the institution and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the institution or receives a high school diploma or its equivalent, whichever occurs first.

“Average daily attendance” or *“ADA”* means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter will be calculated on the regular school year exclusive of summer session.

“Department” means the Iowa department of education.

“District of residence” means the school district in which the parent or guardian of the child resides or as defined under operation of law. If the student’s parental rights have been terminated or if a parent cannot be located in Iowa after a reasonable effort has been made, the school district of the child’s residence is considered the district where the institution is physically located.

“Individualized education program” or *“IEP”* means the written record of an eligible individual’s special education and related services developed in accordance with 281—Chapter 41. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual’s special learning needs. There is one IEP that specifies all the special education and related services for an eligible individual.

“Institution” means the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

“Proposed educational program” means a written description of the general education program, special education services, transition activities, and summer school programs that are proposed to be implemented in order to provide appropriate educational services for each child residing in an institution.

“Proposed educational program budget” means a document that outlines the costs for providing the proposed educational program as defined in these rules.

“Regular school year” means the number of days that school is in session, not to exceed 180 days. The regular school year for each institution shall begin on the first day of school established by the school district in which each institution is located.

“School-age pupil” means a student who is a resident of the state of Iowa and who is at least 5 years of age but less than 21 years of age on September 15 of the school year, or a younger age if served pursuant to an IEP.

“Student contact days” means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

“Transition” means communication between the institution, the child’s district of residence, and any other relevant stakeholders to develop a plan for assisting the child to adjust to school in the district of residence upon the child’s return. Planning for support and follow-up includes contacts with the child’s district of residence, community agencies, and the AEA when needed.

281—34.3(282) General principles.

34.3(1) Availability. All children who reside in state institutions and the mental health institute shall be provided appropriate educational services in accordance with these rules. Special education services to eligible individuals in institutions will be provided in accordance with 281—Chapter 41.

34.3(2) Responsibility of institutions. It is the responsibility of institutions to provide or make provisions for appropriate educational services to children residing in these institutions and to ensure appropriate transition of children back to the school district of residence. The institution may make provisions by contracting with the AEA, the school district in which the institution is located, or an approved charter school.

34.3(3) Basis for funding. Funding for general education programs at the institutions is determined using a formula similar to the formula used for the determination of funding for local school districts while considering the unique setting of the institutions. The amount of special education funding is determined by comparing the structure of the general education program at each institution to the nature

and extent of services necessary for students with special education needs beyond what is provided to all students by the general education program.

34.3(4) *Responsibility of the AEA.* It is the responsibility of the AEA in which the institution is located to provide media services, educational services, and special education support services. The nature and extent of these services will be comparable to those provided to school districts in the AEA.

281—34.4(282) Notification.

34.4(1) *Students served at mental health institute.* The Mental Health Institute, Independence, Iowa, will notify the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in this institution. The notification will occur on or before October 10 and be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

34.4(2) *Students served at the State Training School at Eldora.* The State Training School at Eldora will notify the AEA in which the institution is located and the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in the institution if the child's release date is known and the release date is within the current school year. The notification will occur on or before October 10. For students served pursuant to an IEP, the State Training School at Eldora will by the last Friday in October also notify the AEA in which the institution is located and the district of residence of each child residing in the institution if the child's release date is known and the release date is within the current school year. Notifications will be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

281—34.5(218) Program submission and approval. Educational programs will be submitted, reviewed, modified, and approved using the following procedures:

34.5(1) *Submission.* Each institution will submit a proposed educational program in a time and manner specified by Iowa Code section 282.33(1). The proposed program will be submitted in the manner prescribed by the department and include a description of the following:

- a.* The general education program, including content standards, benchmarks, student learning goals and all other provisions of 281—Chapter 12.
- b.* Special education services, including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.
- c.* Procedures that will be implemented to ensure the effective transition of each child back to the district of residence.

34.5(2) *Approval.* The department will review and approve or modify the proposed educational program at a time and manner specified in Iowa Code section 282.33(1).

281—34.6(218) Budget submission and approval. Educational program budgets will be submitted, reviewed, modified, and approved using the following procedures:

34.6(1) *Submission.* Each institution will submit a proposed educational program budget in a time and manner specified by Iowa Code section 282.33(1). The proposed budget is to be based on the ADA of the children residing in the institution. The ADA used for the proposed budget is the ADA for the school year that ended the previous June 30.

34.6(2) *Students not served pursuant to an IEP.* The budget will be calculated as the sum of the following:

- a.* ADA multiplied by the state cost per pupil for the budget year established pursuant to Iowa Code section 257.9.
- b.* ADA multiplied by the per pupil media services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.
- c.* ADA multiplied by the per pupil educational services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

34.6(3) *Students served pursuant to an IEP.* The budget will be calculated as the sum of the following:

- a.* Costs established pursuant to subrule 34.6(2) for students not served pursuant to an IEP.
- b.* Additional weighting established by the special education weighting plan pursuant to Iowa Code section 257.31(12) as appropriate to support the nature and extent of special education services provided pursuant to subrule 34.3(3).
- c.* Special education student count multiplied by the special education support cost per pupil funding established for the AEA in which the institution is located pursuant to Iowa Code section 257.9.
- d.* The State Training School at Eldora may include in its budget an amount that represents the difference between the amount established pursuant to Iowa Code section 282.28 (2003) and approved by the department for the 2003-2004 fiscal year included in the fiscal year beginning July 1, 2003, and the amount the institution has budgeted under paragraph 34.6(3) “c.” The budget amount will increase annually by the allowable growth rate established for that year.
- e.* In addition to the amount the institution has budgeted as specified in paragraph 34.6(3) “c,” the mental health institute at Independence may include annually in its budget an amount not to exceed \$200,000 based on the budget calculation specified in paragraph 34.6(2) “a.” This budgeted amount may be adjusted to an amount that exceeds \$200,000 in circumstances when there is a significant increase in the number of students in attendance. This additional amount will increase annually by the allowable growth rate established for that year.

34.6(4) *Approval.* The department will review and approve or modify the proposed educational program budget at a time and manner specified in Iowa Code section 282.33(1).

281—34.7(282) Payments.

34.7(1) *General.* Payments to institutions will be made at a time and manner specified in Iowa Code section 282.33(1).

34.7(2) *Payments to the AEA.* Within ten days of receiving its payment, the institution shall pay to the AEA in which the institution is located one-tenth of the total funding included in its approved budget for AEA media services, educational services, and special education support services.

281—34.8(282) Accounting for actual program costs. Each institution will submit an accounting for the actual cost of the program to the department at a time and manner specified by Iowa Code section 282.33(1).

34.8(1) *Instructional costs.* Actual costs include salaries and benefits of instructional staff, instructional supplies and materials, professional development for instructional staff, student transportation, contracted services related to instruction or instructional staff, and instructional equipment.

34.8(2) *Administrative costs.* Costs for administering the educational program may be included in actual costs based on the ADA of students in the institution. Costs are to be limited to the salary and benefits of the full-time equivalent education administrators and clerical support for the instructional program. However, the full-time equivalent (FTE) positions at any institution will not exceed 1.0 FTE position for education administration and 1.0 FTE position for clerical support.

34.8(3) *Unallowed costs.* Costs will not include expenditures for debt services or for facilities acquisition and construction services, including remodeling and facility repair. Costs of residential, custodial, treatment, and similar services provided by the institution will not be included in the actual costs. Costs provided for by a grant or other categorical aid shall not be included in the actual cost calculations pursuant to this chapter.

34.8(4) *Summer school costs.* Costs for providing summer school will be reported separately from regular session costs. Except as approved by the department of education, summer session costs are considered to be included in the state cost per pupil, or as provided in an appropriation through the department of health and human services.

34.8(5) *Instruction to nonresident students.* Costs for providing instruction to students who are not residents of the state of Iowa are excluded from the actual cost calculations.

34.8(6) *Maximum costs for students who are not served pursuant to an IEP.* Actual costs for serving students who are not served pursuant to an IEP will not exceed the greater of the actual ADA for the school year multiplied by the state cost per pupil or the ADA from the approved budget multiplied by the state cost per pupil.

34.8(7) *Maximum costs for students served pursuant to an IEP.* Actual costs for students served pursuant to an IEP will not exceed the amount calculated in subrule 34.6(3).

34.8(8) *Approval of expenditures.* The department will review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to Iowa Code section 256.7(10) and notify the department of revenue of the approved accounting amount. The approved accounting amount will be compared with any amounts paid by the department of revenue to the department of health and human services and any differences added to or subtracted from the October payment made under these rules for the next school year.

34.8(9) *Costs of courses.* Costs include the actual expenses, if reasonable and customary, for tuition, textbooks, course materials, and fees directly related to courses taken pursuant to rule 281—34.10(282) by students who are residents of the state of Iowa.

34.8(10) *Accounting for ADA.* Each institution will keep a daily register that includes the name, birth date, district of residence, attendance, and enrollment status of each student. At the end of the school year, each institution will calculate the ADA for students served pursuant to an IEP and the ADA for students not served pursuant to an IEP. This information will be reported with the accounting for the actual program costs submitted to the department by August 1.

34.8(11) *Audit.* Each institution will make the records related to providing educational services to students residing within the institution available to independent auditors, state auditors and department of education staff upon request.

281—34.9(282) AEA services. Each institution will purchase from the AEA in which the institution is located support, related and other services necessary to provide appropriate educational programs to students requiring special education, and payment for the purchased services shall be made in accordance with subrule 34.7(2). The nature and extent of such services will be comparable to those provided to school districts in the AEA.

281—34.10(282) Postsecondary credit courses. High school students who attend an institution and are residents of the state of Iowa are eligible to be enrolled in college courses offered by an eligible postsecondary institution as defined in Iowa Code section 261C.3(1) and to receive both secondary and postsecondary credit therefor.

34.10(1) *Noneligible courses.* Postsecondary courses utilized in the attainment of an adult diploma or high school equivalency diploma are not eligible for funding hereunder.

34.10(2) *Eligible courses.* Postsecondary courses eligible for funding hereunder must meet all of the following paragraphs. The course is to be:

- a. Supplementing, not supplanting, courses offered at the institution.
- b. Included in the college catalog or an amendment or addendum to the catalog.
- c. Open to all registered college students, not just secondary students.
- d. Taught by a college-employed instructor.
- e. Taught utilizing the college course syllabus.
- f. Of the same quality as a course offered on a college campus.
- g. Nonsectarian.

34.10(3) *Maximum number of college courses allowed.* A student is allowed to take a maximum of three college courses during a semester, for a maximum of six college courses per regular school year, while the student is in attendance at the institution. College courses taken outside the regular school year will not be funded under this chapter. If the student exceeds the course limit, the costs of the additional courses will not be funded under this chapter.

These rules are intended to implement Iowa Code section 282.33.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 41
“Special Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256B.3(16)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 256B and 34 CFR Part 300

Public Hearing

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

January 2, 2024
11 to 11:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This chapter is intended to provide a framework for providing special education and support and related services to Iowa’s children with disabilities. The proposed rulemaking removes unnecessary language that merely restates federal requirements or is addressed by other agency rules, such as Department of Inspections, Appeals, and Licensing (DIAL) rules and procedures on contested cases.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts and AEAs will bear the cost of complying with this proposed rulemaking, such costs being offset by state and federal special education funding.
 - Classes of persons that will benefit from the proposed rulemaking:
Children with disabilities who require special education, as well as their families, will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact.
 - Qualitative description of impact:
There is a qualitative impact of removing duplicative and obsolete rules.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department of Education is responsible for monitoring compliance by school districts and AEAs.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Iowa Code chapter 256B requires rules.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
Because rules are required, the Department did not consider alternatives.
6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 41 and adopt the following **new** chapter in lieu thereof:

TITLE VII SPECIAL EDUCATION CHAPTER 41 SPECIAL EDUCATION

DIVISION I PURPOSE AND APPLICABILITY

281—41.1(256B,34CFR300) Purposes. The purposes of this chapter are set forth in 34 CFR Section 300.1.

281—41.2(256B,34CFR300) Applicability of this chapter. The provisions of this chapter are binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act (Act).

41.2(1) General. The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of children with disabilities, including:

- a.* The state educational agency (SEA).
- b.* Local educational agencies (LEAs), area education agencies (AEAs), and public charter schools that are not otherwise included as LEAs or educational service agencies (ESAs) and are not a school of an LEA or ESA.
- c.* Other state agencies and schools, including but not limited to the departments of human services and public health and state schools and programs for children who are deaf or hard of hearing or children who are blind or visually impaired.
- d.* State and local juvenile and adult correctional facilities.

41.2(2) Private schools and facilities. Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of rule 281—41.148(256B,34CFR300).

41.2(3) Age. This chapter applies to all children requiring special education between birth and the twenty-first birthday and to a maximum allowable age under Iowa Code section 256B.8.

DIVISION II
DEFINITIONS

281—41.3(256B,34CFR300) Act. “Act” means the Individuals with Disabilities Education Act as amended through August 14, 2006.

281—41.4(256B,273) Area education agency. “Area education agency” or “AEA” is a political subdivision of the state organized pursuant to Iowa Code chapter 273. An area education agency, depending on context, may be a local educational agency, as defined in rule 281—41.28(256B,34CFR300), an educational service agency, as defined in rule 281—41.12(256B,34CFR300), or both simultaneously.

281—41.5(256B,34CFR300) Assistive technology device. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

281—41.6(256B,34CFR300) Assistive technology service. “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
 2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
 3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 5. Training or technical assistance for a child with a disability or, if appropriate, that child’s family;
- and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

281—41.7(256B,34CFR300) Charter school. “Charter school” has the meaning given the term in Section 4310(2) of the Elementary and Secondary Education Act of 1965 as amended through December 10, 2015, 20 U.S.C. 6301 et seq. (ESEA).

281—41.8(256B,34CFR300) Child with a disability. “Child with a disability” refers to a person under 21 years of age, including a child under 5 years of age, who has a disability in obtaining an education. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults. In these rules, this term is synonymous with “child requiring special education” and “eligible individual.” “Disability in obtaining an education” refers to a condition, identified in accordance with this chapter, which, by reason thereof, causes a child to require special education and support and related services.

281—41.9(256B,34CFR300) Consent.

41.9(1) *Obtaining consent.* “Consent” is obtained when all of the following conditions are satisfied:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

41.9(2) *When revocation of consent is effective.* If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

41.9(3) *Special rule.* If a parent of a child revokes consent, in writing, for the child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

281—41.10(256B,34CFR300) Core academic subjects. “Core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

281—41.11(256B,34CFR300) Day; business day; school day. “Day” means calendar day unless otherwise indicated as business day or school day.

1. “Business day” means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in 41.148(4) “*b.*”

2. “School day” means any day, including a partial day, when children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. The length of the school day for an eligible individual shall be the same as that determined by the local educational agency’s board of directors for all other individuals, unless a shorter day or longer day is prescribed in the eligible individual’s individualized education program.

281—41.12(256B,34CFR300) Educational service agency. “Educational service agency” means a regional public multiservice agency that is authorized by state law to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the

provision of special education and related services provided within public elementary schools and secondary schools of the state. “Educational service agency” includes any other public institution or agency that has administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in Section 602(23) of the Act as in effect prior to June 4, 1997.

281—41.13(256B,34CFR300) Elementary school. “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—41.14(256B,34CFR300) Equipment. “Equipment” means machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment. “Equipment” includes other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

281—41.15(256B,34CFR300) Evaluation. “Evaluation” means procedures used in accordance with rules 281—41.304(256B,34CFR300) to 281—41.311(256B,34CFR300) to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

281—41.16(256B,34CFR300) Excess costs. “Excess costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting the following:

41.16(1) *Certain federal funds.* Amounts received under Part B of the Act; under Part A of Title I of the ESEA; and under Part A of Title III of the ESEA; and

41.16(2) *Certain state or local funds.* Any state or local funds expended for programs that would qualify for assistance under subrule 41.16(1), but excluding any amounts for capital outlay or debt service.

281—41.17(256B,34CFR300) Free appropriate public education. “Free appropriate public education” or “FAPE” means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the SEA, including the requirements of this chapter; that include an appropriate preschool, elementary school, or secondary school education; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300).

281—41.18 Reserved.

281—41.19(256B,34CFR300) Homeless children. “Homeless children” has the meaning given the term “homeless children and youths” in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act as amended through August 14, 2006, 42 U.S.C. 11431 et seq.

281—41.20(256B,34CFR300) Include. “Include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—41.21(256B,34CFR300) Indian and Indian tribe. “Indian” means an individual who is a member of an Indian tribe. “Indian tribe” means any federal or state Indian tribe, settlement, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

281—41.22(256B,34CFR300) Individualized education program. “Individualized education program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300). A single IEP for each eligible individual, which specifies all the special education and related services the eligible individual is to receive, is required.

281—41.23(256B,34CFR300) Individualized education program team. “Individualized education program team” or “IEP team” means a group of individuals described in rule 281—41.321(256B,34CFR300) that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

281—41.24(256B,34CFR300) Individualized family service plan. “Individualized family service plan” or “IFSP” has the meaning given the term in Section 636 of the Act.

281—41.25(256B,34CFR300) Infant or toddler with a disability. “Infant or toddler with a disability” means an individual under three years of age who needs early intervention services either because the individual has a condition, based on informed clinical opinion, known to have a high probability of resulting in later delays in growth and development if early intervention services are not provided; or the individual has a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, based on informed clinical opinion, in one or more of the following developmental areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development.

281—41.26(256B,34CFR300) Institution of higher education. “Institution of higher education” has the meaning given the term in Section 101 of the Higher Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801 et seq.

281—41.27(256B,34CFR300) Limited English proficient. “Limited English proficient” has the meaning given the term “English learner” in Section 8101 of the ESEA.

281—41.28(256B,34CFR300) Local educational agency.

41.28(1) General. “Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary schools or secondary schools.

41.28(2) Educational service agencies and other public institutions or agencies. The term includes an educational service agency, as defined in rule 281—41.12(256B,34CFR300) and any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

41.28(3) BIA-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—41.29(256B,34CFR300) Native language.

41.29(1) General. “Native language,” when used with respect to an individual who is limited English proficient, means the following:

a. The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child; or

b. The language normally used by the child in the home or learning environment; this language shall be considered “native language” in all direct contact with a child, including evaluation of the child.

41.29(2) *Special rule.* For an individual who is deaf or hard of hearing or who is blind or visually impaired, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, braille, or oral communication.

281—41.30(256B,34CFR300) Parent.

41.30(1) *General.* “Parent” means:

a. A biological or adoptive parent of a child;

b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

d. An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives or an individual who is legally responsible for the child’s welfare; or

e. A surrogate parent who has been appointed in accordance with rule 281—41.519(256B,34CFR300) or 20 U.S.C. 1439(a)(5).

41.30(2) *Rules of construction and application.* The following rules are to be used to determine whether a party qualifies as a parent:

a. Except as provided in 41.30(2) “*b*,” the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of this rule unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs “*a*” to “*d*” of subrule 41.30(1) to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

c. “Parent” does not include a public or private agency involved in the education or care of a child or an employee or contractor with any public or private agency involved in the education or care of the child in that employee’s or contractor’s official capacity.

281—41.31(256B,34CFR300) Parent training and information center. “Parent training and information center” means a center assisted under Section 671 or 672 of the Act.

281—41.32(256B,34CFR300) Personally identifiable. “Personally identifiable” means information that contains the name of the child, the child’s parent, or other family member; the address of the child; a personal identifier, such as the child’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.33(256B,34CFR300) Public agency; nonpublic agency; agency. “Public agency” includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to children with disabilities. “Nonpublic agency” includes any private organization of whatever form that is responsible for providing education to children with disabilities and that is not a public agency. “Agency” includes public agencies and nonpublic agencies.

281—41.34(256B,34CFR300) Related services.

41.34(1) *General.* “Related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. “Related services” includes speech-language pathology and audiology services; interpreting

services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. “Related services” also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

41.34(2) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

a. “Related services” does not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in paragraph “a” of this subrule shall:

(1) Limit the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services as listed in subrule 41.34(1) that are determined by the IEP team to be necessary for the child to receive FAPE;

(2) Limit the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in rule 281—41.113(256B,34CFR300).

41.34(3) *Individual related services terms defined.* The terms used in this definition are defined as follows:

a. “*Audiology*” includes:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

(4) Creation and administration of programs for prevention of hearing loss;

(5) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(6) Determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. “*Counseling services*” means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

c. “*Early identification and assessment of disabilities in children*” means the implementation of a formal plan for identifying a disability as early as possible in a child’s life.

d. “*Interpreting services*” includes the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(2) For children who are deaf-blind, special interpreting services.

e. “*Medical services*” means services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.

f. “*Occupational therapy*” means services provided by a qualified occupational therapist, and includes the following:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) Preventing, through early intervention, initial or further impairment or loss of function.

g. “*Orientation and mobility services*” means services provided to children who are blind or visually impaired by qualified personnel to enable those students to attain systematic orientation to

and safe movement within their environments in school, home, and community, and includes teaching children the following, as appropriate:

(1) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(2) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(3) To understand and use remaining vision and distance low vision aids; and

(4) Other concepts, techniques, and tools.

h. "Parent counseling and training" means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

i. "Physical therapy" means services provided by a qualified physical therapist.

j. "Psychological services" includes the following:

(1) Administering psychological and educational tests, and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(4) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(6) Assisting in developing positive behavioral intervention strategies.

k. "Recreation" includes the following:

(1) Assessment of leisure function;

(2) Therapeutic recreation services;

(3) Recreation programs in schools and community agencies; and

(4) Leisure education.

l. "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 as amended through August 14, 2006, 29 U.S.C. 701 et seq.

m. "School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

n. "Social work services in schools" includes the following:

(1) Preparing a social or developmental history concerning a child with a disability;

(2) Group and individual counseling with the child and family;

(3) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(5) Assisting in developing positive behavioral intervention strategies.

o. "Speech-language pathology services" includes the following:

(1) Identification of children with speech or language impairments;

(2) Diagnosis and appraisal of specific speech or language impairments;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

p. "Transportation" includes the following:

- (1) Travel to and from school and between schools;
- (2) Travel in and around school buildings; and
- (3) Specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.34(4) Rule of construction. A particular service listed in this rule may also be considered special education under rule 281—41.39(256B,34CFR300), a supplementary aid and service under rule 281—41.42(256B,34CFR300), or a support service under rule 281—41.409(256B,34CFR300).

281—41.35 Reserved.

281—41.36(256B,34CFR300) Secondary school. "Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

281—41.37(34CFR300) Services plan. "Services plan" has the meaning given the term in 34 CFR 300.37.

281—41.38(34CFR300) Secretary. "Secretary" means the Secretary of the United States Department of Education.

281—41.39(256B,34CFR300) Special education.

41.39(1) General. "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

- a.* Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- b.* Instruction in physical education.

41.39(2) Specific services included in special education. Special education includes each of the following, if the services otherwise meet the requirements of subrule 41.39(1):

- a.* Any service listed in this chapter, including support services, related services, and supplemental aids and services, that is specially designed instruction under subrule 41.39(1) or state standards or is required to assist an eligible individual in taking advantage of, or responding to, educational programs and opportunities;
- b.* Travel training; and
- c.* Vocational education.

41.39(3) Individual special education terms defined. The terms in this definition are defined as follows:

a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public insurance or benefits or private insurance proceeds to pay for services if they would not incur a financial cost, as described in rule 281—41.154(256B,34CFR300).

b. "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports; and includes special physical education, adapted physical education, movement education, and motor development.

c. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

- (1) To address the unique needs of the child that result from the child's disability; and

(2) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

d. “Travel training” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

- (1) Develop an awareness of the environment in which they live; and
- (2) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

e. “Vocational education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

281—41.40(34CFR300) State. “State” means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

281—41.41(256B,34CFR300) State educational agency. “State educational agency” or “SEA” means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law.

281—41.42(256B,34CFR300) Supplementary aids and services. “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with rules 281—41.114(256B,34CFR300) to 281—41.116(256B,34CFR300).

281—41.43(256B,34CFR300) Transition services.

41.43(1) General. “Transition services” means a coordinated set of activities for a child with a disability and meets the following description:

a. Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes the following:

- (1) Instruction;
- (2) Related services;
- (3) Community experiences;
- (4) The development of employment and other post-school adult living objectives; and
- (5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

41.43(2) May be special education or a related service. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education.

281—41.44(34CFR300) Universal design. “Universal design” has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 as amended through August 14, 2006, 29 U.S.C. 3002.

281—41.45(256B,34CFR300) Ward of the state.

41.45(1) General. Subject to subrules 41.45(2) and 41.45(3), “ward of the state” means a child who, as determined by the state where the child resides, is:

- a. A foster child;
- b. In the custody of a public child welfare agency; or
- c. A ward of the state.

41.45(2) Exception. “Ward of the state” does not include a foster child who has a foster parent who meets the definition of a parent in rule 281—41.30(256B,34CFR300).

41.45(3) Interpretive note. “Ward of the state” is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—41.46 to 41.49 Reserved.

281—41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals. The following terms may be encountered in the identification of children with disabilities.

41.50(1) Autism. “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, which adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child’s educational performance is adversely affected primarily because the child has a behavior disorder, as defined in subrule 41.50(2). A child who manifests the characteristics of autism after the age of three could be identified as having autism if the criteria in the first sentence of this subrule are satisfied. This term includes all conditions described by the term “autism spectrum disorder,” which adversely affects a child’s educational performance.

41.50(2) Behavior disorder. “Behavior disorder” (or emotional disturbance) means any condition that exhibits one or more of the following five characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance.

- a. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- c. Inappropriate types of behavior or feelings under normal circumstances.
- d. A general pervasive mood of unhappiness or depression.
- e. A tendency to develop physical symptoms or fears associated with personal or school problems.

41.50(3) Deaf-blindness. “Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children who are deaf or hard of hearing or children who are blind or visually impaired.

41.50(4) Deafness. “Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a child’s educational performance.

41.50(5) Hearing impairment. “Hearing impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in 41.50(4).

41.50(6) Intellectual disability. “Intellectual disability” means significantly subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior and is manifested during the developmental period, and which adversely affects a child’s educational performance.

41.50(7) Multiple disabilities. “Multiple disabilities” means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

41.50(8) Orthopedic impairment. “Orthopedic impairment” means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly; impairments caused by disease, e.g., poliomyelitis or bone tuberculosis; and

impairments from other causes, e.g., cerebral palsy, amputations, and fractures or burns that cause contractures.

41.50(9) *Other health impairment.* “Other health impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

a. Is due to a chronic or acute health problem such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

b. Adversely affects a child’s educational performance.

41.50(10) *Specific learning disability.* “Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

41.50(11) *Speech or language impairment.* “Speech or language impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

41.50(12) *Traumatic brain injury.* “Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

41.50(13) *Visual impairment.* “Visual impairment,” including blindness, means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

281—41.51(256B,34CFR300) Other definitions applicable to this chapter. The following additional definitions apply to this chapter.

41.51(1) *Appropriate activities.* “Appropriate activities” means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

41.51(2) *Board.* “Board” means the Iowa state board of education.

41.51(3) *Department.* “Department” means the state department of education.

41.51(4) *Director.* “Director” means the director of special education of the AEA.

41.51(5) *Director of education.* “Director of education” means the state director of the department of education.

41.51(6) *Early childhood special education.* “Early childhood special education” or “ECSE” means special education and related services for those individuals below the age of six.

41.51(7) *General curriculum.* “General curriculum” means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

41.51(8) *General education environment.* “General education environment” includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities occur for children of similar age without disabilities.

41.51(9) General education interventions. “General education interventions” means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in rule 281—41.312(256B,34CFR300).

41.51(10) Head injury. “Head injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

41.51(11) Multicategorical. “Multicategorical” means special education in which the individuals receiving special education have different types of disabilities.

41.51(12) School district of the child’s residence. “School district of the child’s residence” or “district of residence of the child” is that school district in which the parent of the individual resides, subject to the following:

a. If an eligible individual is physically present (“lives”) in a district other than the district of residence of the individual’s parent for a primary purpose other than school attendance, then the district of residence of the individual is the district in which the individual resides, and that district becomes responsible for providing and funding the special education and related services.

b. If an eligible individual is physically present (“lives”) in a district other than the district of residence of the individual’s parent solely for the purpose of school attendance, the district of residence remains that of the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

c. If an individual is physically present (“lives”) in an intermediate care facility, residential care facility, or other similar facility, the individual’s district of residence is deemed to be that of the individual’s parents.

d. “Children living in a foster care facility” are individuals requiring special education who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services are determined pursuant to paragraph 41.907(5) “a.”

e. “Children living in a treatment facility” are individuals requiring special education who are living in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a treatment facility and financial responsibility for special education and related services are determined pursuant to paragraph 41.907(5) “b.”

f. “Children placed by the district court” are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined pursuant to subrule 41.907(6).

41.51(13) Severely disabled. “Severely disabled” is an adjective applied to individuals with any severe disability including individuals who are profoundly, multiply disabled.

41.51(14) Signature. “Signature” has the meaning given the term in Iowa Code section 4.1(39).

41.51(15) Systematic progress monitoring. “Systematic progress monitoring” means a systematic procedure for collecting and displaying an individual’s performance over time for the purpose of making educational decisions.

281—41.52 to 41.99 Reserved.

DIVISION III
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

281—41.100(256B,34CFR300) Eligibility for assistance. To be eligible for assistance under Part B of the Act for a fiscal year, the state shall submit a plan that provides assurances to the Secretary that the state has in effect policies and procedures to ensure that the state meets the conditions in rules 281—41.101(256B,34CFR300) to 281—41.176(256B).

281—41.101(256B,34CFR300) Free appropriate public education (FAPE).

41.101(1) General. A free appropriate public education must be available to all children residing in the state for the time period permitted by Iowa Code chapter 256B, including children with disabilities who have been suspended or expelled from school, as provided for in subrule 41.530(4).

41.101(2) FAPE for children beginning at the age of three. The state shall ensure that:

- a. The obligation to make FAPE available to each eligible child residing in the state begins no later than the child's third birthday; and
- b. An IEP is in effect for the child by that date.
- c. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

41.101(3) Children advancing from grade to grade. FAPE shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination that a child described in the first sentence of this subrule is eligible under this chapter must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

281—41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages.

41.102(1) Exceptions. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- a. Children over the age provided in Iowa Code chapter 256B, unless otherwise provided in this rule.
- b. Certain children incarcerated in adult prisons.
 - (1) General. A child aged 18 to 21 who, in the last educational placement prior to incarceration in an adult correctional facility:
 1. Was not actually identified as being a child with a disability under this chapter; and
 2. Did not have an IEP under Part B of the Act.
 - (2) Inapplicability of exception. The exception in 41.102(1) "b"(1) does not apply to a child with disabilities, aged 18 to 21, who:
 1. Had been identified as a child with a disability under this chapter and had received services in accordance with an IEP, but who left school prior to incarceration; or
 2. Did not have an IEP in the child's last educational setting, but who had actually been identified as a child with a disability under this chapter.
- c. Graduates with a regular high school diploma.
 - (1) General. Children with disabilities who have graduated from high school with a regular high school diploma.
 - (2) Inapplicability of exception. The exception in 41.102(1) "c"(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.
 - (3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).
 - (4) Rule of construction. As used in 41.102(1) "c"(1) to (3), the term "regular high school diploma" means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA.

A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

d. Reserved.

e. Eligibility beyond period specified in Iowa Code chapter 256B. An agency may continue the special education and related services of an eligible individual beyond the time period specified in the Iowa Code if the person had an accident or prolonged illness that resulted in delays in the initiation of or in the interruption of that individual's special education program. The AEA director of special education must request approval from the department, which may be granted for up to the individual's twenty-fourth birthday.

41.102(2) Documents relating to exceptions. The state must ensure that the information it has provided to the Secretary regarding the exceptions in subrule 41.102(1) is current and accurate.

281—41.103(256B,34CFR300) FAPE—methods and payments.

41.103(1) All means available to meet Part B requirements. The state may use whatever state, local, federal, and private sources of support that are available in the state to meet the requirements of Part B of the Act.

41.103(2) Third-party obligations not eliminated. Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

41.103(3) No delay in implementing an IEP. Consistent with rule 281—41.323(256B,34CFR300), there shall be no delay in implementing an eligible individual's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

281—41.104(256B,34CFR300) Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to an eligible individual, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.

281—41.105(256B,34CFR300) Assistive technology.

41.105(1) General. Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rules 281—41.5(256B,34CFR300) and 281—41.6(256B,34CFR300), respectively, are made available to a child with a disability if required as a part of the child's:

- a. Special education under rule 281—41.39(256B,34CFR300);
- b. Related services under rule 281—41.34(256B,34CFR300); or
- c. Supplementary aids and services under rule 281—41.42(256B,34CFR300) and 41.114(2) "b."

41.105(2) Use of assistive technology devices at home or in other settings. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

281—41.106(256B,34CFR300) Extended school year services.

41.106(1) General. Each public agency must ensure that extended school year services are available as necessary to provide FAPE.

a. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300), that the services are necessary for the provision of FAPE to the child.

b. In implementing the requirements of this rule, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

41.106(2) Definition. As used in this rule, the term "extended school year services" means special education and related services that meet the standards of the SEA and are provided to a child with a

disability beyond the normal school year of the public agency, in accordance with the child's IEP and at no cost to the parents of the child.

281—41.107(256B,34CFR300) Nonacademic services.

41.107(1) General. Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

41.107(2) Definition. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

281—41.108(256B,34CFR300) Physical education. All public agencies in the state shall comply with the following:

41.108(1) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

41.108(2) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full-time in a separate facility or the child needs specially designed physical education, as prescribed in the child's IEP.

41.108(3) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

41.108(4) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this rule.

281—41.109(256B,34CFR300) Full educational opportunity goal (FEOG). Each public agency shall ensure the provision of full educational opportunity to children requiring special education. Each public agency shall have in effect policies and procedures to demonstrate that the agency has established a goal of providing full educational opportunity to all children with disabilities, aged birth to 21, and a detailed timetable for accomplishing that goal.

281—41.110(256B,34CFR300) Program options. Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

281—41.111(256B,34CFR300) Child find.

41.111(1) General. All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated; and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.

41.111(2) High-quality general education instruction; general education interventions.

a. As a component of efficient and effective, high-quality general education instruction, it shall be the responsibility of the general education program of each LEA to provide additional support and assistance to all students who may need such additional support and assistance to attain the educational

standards of the LEA applicable to all children. Receipt of such additional support and assistance, when considered alone, does not create a suspicion that a child is an eligible individual under this chapter. Activities under this paragraph shall be provided by general education personnel, with occasional or incidental assistance from special education instructional and support personnel.

b. General education interventions involving activities described in rule 281—41.312(256B,34CFR300) are a recognized component of an AEA's child find policy pursuant to the policies set forth in subrule 41.407(1) and the procedures set forth in subrule 41.407(2).

41.111(3) *Other children in child find.* Child find also must include the following:

a. A child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade; and

b. Highly mobile children, including migrant children.

41.111(4) *Classification based on disability not required.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

41.111(5) *Evaluation required when disability is suspected.* At the point when a public agency suspects a child is a child with a disability under this chapter, the public agency must seek parental consent for an initial evaluation of that child, pursuant to subrule 41.300(1).

41.111(6) *Rule of construction—suspicion of a disability.* As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

281—41.112(256B,34CFR300) Individualized education programs (IEPs). An IEP, or an IFSP that meets the requirements of Section 636(d) of the Act (for eligible individuals aged birth to three), is developed, reviewed, and revised for each child with a disability in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300), except as provided in 41.300(2) "d"(2).

281—41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices.

41.113(1) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children who are deaf or hard of hearing are functioning properly.

41.113(2) *External components of surgically implanted medical devices.*

a. Subject to 41.113(2) "b," each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

b. For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a public agency is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

281—41.114(256B,34CFR300) Least restrictive environment (LRE).

41.114(1) *General.* Except as provided in 41.324(4) "a" regarding children with disabilities in adult prisons, each public agency in the state shall have policies and procedures in place to meet the LRE requirements of this rule and rules 281—41.115(256B,34CFR300) to 281—41.120(256B,34CFR300).

41.114(2) *Public agency assurances.* Each public agency must ensure and maintain adequate documentation that:

a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

b. Special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

41.114(3) *State funding mechanism.* A state funding mechanism must not result in placements that violate the requirements of this rule; and the state must not use a funding mechanism by which funds are distributed on the basis of the type of setting in which a child is served or which will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

281—41.115(256B,34CFR300) Continuum of alternative services and placements.

41.115(1) *General.* Each public agency must ensure that a continuum of alternative services and placements is available to meet the needs of children with disabilities for special education and related services.

41.115(2) *Requirements.* The continuum required in subrule 41.115(1) must meet the following requirements:

- a.* Include the alternative placements listed in the definition of special education under rule 281—41.39(256B,34CFR300) (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
- b.* Make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.

281—41.116(256B,34CFR300) Placements.

41.116(1) *General.* In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure the following:

- a.* The placement decision shall be made:
 - (1) By a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) In conformity with the LRE provisions of this chapter, including rules 281—41.114(256B,34CFR300) to 281—41.118(256B,34CFR300);
- b.* The child's placement shall be:
 - (1) Determined at least annually;
 - (2) Based on the child's IEP; and
 - (3) Located as close as possible to the child's home;
- c.* Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled;
- d.* In selecting the LRE, the agency shall consider any potential harmful effect on the child or on the quality of services that he or she needs; and
- e.* A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

41.116(2) *Special rule: Iowa Code section 282.9.* For eligible individuals subject to Iowa Code section 282.9, any decision of educational setting for such eligible individuals shall be made in accordance with this rule.

41.116(3) *Special rule: disciplinary placements.* If a child is placed in an interim alternative educational setting pursuant to rules 281—41.530(256B,34CFR300) and 281—41.531(256B,34CFR300), that setting shall be determined by the IEP team.

41.116(4) *Special considerations.* The team establishing the eligible individual's placement must answer the following questions.

- a. Questions concerning least restrictive environment.* When developing an eligible individual's IEP and placement, the team shall consider the following questions, as well as any other factor appropriate under the circumstances, regarding the provision of special education and related services:
 - (1) What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?
 - (2) Why is it not possible for these accommodations, modifications and adaptations to be provided within the general education environment?

(3) What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

(4) How will receipt of special education services and activities in the general education environment impact this individual?

(5) How will provision of special education services and activities in the general education environment impact other students?

b. Additional questions concerning special school placement. When some or all of an eligible individual's special education is to be provided in a special school, the individual's IEP, or an associated or attached document, shall include specific answers to the following additional four questions:

(1) What are the reasons the eligible individual cannot be provided an education program in an integrated school setting?

(2) What supplementary aids and supports are needed to support the eligible individual in the special education program?

(3) Why is it not possible for these aids and supports to be provided in an integrated setting?

(4) What is the continuum of placements and services available for the eligible individual?

41.116(5) Out-of-state placements. When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accordance with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.116(6) Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies, in accordance with Iowa Code section 273.3(5), with department approval. The department uses the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department contacts the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the department will contact the out-of-state agency to ascertain if its special education complies with the rules of the board.

41.116(7) Trial placements. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement shall be incorporated into this individual's IEP.

281—41.117(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 281—41.107(256B,34CFR300), each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

281—41.118(256B,34CFR300) Children in public or private institutions. Except as provided in rule 281—41.149(256B,34CFR300) regarding agency responsibility for general supervision of some individuals in adult prisons, the department must ensure that rule 281—41.114(256B,34CFR300) is effectively implemented, including, if necessary, making arrangements with public and private institutions such as a memorandum of agreement or special implementation procedures.

281—41.119(256B,34CFR300) Technical assistance and training activities. The state shall carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing rule 281—41.114(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort. If a public agency is having difficulty

in locating an appropriate placement for an eligible individual, the public agency may contact the department for potential assistance.

281—41.120(256B,34CFR300) Monitoring activities. The state shall carry out activities to ensure that rule 281—41.114(256B,34CFR300) is implemented by each public agency. If there is evidence that a public agency makes placements that are inconsistent with rule 281—41.114(256B,34CFR300), the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action. Failure of the public agency to implement any necessary corrective action may result in adverse determinations under rule 281—41.603(256B,34CFR300) or any other available enforcement action.

281—41.121(256B,34CFR300) Procedural safeguards. Each public agency in the state shall meet the requirements of rules 281—41.500(256B,34CFR300) to 281—41.536(256B,34CFR300), and children with disabilities and their parents must be afforded the procedural safeguards identified in those rules.

281—41.122(256B,34CFR300) Evaluation. Children with disabilities must be evaluated in accordance with rules 281—41.300(256B,34CFR300) to 281—41.313(256B,34CFR300), and each AEA shall develop and use procedures to implement those rules.

281—41.123(256B,34CFR300) Confidentiality of personally identifiable information. All public agencies in the state shall comply with rules 281—41.610(256B,34CFR300) to 281—41.626(256B,34CFR300) related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

281—41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs. Each public agency shall comply with the state's policies concerning the transition of infants and toddlers from programs under Part C to programs under Part B of the Act and shall ensure the following regarding such transition:

41.124(1) *Smooth transition.* Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the Act;

41.124(2) *IEP developed.* By the third birthday of a child described in subrule 41.124(1), an IEP has been developed and is being implemented for the child consistent with subrule 41.101(2); and

41.124(3) *Participating agencies.* Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the Act.

281—41.125 to 41.128 Reserved.

281—41.129(256B,34CFR300) Responsibility regarding children in private schools. Each public agency shall meet the private school requirements in rules 281—41.130(256,256B,34CFR300) to 281—41.148(256B,34CFR300).

281—41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities. "Parentally placed private school children with disabilities" means children with disabilities enrolled by their parents in accredited nonpublic, including religious, schools or facilities that meet the definition of elementary school in rule 281—41.13(256B,34CFR300) or secondary school in rule 281—41.36(256B,34CFR300), other than children with disabilities covered under rules 281—41.145(256B,34CFR300) to 281—41.147(256B,34CFR300).

281—41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities.

41.131(1) General. Each AEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the school district served by the AEA, in accordance with subrules 41.131(2) to 41.131(5), and rules 281—41.111(256B,34CFR300) and 281—41.201(256B,34CFR300).

41.131(2) Child find design. The child find process must be designed to ensure:

- a. The equitable participation of parentally placed private school children; and
- b. An accurate count of those children.

41.131(3) Activities. In carrying out the requirements of this rule, the AEA or, if applicable, the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

41.131(4) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining if an AEA has met its obligation under rule 281—41.133(256,256B,34CFR300).

41.131(5) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the AEA consistent with rule 281—41.301(256B,34CFR300).

41.131(6) Out-of-state children. Each AEA in which accredited nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally placed private school children who reside in a state other than the state in which the accredited nonpublic schools that they attend are located.

281—41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement.

41.132(1) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the area served by the AEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with rule 281—41.137(256,256B,34CFR300), unless the Secretary has arranged for services to those children under the bypass provisions in 34 CFR Sections 300.190 to 300.198.

41.132(2) IEP for parentally placed private school children with disabilities. In accordance with subrule 41.132(1) and rules 281—41.137(256,256B,34CFR300) to 281—41.139(256,256B,34CFR300), as well as Iowa Code section 256.12, an IEP must be developed and implemented for each private school child with a disability who has been designated by the AEA in which the private school is located to receive special education and related services under this chapter.

41.132(3) Record keeping. Each AEA must maintain in its records, and provide to the state, the following information related to parentally placed private school children covered under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300):

- a. The number of children evaluated;
- b. The number of children determined to be children with disabilities; and
- c. The number of children served.

281—41.133(256,256B,34CFR300) Expenditures.

41.133(1) Formula. To meet the requirement of subrule 41.132(1), each AEA must spend the following on providing special education and related services, including direct services, to parentally placed private school children with disabilities:

- a. For children aged 3 to 21, an amount that is the same proportion of the AEA's total subgrant under Section 611(f) of the Act as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 to 21.
- b. Additional calculation for children aged 3 through 5.

(1) For children aged 3 through 5, an amount that is the same proportion of the AEA's total subgrant under Section 619(g) of the Act as the number of parentally placed private school children with disabilities aged 3 through 5 who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(2) As described in 41.133(1)“b”(1), children aged 3 through 5 are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if and only if they are enrolled in a private school that meets the definition of elementary school in rule 281—41.13(256B,34CFR300).

c. If an AEA has not expended for equitable services all of the funds described in 41.133(1)“a” and “b” by the end of the fiscal year for which Congress appropriated the funds, the AEA must obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

41.133(2) *Calculating proportionate amount.* The state shall calculate each AEA's proportionate share from data provided by each AEA after each AEA has completed the consultation described in rule 281—41.134(256,256B,34CFR300) and the child count described in rule 281—41.131(256,256B,34CFR300) and subrule 41.133(3).

41.133(3) *Annual count of the number of parentally placed private school children with disabilities.*

a. Each AEA must:

(1) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, consistent with rule 281—41.134(256,256B,34CFR300), determine the number of parentally placed private school children with disabilities attending private schools located in the AEA; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

b. The count must be used to determine the amount that the AEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

41.133(4) *Supplement, not supplant.* State and local funds may supplement, and in no case supplant, the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities under this chapter.

281—41.134(256,256B,34CFR300) Consultation. To ensure timely and meaningful consultation, an AEA or, if appropriate, an SEA must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

41.134(1) *Child find.* The child find process shall determine:

a. How parentally placed private school children suspected of having a disability can participate equitably; and

b. How parents, teachers, and private school officials will be informed of the process.

41.134(2) *Proportionate share of funds.* An explanation that the proportionate share shall be calculated by the state based on data submitted by the AEA, consistent with rule 281—41.133(256,256B,34CFR300).

41.134(3) *Consultation process.* The consultation process among the AEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

41.134(4) *Provision of special education and related services.* How, where, and by whom special education and related services funded by Part B of the Act under rules 281—41.130(256,256B,34CFR300) to 281—41.147(256B,34CFR300) will be provided for parentally placed private school children with disabilities, including a discussion of the following:

- a.* The types of services, including direct services and alternate service delivery mechanisms;
- b.* How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children;
- c.* How and when decisions regarding 41.134(4) “*a*” and “*b*” will be made;
- d.* That the consultation process concerns only funds under Part B of the Act, and does not concern special education and related services provided under Iowa Code section 256.12. The consultation process may, but is not required to, include discussions of special education and related services provided under Iowa Code section 256.12.

41.134(5) *Written explanation by AEA regarding services.* How, if the AEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the AEA will provide to the private school officials a written explanation of the reasons why the AEA chose not to provide services directly or through a contract.

281—41.135(256,256B,34CFR300) Written affirmation. When timely and meaningful consultation, as required by rule 281—41.134(256,256B,34CFR300), has occurred, the AEA must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the AEA must forward the documentation of the consultation process to the department.

281—41.136(256,256B,34CFR300) Compliance.

41.136(1) *General.* A private school official has the right to submit a complaint to the department that the AEA:

- a.* Did not engage in consultation that was meaningful and timely; or
- b.* Did not give due consideration to the views of the private school official.

41.136(2) *Procedure.*

- a.* If the private school official wishes to submit a complaint, the official must provide to the department the basis of the noncompliance by the AEA with the applicable private school provisions in this chapter; and
- b.* The AEA must forward the appropriate documentation to the department.
- c.* If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the Secretary by providing the information on noncompliance described in 41.136(2) “*a.*” The department must forward the appropriate documentation to the Secretary.

281—41.137(256,256B,34CFR300) Equitable services determined.

41.137(1) *Nature and scope of individual right to special education and related services.* Each parentally placed private school child with a disability has a right to receive any special education or related services permitted by Iowa Code section 256.12. Funding for and accounting for such services shall be determined by the provisions of Part B of the Act, this chapter, and Iowa Code section 256.12.

41.137(2) *Decisions.* Decisions about the services that will be provided to parentally placed private school children with disabilities funded by Part B of the Act under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be made in accordance with subrules 41.134(4) and 41.137(3). The AEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities and funded by Part B of the Act.

41.137(3) *IEP for parentally placed private school children with disabilities.* The AEA or LEA must offer to develop an IEP for each child with a disability who is enrolled in a religious or other private school by the child’s parents and develop an IEP if one is requested, pursuant to this chapter. An IEP is offered and prepared pursuant to Iowa Code section 256.12. There is no need to prepare a services plan (see rule 281—41.37(34CFR300)) for such a student. A parent of a child with a disability who is voluntarily enrolled in a private school may not reject an IEP and demand a services plan instead. At any IEP team meeting for a parentally placed private school student with a disability, the AEA or LEA must ensure that a representative of the private school attends each meeting. If the representative cannot

attend, the AEA or LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

281—41.138(256,256B,34CFR300) Equitable services provided.

41.138(1) General. The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the special education teacher requirements of rule 281—41.156(256B,34CFR300). Parentally placed private school children with disabilities receive the special education and related services required by Iowa Code section 256.12, although the source of the funding for such education and services may be different than funding for education and services for children with disabilities in public schools.

41.138(2) Services provided in accordance with an IEP. Each parentally placed private school child with a disability who will receive special education and related services pursuant to the Act and Iowa Code section 256.12 must have an IEP developed in accordance with this chapter.

41.138(3) Provision of equitable services. The provision of services pursuant to this rule and rules 281—41.139(256,256B,34CFR300) to 281—41.143(256,256B,34CFR300) must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

41.138(4) Secular, neutral and nonideological. Special education and related services, including materials and equipment, provided to parentally placed private school children with disabilities, including children attending religious schools, must be secular, neutral, and nonideological.

281—41.139(256,256B,34CFR300) Location of services and transportation.

41.139(1) Services on private school premises. Services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with Iowa Code section 256.12.

41.139(2) Transportation.

a. General.

(1) If necessary for the child to benefit from or participate in the services provided under this chapter, a parentally placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school or to the child's home, depending on the timing of the services.

(2) AEAs or LEAs are not required to provide transportation from the child's home to the private school.

b. Cost of transportation. The cost of the transportation described in 41.139(2)“a”(1) may be included in calculating whether the AEA has met the requirement of rule 281—41.133(256,256B,34CFR300).

281—41.140(256,256B,34CFR300) Due process complaints and state complaints.

41.140(1) When due process complaints available. Pursuant to Iowa Code section 256.12, parents of children with disabilities who are voluntarily placed in accredited nonpublic schools may file a due process complaint as provided in rules 281—41.504(256B,34CFR300) to 281—41.519(256B,34CFR300), except as provided in subrule 41.140(2).

41.140(2) When due process complaints unavailable. The procedures in rules 281—41.504(256B,34CFR300) to 281—41.519(256B,34CFR300) may not be used to challenge the particular amount of services funded by Part B that a parentally placed private school child with disabilities receives, unless the allegation is made that the child was denied FAPE under Iowa Code section 256.12, but a parent of a child with a disability may file a due process complaint alleging the AEA failed to comply with the child find requirements of rule 281—41.131(256,256B,34CFR300). A private school official may not file a due process complaint under this chapter.

41.140(3) *State complaints.* Any complaint that an SEA or AEA has failed to meet the requirements in rules 281—41.132(256,256B,34CFR300) to 281—41.135(256,256B,34CFR300) and 281—41.137(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be filed in accordance with the procedures described in rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300). A complaint filed by a private school official under subrule 41.136(1) must be filed with the SEA in accordance with the procedures in subrule 41.136(2).

281—41.141(256,256B,34CFR300) Requirement that funds not benefit a private school.

41.141(1) *Funds may not benefit private school.* An AEA may not use funds provided under Section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

41.141(2) *Funds only for special education.* The AEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for meeting either of the following needs:

- a. The needs of a private school; or
- b. The general needs of the students enrolled in the private school.

281—41.142(256,256B,34CFR300) Use of personnel.

41.142(1) *Use of public school personnel.* An AEA may use funds available under Sections 611 and 619 of the Act to make public school personnel available in other than public facilities based on the following two criteria:

- a. If and to the extent necessary to provide services under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) for parentally placed private school children with disabilities; and
- b. If those services are not normally provided by the private school.

41.142(2) *Use of private school personnel.* An AEA may use funds available under Sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) if the following two conditions are met:

- a. The employee performs the services outside of the employee's regular hours of duty; and
- b. The employee performs the services under public supervision and control.

281—41.143(256,256B,34CFR300) Separate classes prohibited. An AEA may not use funds available under Section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site; and the classes include both children enrolled in public schools and children enrolled in private schools.

281—41.144(256,256B,34CFR300) Property, equipment, and supplies.

41.144(1) *General.* A public agency must control and administer the funds used to provide special education and related services under rules 281—41.137(256,256B,34CFR300) to 281—41.139(256,256B,34CFR300) and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

41.144(2) *Equipment and supplies on private school premises only while needed.* The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

41.144(3) *Public agency to supervise placement and use of equipment and supplies.* The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

41.144(4) *Duty to remove equipment and supplies.* The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

41.144(5) *No Part B funds for repair or construction.* No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

281—41.145(256B,34CFR300) Applicability of rules 281—41.146(256B,34CFR300) and 281—41.147(256B,34CFR300). Rules 281—41.146(256B,34CFR300) and 281—41.147(256B,34CFR300) apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

281—41.146(256B,34CFR300) Responsibility of department. The department must ensure the following for each child with a disability who is placed in or referred to a private school or facility by a public agency.

41.146(1) FAPE. The child is provided special education and related services in conformance with an IEP that meets the requirements of rules 281—41.320(256B,34CFR300) to 281—41.325(256B,34CFR300) and at no cost to the parents.

41.146(2) Meet state standards. The child is provided an education that meets the standards that apply to education provided by the SEA and LEAs, including the requirements of this chapter except for subrule 41.156(3).

41.146(3) All rights. The child has all of the rights of a child with a disability who is served by a public agency.

281—41.147(256B,34CFR300) Implementation by department. In implementing rule 281—41.146(256B,34CFR300), the department must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

281—41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue.

41.148(1) General. An LEA or AEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with rules 281—41.131(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) and Iowa Code section 256.12.

41.148(2) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rules 281—41.504(256B,34CFR300) to 281—41.520(256B,34CFR300).

41.148(3) Reimbursement for private school placement. If the parents of a child with a disability who previously received special education and related services under the authority of a public agency enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the SEA and LEAs.

41.148(4) Limitation on reimbursement. The cost of reimbursement described in subrule 41.148(3) may be reduced or denied in any of the following cases.

a. At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement

proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;

b. At least ten business days, including any holidays that occur on a business day, prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in 41.148(4) “*a*”;

c. If, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 41.503(1) “*a*,” of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

41.148(5) Exceptions. Notwithstanding the notice requirement in 41.148(4) “*a*” and “*b*,” the cost of reimbursement:

a. Must not be reduced or denied for failure to provide the notice if:

(1) The school prevented the parents from providing the notice;

(2) The parents had not received notice, pursuant to rule 281—41.504(256B,34CFR300), of the notice requirement in 41.148(4) “*a*” and “*b*”; or

(3) Compliance with 41.148(4) “*a*” and “*b*” would likely result in physical harm to the child; and

b. May, in the discretion of the court or an administrative law judge, not be reduced or denied for failure to provide this notice if:

(1) The parents are not literate or cannot write in English; or

(2) Compliance with 41.148(4) “*a*” and “*b*” would likely result in serious emotional harm to the child.

281—41.149(256B,34CFR300) SEA responsibility for general supervision. The state shall exercise general supervision over the implementation of Part B of the Act and this chapter. Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying for some or all of the costs of FAPE to eligible individuals.

281—41.150 Reserved.

281—41.151(256B,34CFR300) Adoption of state complaint procedures.

41.151(1) General. The state maintains written procedures for the following:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of rule 281—41.153(256B,34CFR300) by providing for the filing of a complaint with the department.

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300).

41.151(2) Remedies for denial of appropriate services. In resolving a complaint in which the state has found a failure to provide appropriate services, the state, pursuant to its general supervisory authority under Part B of the Act, shall address the following:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement; and

b. Appropriate future provision of services for all children with disabilities.

281—41.152(256B,34CFR300) Minimum state complaint procedures.

41.152(1) Time limit; minimum procedures. The state shall include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—41.153(256B,34CFR300) to do the following:

a. Carry out an independent on-site investigation, if the state determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the public agency, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300);

d. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the state's final decision.

41.152(2) *Time extension; final decision; implementation.* The state's procedures described in subrule 41.152(1) shall do the following:

a. Permit an extension of the time limit under subrule 41.152(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent or individual or organization and the public agency involved agree to extend the time to engage in mediation pursuant to 41.152(1) "c"(2), or to engage in other alternative means of dispute resolution, if available in the state; and

b. Include procedures for effective implementation of the state's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

41.152(3) *Complaints filed under this rule and due process hearings.* If a written complaint is received that is also the subject of a due process hearing under rule 281—41.507(256B,34CFR300) or 281—41.530(256B,34CFR300) to 281—41.532(256B,34CFR300), or that contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in subrules 41.152(1) and 41.152(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the state must inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the state.

281—41.153(256B,34CFR300) Filing a complaint.

41.153(1) *Complainant.* An organization or individual may file a signed written complaint under the procedures described in rules 281—41.151(256B,34CFR300) and 281—41.152(256B,34CFR300).

41.153(2) *Contents of complaint.* The complaint must include the following:

a. A statement that a public agency has violated a requirement of Part B of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the school the child is attending;

(3) In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

(4) A description of the nature of the problem of the child, including facts relating to the problem; and

(5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

41.153(3) *Time limit.* The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 281—41.151(256B,34CFR300).

41.153(4) *Complainant must provide copy of complaint to AEA and LEA.* The party filing the complaint must forward a copy of the complaint to the AEA and LEA or public agency serving the child at the same time the party files the complaint with the state.

41.153(5) *Failure to comply with due process hearing decision, mediation agreement, resolution meeting agreement.* A complainant may allege a public agency has failed to comply with a due process hearing decision, or a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the state will grant appropriate relief.

281—41.154(256B,34CFR300) Methods of ensuring services.

41.154(1) *Interagency agreements.* An interagency agreement or other mechanism for interagency coordination shall be developed between each noneducational public agency described in subrule 41.154(2) and the SEA, in order to ensure that all services described in 41.154(2) “a” that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph “c” of this subrule. The agreement or mechanism must include the following:

a. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in 41.154(2) “a” to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in subrule 41.154(2), including the state Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the state agency responsible for developing the child’s IEP).

b. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

c. Procedures for resolving interagency disputes, including procedures under which LEAs may initiate proceedings, under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

d. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in 41.154(2) “a.”

41.154(2) *Obligation of noneducational public agencies.*

a. General rule.

(1) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subrule 41.154(1), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in rule 281—41.5(256B,34CFR300) relating to assistive technology devices, rule 281—41.6(256B,34CFR300) relating to assistive technology services, rule 281—41.34(256B,34CFR300) relating to related services, rule 281—41.42(256B,34CFR300) relating to supplementary aids and services, and rule 281—41.43(256B,34CFR300) relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the state, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subrule 41.154(1) or an agreement pursuant to subrule 41.154(3).

(2) A noneducational public agency described in 41.154(2) “a”(1) may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

b. Failure to comply with general rule. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in 41.154(2) “a,” the LEA (or state agency responsible for developing the child’s IEP) must provide or pay for these services to the child in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency

must reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in subrule 41.154(1).

41.154(3) *Special rule.* The requirements of subrule 41.154(1) may be met through the following:

- a. State statute or regulation;
- b. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- c. Other appropriate written methods as determined by the chief executive officer of the state or designee of that officer and approved by the Secretary.

41.154(4) *Children with disabilities who are covered by public benefits or insurance.*

a. *General.* A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter, as permitted under the public benefits or insurance program, except as provided in 41.154(4) “b” through “d.”

b. *Exceptions to ability to use public benefits or insurance.* With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to 41.154(6) “b,” may pay the cost that the parents otherwise would be required to pay; and

(3) May not use a child’s benefits under a public benefits or insurance program if that use would do any of the following:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family’s paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of benefits or insurance; or
4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

c. *Consent requirements.* Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and after providing notification to the child’s parents consistent with 41.154(4) “d,” the public agency must obtain written parental consent that:

(1) Meets the requirements of 34 CFR Section 99.30 and rule 281—41.622(256B,34CFR300), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under this chapter), and the agency to which the disclosure may be made (e.g., the state’s public benefits or insurance program (e.g., Medicaid)); and

(2) Specifies that the parent understands and agrees that the public agency may access the parent’s or child’s public benefits or insurance to pay for services under this chapter.

d. *Notification requirements.* Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and annually thereafter, the public agency must provide written notification, consistent with 41.503(3), to the child’s parents, that includes:

- (1) A statement of the parental consent provisions in paragraph 41.154(4) “c”;
- (2) A statement of the “no cost” provisions in 41.154(4) “b”;
- (3) A statement that the parents have the right under 34 CFR Part 99 and this chapter to withdraw their consent to disclosure of their child’s personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and this chapter to disclose personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(5) *Children with disabilities who are covered by private insurance.*

a. General. With regard to services required to provide FAPE to an eligible child under this chapter, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with rule 281—41.9(256B,34CFR300).

b. Obtaining access to private insurance proceeds. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

- (1) Obtain parental consent in accordance with 41.154(5) "a"; and
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(6) Use of Part B funds.

a. Agency unable to obtain consent. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this chapter, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

b. Use of Part B funds to avoid cost to parents. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or copay amounts).

41.154(7) Proceeds from public benefits or insurance or private insurance. Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions in rules 281—41.163(256B,34CFR300) and 281—41.203(256B,34CFR300).

41.154(8) Rule of construction. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX or Title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

281—41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility. The department shall not make any final determination that an AEA or LEA is not eligible for assistance under Part B of the Act without first giving the AEA or LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

281—41.156(256B,34CFR300) Personnel qualifications.

41.156(1) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the Act and of this chapter are appropriately and adequately prepared, trained, and licensed, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities.

41.156(2) Related services personnel and paraprofessionals. The qualifications under subrule 41.156(1) must include qualifications for related services personnel and paraprofessionals that:

a. Are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

b. Ensure that related services personnel who deliver services in their discipline or profession:

- (1) Meet the requirements of 41.156(2) "a"; and
- (2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- (3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services under this chapter to children with disabilities.

41.156(3) *Qualifications for special education teachers.* The qualifications described in subrule 41.156(1) must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school meets the following standards:

a. The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that a teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the state's public charter school law;

b. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

c. The teacher holds at least a bachelor's degree.

41.156(4) *Policy.* In implementing this rule, the state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain personnel described in this rule to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

41.156(5) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to meet the requirements of this rule, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

41.156(6) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

41.156(7) *Additional rules of construction.*

a. A special educator teaching in one or more core academic subjects must be appropriately licensed in each core academic subject or must collaborate with an appropriately licensed teacher.

b. A teacher will be considered to meet the standard in subrule 41.156(3) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Before and while teaching, receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or in a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in subparagraph 41.156(7) "b" (1) are met.

281—41.157 to 41.159 Reserved.

281—41.160(256B,34CFR300) Participation in assessments.

41.160(1) *General.* The state must ensure that all children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. Section 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

41.160(2) *Accommodation guidelines.*

a. The state (or, in the case of a districtwide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

b. The state's (or, in the case of a districtwide assessment, the LEA's) guidelines must:

(1) Identify only those accommodations for each assessment that do not invalidate the score; and

(2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

41.160(3) *Alternate assessments.*

a. The state (or, in the case of a districtwide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in subrule 41.160(1).

b. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph 41.160(3) “*a*” must provide for alternate assessments that:

(1) Are aligned with the state’s challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

(3) Except as provided in subparagraph 41.160(3) “*b*”(2), a state’s alternate assessments, if any, must measure the achievement of children with disabilities against the state’s grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

c. Consistent with 34 CFR 200.1(e), a state may not adopt modified academic achievement standards for any students with disabilities under Section 602(3) of the Act.

41.160(4) *Explanation to IEP teams.* The state (or, in the case of a districtwide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of state or local policies on the student’s education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

41.160(5) *Inform parents.* The state (or, in the case of a districtwide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards are informed that their child’s achievement will be measured based on alternate academic achievement standards.

41.160(6) *Reports.* The state (or, in the case of a districtwide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

b. The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

c. The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015-2016.

d. The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

e. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015-2016), and alternate assessments based on alternate academic achievement standards if:

(1) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(2) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

41.160(7) *Universal design.* The state (or, in the case of a districtwide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this rule.

281—41.161 Reserved.

281—41.162(256B,34CFR300) Supplementation of state, local, and other federal funds.

41.162(1) *Expenditures.* Funds paid to a state under this chapter must be expended in accordance with all the provisions of this chapter.

41.162(2) *Prohibition against commingling.*

a. Funds paid to a state under this chapter must not be commingled with state funds.

b. The requirement in 41.162(2) “*a*” is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a state under this chapter. Separate bank accounts are not required. (See 34 CFR 76.702, fiscal control and fund accounting procedures.)

41.162(3) *State-level nonsupplanting.*

a. Except as provided in rule 281—41.203(256B,34CFR300), funds paid to a state under Part B of the Act must be used to supplement the level of federal, state, and local funds, including funds that are not under the direct control of the SEA or LEAs, expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those federal, state, and local funds.

b. If the state provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of 41.162(3) “*a*” if the Secretary concurs with the evidence provided by the state under 34 CFR Section 300.164.

281—41.163(256B,34CFR300) Maintenance of state financial support. The state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

281—41.164 Reserved.

281—41.165(256B,34CFR300) Public participation.

41.165(1) *General.* Prior to the adoption of any policies and procedures needed to comply with Part B of the Act, including any amendments to those policies and procedures, the state must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

41.165(2) *State plan.* Before submitting a state plan under this chapter, the state must comply with the public participation requirements in subrule 41.165(1) and those in 20 U.S.C. 1232d(b)(7).

281—41.166(256B,34CFR300) Rule of construction. In complying with rules 281—41.162(256B,34CFR300) and 281—41.163(256B,34CFR300), the state may not use funds paid to it under this chapter to satisfy state-mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

281—41.167(256B,34CFR300) State advisory panel. An advisory panel is established and maintained for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

281—41.168(256B,34CFR300) Advisory panel membership.

41.168(1) *General.* The advisory panel must consist of members appointed by the director of education, be representative of the state population and be composed of individuals involved in or concerned with the education of children with disabilities, including:

a. Parents of children with disabilities aged birth to 26;

- b.* Individuals with disabilities;
 - c.* Teachers;
 - d.* Representatives of institutions of higher education that prepare special education and related services personnel;
 - e.* State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.;
 - f.* Administrators of programs for children with disabilities;
 - g.* Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
 - h.* Representatives of private schools and public charter schools;
 - i.* At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
 - j.* A representative from the state child welfare agency responsible for foster care; and
 - k.* Representatives from the state juvenile and adult corrections agencies.
- 41.168(2) *Special rule.*** A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities aged birth to 26.

281—41.169(256B,34CFR300) Advisory panel duties. The advisory panel must:

- 1. Advise the department of unmet needs within the state in the education of children with disabilities;
- 2. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;
- 3. Advise the department in developing evaluations and reporting on data to the Secretary under Section 618 of the Act;
- 4. Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Act;
- 5. Advise the department in developing and implementing policies relating to the coordination of services for children with disabilities; and
- 6. Advise the department on eligible individuals with disabilities in adult prisons.

281—41.170(256B,34CFR300) Suspension and expulsion rates.

41.170(1) *General.* The department must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

- a.* Among LEAs in the state; or
- b.* Compared to the rates for nondisabled children within an LEA.

41.170(2) *Review and revision of policies.* If the discrepancies described in subrule 41.170(1) are occurring, the department must review and, if appropriate, revise (or require the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with the Act.

281—41.171 Reserved.

281—41.172(256B,34CFR300) Access to instructional materials.

41.172(1) *General.* The state:

- a.* Adopts the National Instructional Materials Accessibility Standard (NIMAS) published in the Federal Register on July 19, 2006 (71 Fed. Reg. 41084), for the purposes of providing instructional materials to persons who are blind or visually impaired or other persons with print disabilities in a timely manner; and
- b.* Establishes the following definition of “timely manner” for purposes of this chapter: Providing instructional materials in accessible formats to children with disabilities in a “timely manner” means

delivering those accessible instructional materials at the same time as other children receive instructional materials.

41.172(2) *Public agencies.* All public agencies must comply with rule 281—41.210(256B,34CFR300).

41.172(3) *Assistive technology.* In carrying out this rule, the department, to the maximum extent possible, must work collaboratively with the state agency responsible for assistive technology programs.

281—41.173(256B,34CFR300) *Overidentification and disproportionality.* Each public agency shall implement policies and procedures developed by the department designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

281—41.174(256B,34CFR300) *Prohibition on mandatory medication.*

41.174(1) *General.* No public agency personnel are permitted to require parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation or services under Part B or this chapter.

41.174(2) *Rule of construction.* Nothing in subrule 41.174(1) shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under rule 281—41.111(256B,34CFR300) related to child find.

281—41.175 Reserved.

281—41.176(256B) *Special school provisions.*

41.176(1) *Providers.* Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs, jointly by two or more LEAs, by the AEA, jointly by two or more AEAs, by the state directly, or by approved private providers.

41.176(2) *Department recognition.* Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for nonpublic agencies to provide special education and related services and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.177(256B) *Facilities.*

41.177(1) *Equivalent to general education.* Each agency providing special education and related services shall supply facilities that shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities.

41.177(2) *Personnel space and assistance.* Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance and sufficient and appropriate work space regularly available for their use that is readily accessible to individuals with disabilities.

281—41.178(256B) *Materials, equipment and assistive technology.*

41.178(1) *Provision for materials, equipment, and assistive technology.* Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes

special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.178(2) *Acquire and maintain equipment.* Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

281—41.179 to 41.185 Reserved.

281—41.186(256B,34CFR300) Assistance under other federal programs. Part B of the Act will not be construed to permit a state to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of FAPE to children with disabilities in the state.

281—41.187(256B) Research, innovation, and improvement.

41.187(1) *Evaluation and improvement.* Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.187(2) *Research.* Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, an AEA or the department, or another agency, when approved by the department, to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.187(3) *Support and facilitation.* State rules, regulations, and policies under Part B of the Act must support and facilitate AEA, LEA and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

281—41.188 to 41.199 Reserved.

DIVISION IV
LEA AND AEA ELIGIBILITY, IN GENERAL

281—41.200(256B,34CFR300) Condition of assistance. An AEA or an LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the state that the LEA meets each of the conditions in rules 281—41.201(256B,34CFR300) to 281—41.213(256B,34CFR300).

41.200(1) *Required descriptions, policies and procedures.* Each AEA will submit to the department the policies and procedures identified in subrules 41.407(1) and 41.407(2) and other descriptions that may be required by the department for approval. Any modifications to an AEA's descriptions, policies or procedures are to be submitted to the department for approval.

41.200(2) *AEA application.* Each AEA will submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under Part B of the Act, implementing federal regulations, and this chapter. An AEA application will receive department approval only when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.200(1) have been met. The application, on forms provided by the department, includes the following:

- a. *General information.*
- b. *Utilization of funds.*
- c. *Assurances.*

281—41.201(256B,34CFR300) Consistency with state policies. The AEA or LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established under

281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—41.187(256B).

281—41.202(256B,34CFR300) Use of amounts.

41.202(1) General. Amounts provided to the AEA or LEA under Part B of the Act must be:

- a. Expended in accordance with the applicable provisions of Part B of the Act and this chapter;
- b. Used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with subrule 41.202(2); and
- c. Used to supplement state, local, and other federal funds, and not to supplant those funds.

41.202(2) Excess cost requirement.

a. *General.*

(1) The excess cost requirement prevents an AEA or LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to 41.202(2) “a”(2).

(2) The excess cost requirement does not prevent an AEA or LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability aged 3 to 5 or 18 to 20 if no local or state funds are available for nondisabled children of these ages. However, the AEA or LEA must comply with the nonsupplanting and other requirements of Part B of the Act and of this chapter in providing the education and services for these children.

b. *Meeting excess cost requirement.*

(1) An AEA or LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in 41.202(2) “b”(1) is determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300). That amount may not include capital outlay or debt service.

c. *Joint establishment of eligibility.* If two or more AEAs or LEAs jointly establish eligibility in accordance with rule 281—41.223(256B,34CFR300), the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300) in those agencies for elementary or secondary school students, as the case may be.

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) Eligibility standard.

a. For purposes of establishing the LEA’s eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (1) Local funds only;
- (2) The combination of state and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of state and local funds on a per capita basis.

b. When determining the amount of funds that the LEA must budget to meet the requirement in paragraph 41.203(1) “a,” the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300) that the LEA:

(1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and

(2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal

government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph 41.203(1) “a.”

41.203(2) Compliance standard.

a. Except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300), funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

b. An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300):

- (1) Local funds only;
- (2) The combination of state and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of state and local funds on a per capita basis.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs 41.203(2) “a” and 41.203(2) “b.”

41.203(3) Subsequent years.

a. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the requirements of 34 CFR 300.203 and rule 281—41.203(256B,34CFR300) in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA’s reduced level of expenditures.

b. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2) “b”(1) or 41.203(2) “b”(3) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2) “b”(1) or 41.203(2) “b”(3) in the absence of that failure, not the LEA’s reduced level of expenditures.

c. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2) “b”(2) or 41.203(2) “b”(4) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2) “b”(2) or 41.203(2) “b”(4) in the absence of that failure, not the LEA’s reduced level of expenditures.

41.203(4) Consequence of failure to maintain effort. If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with subrule 41.203(2), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the U.S. Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with subrule 41.203(2) in that fiscal year, or the amount of the LEA’s Part B subgrant in that fiscal year, whichever is lower.

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule 41.203(2), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

41.204(1) Departure of personnel. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

41.204(2) Decrease in enrollment. A decrease in the enrollment of children with disabilities.

41.204(3) *Termination of obligation to provide an “exceptionally costly” program to a particular child.* The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:

- a. Has left the jurisdiction of the agency;
- b. Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
- c. No longer needs the program of special education.

41.204(4) *Termination of costly expenditures for long-term purchases.* The termination of costly expenditures for long-term purchases, such as the acquisition of equipment.

41.204(5) *High-cost fund.* The assumption of cost by the high-cost fund operated by the state under this chapter.

281—41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years.

41.205(1) *Amounts in excess.* Notwithstanding 41.202(1) “b,” 41.202(2), and 41.203(2), and except as provided in 41.205(4) and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under rule 281—41.705(256B,34CFR300) exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule 41.203(2) by not more than 50 percent of the amount of that excess.

41.205(2) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under subrule 41.205(1), the LEA must use an amount of local funds equal to the reduction in expenditures under subrule 41.205(1) to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

41.205(3) *State prohibition.* Notwithstanding subrule 41.205(1), if the SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 613(a) of the Act and of this chapter or the SEA has taken action against the LEA under Section 616 of the Act and rules 281—41.600(256B,34CFR300) to 281—41.609(256B,34CFR300), the SEA must prohibit the LEA from reducing the level of expenditures under subrule 41.205(1) for that fiscal year.

41.205(4) *Special rule.* The amount of funds expended by an LEA for early intervening services under rule 281—41.226(256B,34CFR300) shall count toward the maximum amount of expenditures that the LEA may reduce under subrule 41.205(1).

281—41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA.

41.206(1) *General.* Notwithstanding the provisions of rules 281—41.202(256B,34CFR300) and 281—41.203(256B,34CFR300) or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under Section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of the Act for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

41.206(2) *Funding conditions.* The funds described in subrule 41.206(1) are subject to the following conditions:

- a. The funds must be considered as federal Part B funds for purposes of the calculations required by 41.202(1) “b” and “c.”
- b. The funds may be used without regard to the requirements of 41.202(1) “a.”

41.206(3) *Meeting other Part B requirements.* Except as provided in subrule 41.206(2), all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with subrule 41.206(1), including ensuring that children with disabilities in schoolwide program schools:

- a. Receive services in accordance with a properly developed IEP; and
- b. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

281—41.207(256B,34CFR300) Personnel development. Each public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of rule 281—41.156(256B,34CFR300) related to personnel qualifications and Section 2102(b) of the ESEA.

281—41.208(256B,34CFR300) Permissive use of funds.

41.208(1) Uses. Notwithstanding rule 281—41.202(256B,34CFR300) and subrules 41.203(2) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

a. Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. This provision may not be construed to apply to rules 281—41.172(256B,34CFR300) and 281—41.210(256B,34CFR300).

b. Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with rule 281—41.226(256B,34CFR300). Such development and implementation may be required by the SEA under subrule 41.646(2).

c. High-cost special education and related services. To establish and implement cost- or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high-cost special education and related services.

41.208(2) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

281—41.209(256B,34CFR300) Treatment of charter schools and their students.

41.209(1) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this chapter.

41.209(2) Charter schools that are public schools of the LEA.

a. General. In carrying out Part B of the Act and these rules with respect to charter schools that are public schools of the LEA, the LEA must:

(1) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(2) Provide funds under Part B of the Act to those charter schools:

1. On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

2. At the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law.

b. Relationship to rule 281—41.705(256B,34CFR300). If the public charter school is a school of an LEA that receives funding under rule 281—41.705(256B,34CFR300) and includes other public schools:

(1) The LEA is responsible for ensuring that the requirements of this chapter are met, unless state law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of 41.209(2) "a."

281—41.210(256B,34CFR300) Purchase of instructional materials.

41.210(1) General. An AEA, an LEA, or any other public agency, when purchasing print instructional materials, must acquire those instructional materials for children who are blind or visually impaired or for other persons with print disabilities in a manner consistent with subrule 41.210(3) and ensure delivery of those materials in a timely manner to those children.

41.210(2) *Rights and responsibilities of AEA or LEA.* Nothing in this rule relieves the LEA or AEA or any other public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of persons who are blind or visually impaired or other persons with print disabilities in 41.210(4) “a” or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner, as defined in 41.172(1) “b.”

41.210(3) *Preparation and delivery of files.* Because the state chooses to coordinate with the NIMAC, an AEA, an LEA, or any other public agency must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

b. Provide instructional materials to persons who are blind or visually impaired or other persons with print disabilities in a timely manner.

41.210(4) *Definitions.* The following definitions apply to this rule and rule 281—41.172(256B,34CFR300), and apply to each state and LEA, regardless of whether the state or LEA chooses to coordinate with the NIMAC:

a. “Persons who are blind or visually impaired or other persons with print disabilities” means children served under this chapter who may qualify to receive books and other publications produced in specialized formats in accordance with 2 U.S.C. 135a and 36 CFR 701.6. Persons who may receive material in specialized formats include persons who are blind, who have visual disabilities, have certain physical disabilities, or who have reading disabilities resulting from organic dysfunction, as those terms are defined in 36 CFR 701.6(b)(1), and who have obtained certification from a “competent authority,” as defined in 36 CFR 701.6(b)(2).

b. “National Instructional Materials Access Center” or “NIMAC” means the center established pursuant to Section 674(e) of the Act.

c. “National Instructional Materials Accessibility Standard” or “NIMAS” has the meaning given the term in Section 674(e)(3)(B) of the Act.

d. “Print instructional materials” has the meaning given the term in Section 674(e)(3)(C) of the Act.

e. “Specialized formats” has the meaning given the term in Section 674(e)(3)(D) of the Act.

281—41.211(256B,34CFR300) Information for department. Each public agency will provide the department with information necessary to enable the department to carry out its duties under Part B of the Act and this chapter, including, with respect to 34 CFR Section 300.157, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. This information, including such quantitative and qualitative data as the department may demand, is to be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—41.603(256B,34CFR300) or in taking any other action to enforce Part B of the Act or this chapter.

281—41.212(256B,34CFR300) Public information. Each public agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

281—41.213(256B,34CFR300) Records regarding migratory children with disabilities. Each AEA or LEA must cooperate in the Secretary’s efforts under Section 1308 of the ESEA to ensure the linkage

of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

281—41.214 to 41.219 Reserved.

281—41.220(256B,34CFR300) Exception for prior local plans.

41.220(1) General. If an AEA or LEA or a state agency described in rule 281—41.228(256B,34CFR300) has on file with the SEA policies and procedures that demonstrate that the AEA or LEA or state agency meets any requirement of 281—41.200(256B,34CFR300), including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the AEA or LEA or state agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

41.220(2) Modification made by an AEA or LEA or state agency. Subject to subrule 41.220(3), policies and procedures submitted by an LEA or a state agency remain in effect until the AEA or LEA or state agency submits to the SEA the modifications that the AEA or LEA or state agency determines are necessary.

41.220(3) Modifications required by the SEA. The SEA may require an AEA or LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with Part B of the Act or state law, if:

- a. After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act, or the regulations developed to carry out the Act, are amended;
- b. There is a new interpretation of an applicable provision of the Act by federal or state courts; or
- c. There is an official finding of noncompliance with federal or state law or regulations.

281—41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility. If the state determines that an AEA or LEA or state agency is not eligible under Part B of the Act, then the state must notify the AEA or LEA or state agency of that determination and provide the AEA or LEA or state agency with reasonable notice and an opportunity for a hearing. This hearing shall not be considered a contested case under Iowa Code chapter 17A.

281—41.222(256B,34CFR300) AEA or LEA and state agency compliance.

41.222(1) General. If the state, after reasonable notice and an opportunity for a hearing, finds that an AEA or LEA or state agency that has been determined to be eligible under this chapter is failing to comply with any requirement described in rules 281—41.201(256B,34CFR300) to 281—41.213(256B,34CFR300), the state must reduce or must not provide any further payments to the AEA or LEA or state agency until the state is satisfied that the AEA or LEA or state agency is complying with that requirement.

41.222(2) Notice requirement. Any state agency or AEA or LEA in receipt of a notice described in subrule 41.222(1), by means of public notice, must take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

41.222(3) Consideration. In carrying out its responsibilities under this rule, the state must consider any decision resulting from a hearing held under rules 281—41.511(256B,34CFR300) to 281—41.533(256B,34CFR300) that is adverse to the AEA or LEA or state agency involved in the decision.

281—41.223(256B,34CFR300) Joint establishment of eligibility.

41.223(1) General. The state may require an AEA or LEA to establish its eligibility jointly with another AEA or LEA if the state determines that the AEA or LEA will be ineligible because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

41.223(2) Reserved.

41.223(3) Amount of payments. If the state requires the joint establishment of eligibility under subrule 41.223(1), the total amount of funds made available to the affected AEAs or LEAs must be equal to the sum of the payments that each AEA or LEA would have received under rule 281—41.705(256B,34CFR300) if the agencies were eligible for those payments.

281—41.224(256B,34CFR300) Requirements for jointly establishing eligibility.

41.224(1) Requirements for AEAs or LEAs in general. AEAs or LEAs that establish joint eligibility under this rule must:

a. Adopt policies and procedures that are consistent with the state's policies and procedures under rules 281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—41.187(256B); and

b. Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

41.224(2) Requirements for educational service agencies in general. If an educational service agency is required by state law to carry out programs under Part B of the Act, the joint responsibilities given to AEAs or LEAs under Part B of the Act:

a. Do not apply to the administration and disbursement of any payments received by that educational service agency; and

b. Must be carried out only by that educational service agency.

41.224(3) Additional requirement. Notwithstanding any other provision of rule 281—41.223(256B,34CFR300) and this rule, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by this chapter.

281—41.225 Reserved.

281—41.226(256B,34CFR300) Early intervening services.

41.226(1) General. An AEA or LEA may use no more than 15 percent of the amount the AEA or LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the AEA or LEA pursuant to rule 281—41.205(256B,34CFR300), if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

41.226(2) Activities. In implementing coordinated, early intervening services under this rule, an AEA or LEA may carry out activities that include:

a. Professional development, which may be provided by other entities, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

41.226(3) Construction. Nothing in this rule shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

41.226(4) Reporting: in general. Each AEA or LEA that develops and maintains coordinated, early intervening services under this rule must annually report to the SEA on:

a. The number of children served under this rule who received early intervening services; and

b. The number of children served under this rule who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

41.226(5) Reporting: disproportionality. If an LEA is required to reserve the maximum amount available under this rule for early intervening services because of a determination of significant

disproportionality under rule 281—41.646(256B,34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 281—41.646(256B,34CFR300), as required by the SEA.

41.226(6) *Coordination with ESEA.* Funds made available to carry out this rule may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this rule.

281—41.227 Reserved.

281—41.228(256B,34CFR300) State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year under rule 281—41.705(256B,34CFR300) is to meet the provisions of 34 CFR Section 300.228.

281—41.229(256B,34CFR300) Disciplinary information.

41.229(1) *Requirement of transmittal of disciplinary records.* Pursuant to Iowa Code section 279.9A, the state requires that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children without disabilities.

41.229(2) *Contents of transmittal.* The transmittal shall include an accurate record of any suspension or expulsion actions taken and the basis for those actions taken. It may include any other information that is relevant to the safety of the child and other individuals involved with the child, to the extent that information is transmitted for children without disabilities.

41.229(3) *Additional contents of transmittal.* If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

41.229(4) *When transmittal must occur.* Pursuant to Iowa Code section 279.9A, a transmittal of records under this rule shall occur if requested by officials of the school to which the student seeks to transfer or has transferred.

41.229(5) *Additional state law requirement.* Pursuant to Iowa Code section 279.9A, this rule applies also to accredited nonpublic schools, as well as AEAs.

281—41.230(256B,34CFR300) SEA flexibility. The department reserves to itself the flexibility provided by 34 CFR Section 300.230.

281—41.231 to 41.299 Reserved.

DIVISION V
EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

281—41.300(256B,34CFR300) Parental consent and participation.

41.300(1) *Parental consent for initial evaluation.*

a. General.

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 281—41.503(256B,34CFR300) and 281—41.504(256B,34CFR300), obtain informed consent, consistent with rule 281—41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

b. Special rule: initial evaluation for a child who is a ward of the state and not residing with a parent. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. Parental refusal to provide consent for initial evaluation.

(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 41.300(1)“*a*,” or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this chapter, including the mediation procedures under rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) to 281—41.516(256B,34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under rules 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—41.311(256B,34CFR300) if it declines to pursue the evaluation under 41.300(1)“*c*”(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

(1) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(3) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child.

d. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(1) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with rule 281—41.503(256B,34CFR300) before ceasing the provision of special education and related services;

(2) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(4) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child for further provision of special education and related services.

41.300(3) Parental consent for reevaluations.

a. General. Subject to 41.300(3)“b”:

(1) Each public agency must obtain informed parental consent, in accordance with 41.300(1)“a,” prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 41.300(1)“c.”

(3) The public agency does not violate its obligation under rules 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in 41.300(3)“a” need not be obtained if the public agency can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

(2) The child’s parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required. Parental consent is not required before:

(1) A review of existing data as part of an evaluation or a reevaluation; or

(2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

b. Additional consent requirements. In addition to the parental consent requirements described in subrules 41.300(1) through 41.300(3), the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency’s use of failure to give consent. A public agency may not use a parent’s refusal to consent to one service or activity under subrules 41.300(1) through 41.300(3) or paragraph 41.300(4)“b” to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in 41.300(1)“c” and 41.300(3)“a”; and

(2) The public agency is not required to consider the child as eligible for services under rules 281—41.132(256B,34CFR300) to 281—41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in 41.300(1)“a”(3), 41.300(1)“b”(1), 41.300(2)“b,” and 41.300(3)“b”(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parent participation. The identification process is to include interactions with the individual, the individual’s parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel will seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.

281—41.301(256B,34CFR300) Full and individual initial evaluations.

41.301(1) General. Each public agency must conduct a full and individual initial evaluation, in accordance with rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300), before the initial provision of special education and related services to a child with a disability under this chapter.

41.301(2) Request for initial evaluation. Consistent with the consent requirements in rule 281—41.300(256B,34CFR300), either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

41.301(3) Procedures for initial evaluation. The initial evaluation:

- a. Must be conducted within 60 calendar days of receiving parental consent for the evaluation;
- b. Must consist of procedures:
 - (1) To determine if the child is a child with a disability under this chapter; and
 - (2) To determine the educational needs of the child.

41.301(4) Exception. The time frame described in 41.301(3) “a” does not apply to a public agency if:

- a. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- b. A child enrolls in a school of another public agency after the relevant time frame in 41.301(3) “a” has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under this chapter.

41.301(5) Applicability of exception in 41.301(4) “b.” The exception in 41.301(4) “b” applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the subsequent public agency agree to a specific time when the evaluation will be completed.

41.301(6) Content of full and individual initial evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

- a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.
- b. Analysis of existing information about the individual, as described in 41.305(1) “a.”
- c. Identification of the individual’s strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.
- d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

281—41.302(256B,34CFR300) Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

281—41.303(256B,34CFR300) Reevaluations.

41.303(1) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with rules 281—41.304(256B,34CFR300) to 281—41.311(256B,34CFR300):

- a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- b. If the child’s parent or teacher requests a reevaluation.

41.303(2) Limitation. A reevaluation conducted under subrule 41.303(1):

- a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- b. Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

281—41.304(256B,34CFR300) Evaluation procedures.

41.304(1) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with rule 281—41.503(256B,34CFR300), that describes any evaluation procedures the agency proposes to conduct.

41.304(2) *Conduct of evaluation.* In conducting the evaluation, the public agency must:

a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

- (1) Whether the child is a child with a disability under this chapter; and
- (2) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.304(3) *Other evaluation procedures.* Each public agency must ensure that:

a. Assessments and other evaluation materials used to assess a child under this chapter:

- (1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (2) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(3) Are used for the purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of the assessments.

b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

e. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 41.301(4) "b" and 41.301(5), to ensure prompt completion of full evaluations.

f. The evaluation of each child with a disability under rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300) is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

g. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

281—41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations.

41.305(1) *Review of existing evaluation data.* As part of an initial evaluation, if appropriate, and as part of any reevaluation under this chapter, the IEP team and other qualified professionals, as appropriate, must:

a. Review existing evaluation data on the child, including:

- (1) Evaluations and information provided by the parents of the child;
- (2) Current classroom-based, local, or state assessments, and classroom-based observations; and
- (3) Observations by teachers and related services providers; and

b. On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(1) Whether the child is a child with a disability, as defined in this chapter, and the educational needs of the child or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(2) The present levels of academic achievement and related developmental needs of the child;

(3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

41.305(2) *Conduct of review.* The group described in subrule 41.305(1) may conduct its review without a meeting.

41.305(3) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subrule 41.305(1).

41.305(4) *Requirements if additional data are not needed.*

a. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability or to determine the child's educational needs, the public agency must notify the child's parents of:

(1) The determination and the reasons for the determination; and

(2) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The public agency is not required to conduct the assessment described in 41.305(4) "a"(2) unless requested to do so by the child's parents.

41.305(5) *Evaluations before change in eligibility.*

a. Except as provided in 41.305(5) "b," a public agency must evaluate a child with a disability in accordance with these rules before determining that the child is no longer a child with a disability.

b. The evaluation described in 41.305(5) "a" is not required before the termination of a child's eligibility under this chapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

c. For a child whose eligibility terminates under circumstances described in 41.305(5) "b," a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

41.305(6) *At no cost to parent.* Evaluations or reevaluations under this chapter, including any outside consultations or evaluations, shall be at no cost to the parent. AEAs or LEAs may access a parent's private insurance or public benefits or insurance, however, provided that a parent gives informed consent consistent with rule 281—41.9(256B,34CFR300) and subrules 41.154(4) and 41.154(5).

281—41.306(256B,34CFR300) Determination of eligibility.

41.306(1) *General.* Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(3) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this chapter:

a. If the determinant factor for that determination is:

(1) Lack of appropriate instruction in reading, including the essential components of reading instruction, as defined in Section 1208(3) of the ESEA, as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015);

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency; and

b. If the child does not otherwise meet the eligibility criteria under this chapter.

41.306(3) Procedures for determining eligibility and educational need.

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education will certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required special education and related services of each eligible individual will be maintained by the AEA, and provision will be made for its periodic revision.

281—41.307(256B,34CFR300) Specific learning disabilities.

41.307(1) General. The state adopts, consistent with rule 281—41.309(256B,34CFR300), criteria for determining whether a child is an eligible individual on the basis of a specific learning disability as defined in subrule 41.50(10). In addition, the criteria adopted by the state:

a. Requires the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in subrule 41.50(10); and

b. Prohibits the use of a severe discrepancy between intellectual ability and achievement for determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(2) Consistency with state criteria. A public agency must use the state criteria adopted pursuant to subrule 41.307(1) in determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(3) Rule of construction: "Labelling." Nothing in this rule or rules 281—41.308(256B,34CFR300) to 281—41.311(256B,34CFR300) is to be construed as requiring children evaluated under these rules to be classified as having a specific learning disability, as long as the child is regarded as a child with a disability or an eligible individual under this chapter.

41.307(4) Rule of construction: Use of rules 281—41.307(256B,34CFR300) to 281—41.310(256B,34CFR300). Nothing in this rule or rule 281—41.308(256B,34CFR300) or 281—41.311(256B,34CFR300) is to be construed as limiting its applicability solely to determining whether a child is an eligible individual on the basis of a specific learning disability. The procedures, methods, etc. listed in this rule and rules 281—41.308(256B,34CFR300) and 281—41.310(256B,34CFR300) may be employed in evaluating any child suspected of being an eligible individual, if appropriate in the child's circumstances.

281—41.308(256B,34CFR300) Additional group members. The determination of whether a child suspected of being an eligible individual due to the presence of a specific learning disability is a child with a disability as defined in this chapter, must be made by the child's parents and a team of qualified professionals, which must include the following persons:

41.308(1) Required teachers.

- a. The child's general education teacher; or
- b. If the child does not have a general education teacher, a general education teacher qualified to teach a child of his or her age; or
- c. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age.

41.308(2) Individual qualified to conduct diagnostic examinations. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

281—41.309(256B,34CFR300) Determining the existence of a specific learning disability.

41.309(1) Required determinations. The group described in rule 281—41.306(256B,34CFR300) may determine that a child has a specific learning disability, as defined in subrule 41.50(10), after considering the following three factors:

a. *Lack of adequate achievement.* The child does not achieve adequately for the child's age, grade-level expectations or such grade-level standards the SEA may choose to adopt in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or grade-level expectations or such grade-level standards the SEA may choose to adopt:

- (1) Oral expression.
 - (2) Listening comprehension.
 - (3) Written expression.
 - (4) Basic reading skill.
 - (5) Reading fluency skills.
 - (6) Reading comprehension.
 - (7) Mathematics calculation.
 - (8) Mathematics problem solving.
- b. *Lack of adequate progress.*

(1) The child does not make sufficient progress to meet age expectations, grade-level expectations, or such state-approved grade-level standards as the state may choose to adopt in one or more of the areas identified in 41.309(1)“a” when using a process based on the child's response to scientific, research-based intervention; or

(2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level expectations, such state-approved grade-level standards as the state may choose to adopt, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with rules 281—41.304(256B,34CFR300) and 281—41.305(256B,34CFR300).

c. *Exclusionary factors.* The group determines that its findings under 41.309(1)“a” and 41.309(1)“b” are not primarily the result of:

- (1) A visual, hearing, or motor disability;
- (2) Intellectual disability;
- (3) Emotional disturbance;
- (4) Cultural factors;
- (5) Environmental or economic disadvantage; or
- (6) Limited English proficiency.

41.309(2) Review of data. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300):

a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

41.309(3) *When consent required.* The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the time frames described in rules 281—41.301(256B,34CFR300) and 281—41.303(256B,34CFR300):

a. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 41.309(2) “*a*” and “*b*”; and

b. Whenever a child is referred for an evaluation.

41.309(4) *Rule of construction.* Subparagraph 41.309(1) “*b*”(2) shall not be construed to require a child with a pattern of strengths and weaknesses in performance, achievement, or both, to be identified as an eligible individual, absent a determination that the child has a disability and needs special education and related services.

41.309(5) *Rule of construction.* A process by which a child's response to intervention is measured is a component of a full and individual evaluation and is not, considered alone, a full and individual evaluation, unless the response to intervention process contains all required elements of a full and individual evaluation under this chapter.

281—41.310(256B,34CFR300) Observation.

41.310(1) *Observation required.* The public agency must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

41.310(2) *Who must observe.* The group described in 41.306(1) “*a*,” in determining whether a child has a specific learning disability, must decide to:

a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, consistent with rules 281—41.306(256B,34CFR300), 281—41.309(256B,34CFR300), 281—41.312(256B,34CFR300) and 281—41.313(256B,34CFR300); or

b. Have at least one member of the group described in 41.306(1) “*a*” conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with subrule 41.300(1), is obtained.

41.310(3) *Child less than school age or out of school.* In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. This subrule also applies to school-age children who must be evaluated during school breaks.

281—41.311(256B,34CFR300) Specific documentation for the eligibility determination.

41.311(1) *Documentation required.* For a child suspected of having a specific learning disability, the documentation of the determination that the child is an eligible individual, as required in 41.306(1) “*b*,” must contain a statement of:

a. Whether the child has a specific learning disability;

b. The basis for making the determination, including an assurance that the determination has been made in accordance with 41.306(3) “*a*”;

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

d. The educationally relevant medical findings, if any;

e. The determination that:

(1) The child does not achieve adequately for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1) “*a*”; and

(2) The child does not make sufficient progress for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1) “*b*”(1); or the child exhibits a pattern of strengths and weaknesses in performance,

achievement, or both, relative to the child's age or to meet grade-level expectations, such grade-level standards the SEA may choose to adopt, or intellectual development consistent with 41.309(1) "b"(2);

f. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

g. If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(1) The instructional strategies used and the student-centered data collected; and

(2) The documentation that the child's parents were notified about:

1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

2. Strategies for increasing the child's rate of learning; and

3. The parents' right to request an evaluation.

41.311(2) *Certification required.* Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

281—41.312(256B,34CFR300) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when there is a suspicion that a child is an eligible individual under this chapter, the AEA or AEA in collaboration with the LEA will conduct a full and individual initial evaluation. Documentation of the rationale for such action will be included in the individual's educational record.

41.312(1) *Notice to parents.* Each LEA will provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

41.312(2) *Nature of general education interventions.* General education interventions will include consultation with special education support and instructional personnel. General education intervention activities will be documented and include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

41.312(3) *Referral for full and individual initial evaluation.* If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but need continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.312(4) *Parent may request evaluation at any time.* The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

281—41.313(256B,34CFR300) Systematic problem-solving process.

41.313(1) *Definition.* When used by an AEA in its identification process, "systematic problem-solving" means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions.

41.313(2) *Parent participation in systematic problem-solving process.* Active parent participation is an integral aspect of the process and is solicited throughout.

41.313(3) *Components.* At a minimum, a systematic problem-solving process includes the following components.

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting

problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are to be relevant to the presenting problem or behaviors of concern and shall be collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are to be individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions will be designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are to be described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions will be implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring will be conducted that includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions will be evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

41.313(4) Rule of construction. A systematic problem-solving process may be used for any child suspected of being an eligible individual, and nothing in this chapter nor in Part B of the Act is to be construed to limit the applicability of a systematic problem-solving process to children suspected of having a certain type of disability.

281—41.314(256B,34CFR300) Progress monitoring and data collection.

41.314(1) Evidence of progress in general education instruction. Each public agency shall establish standards, consistent with those the department may establish, by which the adequacy of general education instruction, including the quality and quantity of data gathered, is assessed, and whether such data are sufficient in quantity and quality to make decisions under Part B of the Act and this chapter.

41.314(2) Progress monitoring and determining eligibility. Each public agency shall engage in progress monitoring of each individual's progress as the department may prescribe during the process of evaluating whether a child is an eligible individual and record such progress in any manner that the department may permit or prescribe. If the AEA or LEA serving an individual imposes additional standards for the monitoring of progress of individuals during the process of evaluation, personnel serving that individual are to comply with those additional requirements. The team determining the child's eligibility may increase the frequency with which the child's progress is monitored.

41.314(3) Progress monitoring and eligible individuals. Each public agency shall engage in progress monitoring of each eligible individual's progress as the department may prescribe and record such progress in any manner that the department may permit or require. If the AEA or LEA serving an eligible individual imposes additional requirements for the monitoring of progress of eligible individuals, personnel serving that individual will comply with those additional requirements. An IEP team may increase the frequency with which an eligible individual's progress is monitored.

281—41.315 to 41.319 Reserved.

281—41.320(256B,34CFR300) Definition of individualized education program.

41.320(1) General. As used in this chapter, the term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with these rules, and that must include:

a. A statement of the child's present levels of academic achievement and functional performance, including:

(1) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(2) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

b. A statement of measurable annual goals, including academic and functional goals designed to meet:

(1) The child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(2) Each of the child's other educational needs that result from the child's disability;

c. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

d. A description of:

(1) How the child's progress toward meeting the annual goals described in 41.320(1) "*b*" will be measured; and

(2) When periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided;

e. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved in and make progress in the general education curriculum in accordance with 41.320(1) "*a*," and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 41.320(1) "*e*";

g. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the Act; and, if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child; and

h. The projected date for the beginning of the services and modifications described in 41.320(1) "*e*" and the anticipated frequency, location, and duration of those services and modifications.

41.320(2) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

b. The transition services, including courses of study, needed to assist the child in reaching those goals.

41.320(3) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under state law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under rule 281—41.520(256B,34CFR300).

41.320(4) *Construction.* Nothing in this rule shall be construed to require:

a. That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the Act; or

b. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

41.320(5) *Special considerations.* The IEP, or an associated document, must contain the answers to the questions contained in subrule 41.116(4).

41.320(6) *Prohibited practices.* An IEP shall not include practices that are precluded by constitution, statute, this chapter, or any other applicable law.

41.320(7) *Clearing classrooms.* An IEP or a behavioral intervention plan shall not include provisions for clearing all other students out of the regular classroom in order to calm the child requiring special education or the child for whom a behavioral intervention plan has been implemented except as provided in Iowa Code section 279.51A as enacted by 2020 Iowa Acts, Senate File 2360.

If a student whose behavior caused a classroom clearance has an IEP or a behavioral intervention plan, the classroom teacher shall call for and be included in a review and potential revision of the student's IEP or behavioral intervention plan by the student's IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student's IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a FAPE.

281—41.321(256B,34CFR300) IEP team.

41.321(1) *General.* The public agency must ensure that the IEP team for each child with a disability includes the following:

- a.* The parents of the child;
- b.* At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- c.* At least one special education teacher of the child or, where appropriate, at least one special education provider of the child;
- d.* A representative of the public agency who:
 - (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (2) Is knowledgeable about the general education curriculum; and
 - (3) Is knowledgeable about the availability of resources of the public agency.
- e.* An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 41.321(1) "b" to "f";
- f.* At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- g.* Whenever appropriate, the child with a disability.

41.321(2) *Transition services participants.*

a. In accordance with 41.321(1) "g," the public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under subrule 41.320(2).

b. If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

c. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of 41.321(2) "a," the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

41.321(3) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in 41.321(1) "f" must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

41.321(4) Designating a public agency representative. A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in 41.321(1) “d” are satisfied.

41.321(5) IEP team attendance.

a. A member of the IEP team described in 41.321(1) “b” to “e” is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.

b. A member of the IEP team described in 41.321(5) “a” may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if:

- (1) The parent, in writing, and the public agency consent to the excusal; and
- (2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

41.321(6) Initial IEP team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

281—41.322(256B,34CFR300) Parent participation.

41.322(1) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:

- a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- b. Scheduling the meeting at a mutually agreed-upon time and place.

41.322(2) Information provided to parents.

a. The notice required under 41.322(1) “a” must:

- (1) Indicate the purpose, time, and location of the meeting and who will be in attendance (name and position); and
- (2) Inform the parents of the provisions in 41.321(1) “f” and 41.321(3) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child and subrule 41.321(6) relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act.

b. For a child with a disability, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, the notice also must:

- (1) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with subrule 41.320(2), and that the agency will invite the student; and
- (2) Identify any other agency that will be invited to send a representative.

41.322(3) Other methods to ensure parent participation. If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with rule 281—41.328(256B,34CFR300) related to alternative means of meeting participation.

41.322(4) Conducting an IEP team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed-upon time and place, including:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to the parents and any responses received; and
- c. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

41.322(5) *Use of interpreters or other action, as appropriate.* The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

41.322(6) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.

41.322(7) *Rule of construction: "final" versus "draft" IEPs.* An agency shall not present a completed and finalized IEP to parents before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. An agency may come prepared with evaluation findings, proposed statements of present levels of educational performance, proposed recommendations regarding annual goals or instructional objectives, and proposals concerning the nature of special education and related services to be provided. The agency shall inform the parents at the outset of the meeting that the proposals are only recommendations for review and discussion with the parents.

281—41.323(256B,34CFR300) When IEPs must be in effect.

41.323(1) *General.* An IEP must be in effect before special education and related services are provided to eligible individuals. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in rule 281—41.320(256B,34CFR300).

41.323(2) Reserved.

41.323(3) *Initial IEPs; provision of services.* Each public agency must ensure that:

a. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

b. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

41.323(4) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that:

a. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

b. Each teacher and provider described in 41.323(4) "a" is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

41.323(5) *IEPs for children who transfer public agencies in the same state.* If a child with a disability who had an IEP that was in effect in a previous public agency in this state transfers to a new public agency in this state and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency until the new public agency either:

a. Adopts the child's IEP from the previous public agency; or

b. Develops, adopts, and implements a new IEP that meets the applicable requirements in these rules.

41.323(6) *IEPs for children who transfer from another state.* If a child with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in this state and enrolls in a new school within the same school year, the receiving public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the receiving public agency:

a. Conducts an evaluation pursuant to these rules if determined to be necessary by the receiving public agency; and

b. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in these rules.

41.323(7) *Transmittal of records.* To facilitate the transition for a child described in subrules 41.323(5) and 41.323(6):

a. The receiving public agency in which the child enrolls must take all reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR Section 99.31(a)(2); and

b. The previous public agency in which the child was enrolled must take all reasonable steps to promptly respond to the request from the receiving public agency.

41.323(8) Other. An IEP of an eligible individual will be implemented immediately after an IEP team meeting. Exceptions to this would be when the meeting occurs during the summer or vacation period, unless the child requires services during that period, or where there are circumstances requiring a short delay (e.g., making transportation arrangements); however, there can be no undue delay in providing special education and related services to an eligible individual.

281—41.324(256B,34CFR300) Development, review, and revision of IEP.

41.324(1) Development of IEP.

a. *General.* In developing each child's IEP, the IEP team must consider:

- (1) The strengths of the child;
- (2) The concerns of the parents for enhancing the education of their child;
- (3) The results of the initial or most recent evaluation of the child; and
- (4) The academic, developmental, and functional needs of the child.

b. *Consideration of special factors.* The IEP team must:

- (1) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(3) In the case of a child who is blind or visually impaired, provide for instruction in braille and the use of braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the child;

(4) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(5) Consider whether the child needs assistive technology devices and services, including accessible instructional materials.

c. *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

- (1) Appropriate positive behavioral interventions and supports and other strategies for the child; and
- (2) Supplementary aids and services, program modifications, and support for school personnel consistent with 41.320(1) "e."

d. *Agreement.*

(1) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(2) If changes are made to the child's IEP in accordance with 41.324(1) "d"(1), the public agency must ensure that the child's IEP team is informed of those changes.

(3) A public agency may only agree to make changes pursuant to 41.324(1) "d"(1) concerning resources the public agency has the authority to commit.

e. Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

f. Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in 41.324(1)“d” by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

41.324(2) Review and revision of IEPs.

a. General. Each public agency must ensure that, subject to 41.324(2)“b” and “c,” the IEP team:

(1) Reviews the child’s IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address the following:

1. Any lack of expected progress toward the annual goals described in 41.320(1)“b,” and in the general education curriculum, if appropriate;

2. The results of any reevaluation conducted under rule 281—41.303(256B,34CFR300);

3. Information about the child provided to or by the parents, as described in 41.305(1)“b”;

4. The child’s anticipated needs; or

5. Other matters.

b. Consideration of special factors. In conducting a review of the child’s IEP, the IEP team must consider the special factors described in 41.324(1)“b.”

c. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP team, must, consistent with 41.324(1)“c,” participate in the review and revision of the IEP of the child.

41.324(3) Failure to meet transition objectives.

a. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subrule 41.320(2), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

b. Construction. Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

41.324(4) Children with disabilities in adult prisons.

a. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) The requirements contained in Section 612(a)(16) of the Act and 41.320(1)“g” relating to participation of children with disabilities in general assessments.

(2) The requirements in subrule 41.320(2) relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

b. Modifications of IEP or placement.

(1) Subject to 41.324(4)“b”(2), the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child’s IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements in rules 281—41.320(256B,34CFR300) relating to IEPs and 281—41.114(256B,34CFR300) relating to LRE do not apply with respect to the modifications described in 41.324(4)“b”(1).

41.324(5) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP that meets all the requirements of rule 281—41.320(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part

of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Complete evaluation and make judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conduct meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.324(6) Rules of construction—instruction in braille. For an eligible individual for whom instruction in braille is determined to be appropriate, as provided in 41.324(1)“b”(3), that eligible individual is entitled to instruction in braille reading and writing that is sufficient to enable the individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level. Instruction in braille reading and writing may only be provided by a teacher with an endorsement to teach individuals who are blind or visually impaired.

281—41.325(256B,34CFR300) Private school placements by public agencies.

41.325(1) Developing IEPs.

a. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with these rules.

b. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

41.325(2) Reviewing and revising IEPs.

a. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

b. If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

41.325(3) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this chapter remains with the public agency and the SEA.

281—41.326(256B,34CFR300) Other rules concerning IEPs.

41.326(1) Children from birth to the age of three. A fully developed IFSP is considered to have met the rules for an IEP for an eligible individual younger than the age of three.

41.326(2) Support services only. An IEP that satisfies the requirements of this chapter will be developed for eligible individuals who need only special education support services. The special education support service specialist with knowledge in the area of need will have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided; however, the determination that an individual is eligible for special

education will be based on these rules. Attendance at IEP meetings for students will be determined in accordance with rule 281—41.325(256B,34CFR300).

281—41.327(256B,34CFR300) Educational placements. Consistent with subrule 41.501(3), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of the child.

281—41.328(256B,34CFR300) Alternative means of meeting participation. When conducting IEP team meetings and placement meetings under this chapter and carrying out administrative matters under Section 615 of the Act, such as scheduling, exchange of witness lists, and status conferences, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

281—41.329(256B,34CFR300) Family support mentoring program. If moneys are appropriated by the general assembly for a fiscal year for the purpose provided in this rule, the department will develop guidelines for a comprehensive family support mentoring program that meets the language and communication needs of families, or implement them if guidelines already exist. The department, in consultation with the Iowa school for the deaf, will administer the family support mentoring program for deaf or hard-of-hearing children.

41.329(1) General department powers. In establishing the family support mentoring program, the department may do all of the following, either directly or through a contract or agreement:

- a. Hire a family support mentoring coordinator.
- b. Utilize the parent resource created in Iowa Code section 256B.10(2) as well as other resources to provide families with information and guidance on language, communication, social, and emotional development of their child.
- c. Recruit family support mentors to serve the needs of the family support mentoring program.
- d. Train parents of a deaf or hard-of-hearing child to become family support mentors and train deaf or hard-of-hearing adults to become deaf or hard-of-hearing adult family support mentors.
- e. Reach out to parents of children identified through the early hearing detection and intervention program in the Iowa department of public health and share information about the family support mentoring program services available to such parents.
- f. Reach out to families referred by primary care providers, the area education agencies, and from other agencies that provide services to deaf or hard-of-hearing children.
- g. Provide follow-up contact, as necessary, to establish services after initial referral.
- h. Provide administrative oversight of any program established under this rule. Administrative oversight may include:
 - (1) Review of the qualifications of mentors;
 - (2) Alignment of family needs with paired mentors;
 - (3) Administration and analysis of satisfaction surveys; and
 - (4) Gathering demographic data of those served, such as ages and geographic location of children.

41.329(2) Collaboration.

a. The department shall work with the early hearing detection and intervention program in the Iowa department of public health, the Iowa school for the deaf, and the area education agencies when developing the guidelines.

b. The department shall coordinate family support mentoring activities with the early hearing detection and intervention program in the Iowa department of public health, the Iowa school for the deaf, the area education agencies, and nonprofit organizations that provide family support mentoring to parents with deaf or hard-of-hearing children.

41.329(3) Nature of the program.

a. A family support mentor may be any of the following:

- (1) A parent who has experience raising a child who is deaf or hard-of-hearing and who has experience supporting the child's communication and language development.

(2) A deaf or hard-of-hearing adult who serves as a deaf or hard-of-hearing role model for the children and their families. Deaf or hard-of-hearing family support mentors may provide parents with an understanding of American sign language and English, including instructional philosophies for both, such as bilingual bimodal, listening and spoken language, total communication, and other philosophies, as well as other forms of communication, deaf culture, deaf community, and self-identity.

(3) The department will ensure mentors are qualified to provide supports that match the specific needs, experiences, and desires of families of children who are deaf or hard-of-hearing.

(4) Nothing in this rule shall be construed to create or require any credential or certification to serve as a family support mentor.

b. With the consent of the parent of the deaf or hard-of-hearing child, the family support mentoring program shall pair families based on the specific need, experience, or want of the parent of the deaf or hard-of-hearing child with another family mentor or deaf or hard-of-hearing adult mentor to provide support.

c. The family support mentoring program under this rule shall meet the following additional standards:

(1) Serve families of children who are deaf or hard-of-hearing from the child's birth through age 8, and may serve learners up to age 21;

(2) Provide services statewide, regardless of educational setting of the child;

(3) Make services available to families based on their specific need, experience, or want;

(4) Make services available to all children who are deaf or hard-of-hearing and their families, regardless of children's eligibility for other programs, including Section 504 of the Rehabilitation Act of 1973; and

(5) Not condition receipt of services under this rule upon eligibility under this chapter or 281—Chapter 120.

41.329(4) *Rule of construction.* This rule only applies in a fiscal year for which there is an appropriation by the general assembly.

281—41.330 to 41.399 Reserved.

DIVISION VI
ADDITIONAL RULES RELATED TO AEAs, LEAs, AND SPECIAL EDUCATION

281—41.400(256B,34CFR300) Shared responsibility.

41.400(1) *General.* It is the responsibility of each eligible individual's resident LEA to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself, by action of two or more LEAs through the establishment and maintenance of joint programs, by the AEA, by contract for services from approved public or private agencies offering the appropriate special education and related services, or by any combination of these options. The AEA shall support and assist LEAs in meeting their responsibilities for providing appropriate special education and related services. Part B of the Act and this chapter are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B of the Act.

41.400(2) *Shared responsibility between general education and special education.* General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

281—41.401(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed. In addition, personnel providing special education and related services who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a

professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.402(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided.

41.402(1) Director of special education. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director's powers and duties shall include:

- a. Properly identifying children requiring special education,
- b. Ensuring that each child requiring special education in the area receives an appropriate special education program or service,
- c. Assigning appropriate weights for each child requiring special education programs or services as provided in Iowa Code section 256B.9,
- d. Supervising special education support personnel,
- e. Providing each school district within the area served and the department with a special education weighted enrollment count, including the additional enrollment because of special education by the date specified in the Iowa Code,
- f. Submitting to the department special education instructional and support program plans and applications, subject to the criteria listed in Iowa Code chapters 256B and 273, for approval by the deadline specified in the Iowa Code,
- g. Coordinating the special education program within the area served, and
- h. Reporting any violation of the Act or this chapter to the department for appropriate action.

41.402(2) Special education instructional personnel. Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.402(3) Special education support personnel. The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accordance with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

"Assistant director of special education" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

"Audiologist" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals who are deaf or hard of hearing.

"Consultant" is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

"Educational interpreter" interprets or translates spoken language into sign language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

"Educational strategist" provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

"Itinerant teacher" provides special education on an itinerant basis to eligible individuals.

“Occupational therapist” is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

“Physical therapist” is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

“School psychologist” assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

“School social worker” enhances the educational programs of individuals by assisting in identification and assessment of individuals’ educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as a liaison among home, school and community.

“Special education coordinator” facilitates the provision of special education within a specific geographic area.

“Special education media specialist” is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

“Special education nurse” is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals’ education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

“Speech-language pathologist” applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

“Supervisor” is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

“Work experience coordinator” plans and implements sequential secondary programs that provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

“Others (other special education support personnel)” may be employed as approved by the department and board of educational examiners.

281—41.403(256B) Paraprofessionals.

41.403(1) Responsibilities. Special education personnel may be employed to assist in the provision of special education and related services to children with disabilities and shall:

a. Complete appropriate preservice and ongoing staff development specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.403(2) Authorized special education paraprofessionals. Authorized special education paraprofessional roles include:

“*Audiometrist*” provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

“*Licensed practical nurse*” shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student’s health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

“*Occupational therapy assistant*” is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

“*Para-educator*” is a licensed educational assistant as defined in Iowa Code section 272.12.

“*Physical therapist assistant*” is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

“*Psychology assistant*” collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

“*Speech-language pathology assistant*” provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

“*Vision assistant*” provides materials in the appropriate medium for use by individuals who are blind or visually impaired and performs other duties as assigned by the supervising teacher of the visually impaired.

“*Others*” as approved by the department, such as educational assistants described in 281—subrule 12.4(9).

281—41.404(256B) Policies and procedures required of all public agencies.

41.404(1) Policies. Policies related to the provision of special education and related services shall be developed by each public agency and made available to the department upon request to include the following:

- a. Policy to ensure the provision of a free appropriate public education.
- b. Policy for the provision of special education and related services.
- c. Policies to ensure the provision of special education and related services in the least restrictive environment.
- d. Policy concerning the protection of confidentiality of personally identifiable information.
- e. Policy concerning graduation requirements for eligible individuals.
- f. Policy to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(2) Procedures. Each public agency shall develop written procedures concerning the provision of special education and related services and shall make such procedures available to the department upon request and shall, at a minimum, include:

- a. Procedures to ensure the provision of special education and related services.
- b. Procedures for protecting the confidentiality of personally identifiable information.
- c. Procedures for the graduation of eligible individuals.
- d. Procedures for providing continuing education opportunities.
- e. A procedure for its continued participation in the development of the eligible individual’s IEP in out-of-state placements and shall outline a program to prepare for the eligible individual’s transition back to the LEA before the eligible individual is placed out of state.
- f. Procedures for ensuring procedural safeguards for children with disabilities and their parents.
- g. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(3) *Rule of construction.* Any public agency will adopt any policy and procedure necessary to comply with Part B of the Act and this chapter, even if such a policy or procedure is not listed in this rule.

281—41.405 Reserved.

281—41.406(256B) Additional requirements of LEAs. The following provisions are applicable to each LEA that provides special education and related services.

41.406(1) *Policies.* Each LEA will develop written policies pertinent to the provision of special education and related services and make such policies available to the department upon request. At a minimum, such policies include those identified in subrule 41.404(1).

41.406(2) *Procedures.* Each LEA will develop written procedures pertinent to the provision of special education and related services and make such procedures available to the department upon request. At a minimum, such procedures include those identified in subrule 41.404(2).

41.406(3) *Plans.* Districtwide plans required by the department or federal programs and regulations will address eligible individuals and describe the relationship to or involvement of special education services.

41.406(4) *Nonpublic schools.* Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accordance with Iowa Code sections 256.12(2) and 273.2.

281—41.407(256B,273,34CFR300) Additional requirements of AEAs. The following provisions are applicable to each AEA that provides special education and related services.

41.407(1) *Policies.* Each AEA will develop written policies pertinent to the provision of special education and related services and will make such policies available to the department upon request. At a minimum, such policies will include those identified in 41.404(1) “a” to “e” and the following:

- a. Policy regarding appointment of surrogate parents.
- b. Policy regarding provision of and payment for independent educational evaluations.
- c. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals.
- d. Policy addressing the methods of ensuring services to eligible individuals.
- e. Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.
- f. A policy that meets the requirements of these rules for evaluating and determining eligibility of students who require special education, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the identification of a specific disability may enhance the development and ongoing provision of an appropriate educational program.
- g. Policy for the development, review and revision of IEPs.
- h. Policy for transition from Part C to Part B.
- i. Policy for provision of special education and related services to students in accredited, nonpublic schools.

41.407(2) *Procedures.* Each AEA will develop written procedures pertinent to the provision of special education and related services and make such procedures available to the department upon request. At a minimum, such procedures include those identified in subrule 41.404(2) and the following:

- a. Appointment of surrogate parents.
- b. Provision of and payment for independent educational evaluations.
- c. Procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance that have not been resolved satisfactorily pursuant to 41.408(2) “b”(3).

d. Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance.

e. Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of these rules, including a description of the extent to which the AEA system uses categorical designations.

g. Procedures for the development, review and revision of IEPs.

h. Procedures to ensure the provision of special education and related services in the least restrictive environment.

i. Procedures for transition from Part C to Part B.

j. Procedures for provision of special education and related services to students in accredited, nonpublic schools.

k. Procedures describing the methods of ensuring services to eligible individuals.

41.407(3) *Responsibility for monitoring of compliance.* The AEA shall conduct activities in each constituent LEA to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. Monitoring of compliance activities will be as directed by the department.

41.407(4) *Educate and inform.* The AEA will provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.407(5) *Coordination of services.* The AEA will provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.408(256B,273,34CFR300) Instructional services.

41.408(1) *General.* Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency must use the procedure and criteria described in subrule 41.408(2) for creating a delivery system for instructional services.

41.408(2) *Delivery system.* An agency shall use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet this chapter's requirements relating to a continuum of services and placements, address the needs of eligible individuals aged 3 to 21, and provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including settings and programs in which eligible individuals aged 3 through 5 receive specially designed instruction, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of this chapter, and the provisions described in 41.408(2)“a.”

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process that will be used to evaluate the effectiveness of the system.

(5) A description of how the delivery system will meet the targets identified in the state's performance plan, described in this chapter.

(6) A description of how the delivery system will address needs identified by the state in any determination made under this chapter.

c. The following procedures shall be followed by the agency:

(1) The delivery system will be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative will be selected by the AEA director.

(2) The AEA director of special education will verify that the delivery system complies with these rules prior to LEA board adoption.

(3) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development will provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group will describe the comment received from the general public and how the comment was considered.

(4) The LEA board will approve the system prior to implementation.

d. The procedure presented in subrule 41.907(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

e. An LEA shall review, revise, and readopt its delivery system using the procedures identified in paragraph "c" of this subrule at least every five years, or sooner if required by the state in conjunction with any determination made under this chapter.

f. An LEA shall make the document describing its delivery system readily available to LEA personnel and members of the public.

281—41.409(256B,34CFR300) Support services. Support services are the specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, and speech-language services. Support services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.410(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis.

41.410(1) School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency.

41.410(2) Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. Home or hospital instructional services shall in ordinary circumstances be provided by the LEA but may be provided by contractual agreement, subject to the approval of the LEA board, by the AEA or another qualified agency. Home or hospital support or related services are

usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency. The provision of services in a home or hospital setting shall satisfy the following:

- a.* The service and the location of the service shall be specified in the individual's IEP.
- b.* The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.
- c.* Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

281—41.411(256B,34CFR300) Related services, supplementary aids and services. Related services and supplementary aids and services shall be provided to an eligible individual in accordance with an IEP. Such services that are also support services under rule 281—41.409(256B,34CFR300) are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency. Other such services are usually provided by the LEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.412(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.412(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and be considered an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

- a.* Transportation from the eligible individual's residence to the location of the special education services and back to the individual's residence, or child care placement for eligible individuals below the age of six.
- b.* Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education services.
- c.* Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education services.
- d.* Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.412(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.412(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund, the physical plant and equipment levy (PPEL) fund, or the secure an advanced vision for education (SAVE) fund, if appropriate. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA, using the method specified in Iowa Code section 285.1(12). An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report if the equipment was purchased from the general fund. If the transportation equipment was purchased using funds from the PPEL fund or SAVE fund, that purchase is not reported as a cost from special education funds generated through the weighting plan. Annual depreciation charges on transportation equipment purchased with funds from the PPEL fund or SAVE fund shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services, in which case the lease cost would be an expenditure from the PPEL fund or the SAVE fund, if appropriate. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall not be considered a special education transportation cost and shall not be reported in the LEA Certified Annual Report.

41.412(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

41.412(6) *Transportation for students in interdistrict and intradistrict school choice programs, such as open enrollment.* The following provisions apply to the transportation of eligible individuals who participate in school choice programs.

a. A parent who elects to have an eligible individual attend another school within an LEA may be required by the LEA to provide transportation to that eligible individual, even if transportation is listed on the eligible individual's IEP as a service.

b. If a parent elects to have an eligible individual with transportation listed as a service on the individual's IEP attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the resident district informs the parent it will not be providing transportation for the eligible individual to the receiving district, a parent who chooses to proceed with open enrollment will be deemed, as a matter of law, to have waived the transportation listed as a service on the IEP.

c. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the resident district elects to provide that transportation as a service, such transportation as a related service may be provided by the resident district, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

d. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the receiving district elects to provide that transportation as a service, such transportation as a related service may be provided by the receiving district, regardless of consent granted or refused by the resident district and notwithstanding any other statute or rule to the contrary, but the costs of such transportation shall not be paid by the individual's resident district.

e. If an eligible individual's placement team proposes placement in a district other than the district of residence based on a tuition arrangement, regardless of whether the eligible individual's IEP lists transportation as a related service, and the other district agrees to accept the eligible individual as an open enrollment student but not as a tuition student, the receiving district must provide transportation as a related service, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

f. Except as expressly provided in this subrule, nothing in this subrule creates or expands any right, license, or privilege concerning transportation of persons who are not eligible individuals or transportation of eligible individuals who do not have transportation listed as a service on an IEP.

281—41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools.

41.413(1) *State and local funds under Iowa Code section 256.12.* State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools under Iowa Code section 256.12 must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of Iowa Code section 256.12 specifically requires the contrary, are subject to the restrictions contained in rules 281—41.138(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

41.413(2) *Placements by public agencies.* State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools pursuant to a placement made or referred by a public agency pursuant to rules 281—41.145(256B,34CFR300) to 281—41.147(256B,34CFR300) must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of law specifically requires the contrary, are subject to the restrictions contained in rules 281—41.138(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

281—41.414 to 41.499 Reserved.

DIVISION VII
PROCEDURAL SAFEGUARDS

281—41.500(256B,34CFR300) Responsibility of SEA and other public agencies. The department shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of rules 281—41.500(256B,34CFR300) to 281—41.536(256B,34CFR300).

281—41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings.

41.501(1) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of rules 281—41.613(256B,34CFR300) to 281—41.621(256B,34CFR300), an opportunity to inspect and review all education records with respect to:

- a.* The identification, evaluation, and educational placement of the child; and
- b.* The provision of FAPE to the child.

41.501(2) *Parent participation in meetings.*

a. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

b. Each public agency must provide notice consistent with 41.322(1)“a” and 41.322(2)“b” to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 41.501(2)“a.”

c. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of

service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.501(3) *Parent involvement in placement decisions.*

a. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

b. In implementing the requirements of 41.501(3) "*a*," the public agency must use procedures consistent with the procedures described in 41.322(1) to 41.322(2) "*a*."

c. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

d. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure parental involvement.

281—41.502(256B,34CFR300) Independent educational evaluation.

41.502(1) *General.*

a. The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to subrules 41.502(2) to 41.502(5).

b. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in subrule 41.502(5).

c. For the purposes of this division:

(1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(2) "Public expense" means that the AEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.502(2) *Parent right to evaluation at public expense.*

a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the AEA, subject to the conditions in 41.502(2) "*b*" to "*d*."

b. If a parent requests an independent educational evaluation at public expense, the AEA must, without unnecessary delay, either:

(1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the AEA demonstrates in a hearing pursuant to these rules that the evaluation obtained by the parent did not meet agency criteria.

c. If the AEA files a due process complaint notice to request a hearing and the final decision is that the AEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

d. If a parent requests an independent educational evaluation, the AEA may ask for the parent's reason why the parent objects to the public evaluation. However, the AEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time a public agency conducts an evaluation with which the parent disagrees.

41.502(3) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation:

a. Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

b. May be presented by any party as evidence at a hearing on a due process complaint under this chapter regarding that child.

41.502(4) *Requests for evaluations by administrative law judges.* If an administrative law judge requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

41.502(5) *Agency criteria.*

a. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

b. Except for the criteria described in 41.502(5) "*a*," a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

281—41.503(256B,34CFR300) Prior notice by the public agency; content of notice.

41.503(1) *Notice.* Written notice that meets the requirements of subrule 41.503(2) must be given to the parents of a child with a disability within a reasonable time before the public agency:

a. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

41.503(2) *Content of notice.* The notice required under subrule 41.503(1) must include the following:

a. A description of the action proposed or refused by the agency;

b. An explanation of why the agency proposes or refuses to take the action;

c. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

d. A statement that the parents of a child with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

e. Sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

f. A description of other options that the IEP team considered and the reasons why those options were rejected; and

g. A description of other factors that are relevant to the agency's proposal or refusal.

41.503(3) *Notice in understandable language.*

a. The notice required under subrule 41.503(1) must be written in language understandable to the general public, and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements in 41.503(3) "*b*"(1) and (2) have been met.

281—41.504(256B,34CFR300) Procedural safeguards notice.

41.504(1) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only once a school year, except that a copy also must be given to the parents as follows:

a. Upon initial referral or parent request for evaluation;

b. Upon receipt of the first state complaint under rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300) and upon receipt of the first due process complaint under 281—41.507(256B,34CFR300) in a school year;

c. In accordance with the discipline procedures in subrule 41.530(8); and

d. Upon request by a parent.

41.504(2) Internet website. A public agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists.

41.504(3) Contents. The procedural safeguards notice must include a full explanation of all the procedural safeguards available under this chapter relating to the following:

- a. Independent educational evaluations;
- b. Prior written notice;
- c. Parental consent;
- d. Access to education records;
- e. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, and must explain:
 - (1) The time period in which to file a complaint;
 - (2) The opportunity for the agency to resolve the complaint; and
 - (3) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- f. The availability of mediation;
- g. The child's placement during the pendency of any due process complaint;
- h. Procedures for students who are subject to placement in an interim alternative educational setting;
- i. Requirements for unilateral placement by parents of children in private schools at public expense;
- j. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions, including the time period in which to file those actions; and
- l. Attorneys' fees.

41.504(4) Notice in understandable language. The notice required under subrule 41.504(1) must meet the requirements of subrule 41.503(3).

41.504(5) "Summaries" of procedural safeguards limited. An AEA or LEA may only provide a document summarizing the procedural safeguards notice if that document has been approved by the department. Any summary is to inform parents that the summary is only provided for the convenience of the reader and is not a replacement for the procedural safeguards notice. Any approved summary of the procedural safeguards notice will be given along with the procedural safeguards notice and will not be given in place of the procedural safeguards notice.

281—41.505(256B,34CFR300) Electronic mail. A parent of a child with a disability may elect to receive notices required by these rules by an electronic mail communication, if the public agency makes that option available.

281—41.506(256B,34CFR300) Mediation.

41.506(1) General. Each public agency must ensure that procedures are established and implemented to allow parties involved in disputes relating to any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

41.506(2) Requirements. The procedures must meet the following requirements:

- a. The procedures must ensure that the mediation process:
 - (1) Is voluntary on the part of the parties;
 - (2) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

c. State responsibility for mediation.

(1) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) The SEA must select mediators on a random, rotational, or other impartial basis.

d. The state must bear the cost of the mediation process, including the costs of meetings described in 41.506(2) “*b.*”

e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

g. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

h. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court.

41.506(3) *Impartiality of mediator.*

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(2) Must not have a personal or professional interest that conflicts with the person’s objectivity.

b. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under rule 281—41.228(256B,34CFR300) solely because the person is paid by the agency to serve as a mediator.

41.506(4) *Mediation procedures.* A request for mediation filed before the filing of a due process complaint shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a “preappeal conference” as requests for mediation prior to the filing of a due process complaint.

281—41.507(256B,34CFR300) Filing a due process complaint.

41.507(1) *General.*

a. Subject matter of due process complaint. A parent or a public agency may file a due process complaint on any of the matters described in subrule 41.503(1) relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

b. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in subrule 41.511(6) apply to the timeline in this rule.

41.507(2) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency files a due process complaint under this rule.

41.507(3) *Synonymous term.* Whenever the term “request for due process hearing” is used in prior department rules and documents, that term shall be construed to mean “due process complaint.”

281—41.508(256B,34CFR300) Due process complaint.

41.508(1) *General.* A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

41.508(2) *Content of complaint.* The due process complaint required in subrule 41.508(1) must include the following information:

- a. The name of the child;
- b. The address of the residence of the child;
- c. The name of the school the child is attending;
- d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child and the name of the school the child is attending;
- e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- f. A proposed resolution of the problem to the extent known and available to the party at the time.

41.508(3) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

41.508(4) *Sufficiency of complaint.*

a. *General.* The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. *Determination.* Within five days of receipt of notification under 41.508(4) “a,” the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2), and must immediately notify the parties in writing of that determination.

c. *Amending due process complaint.* A party may amend its due process complaint only if:

- (1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 281—41.510(256B,34CFR300); or
- (2) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend at any time not later than five days before the due process hearing begins.

d. *Timelines after amendment.* If a party files an amended due process complaint, the timelines for the resolution meeting in subrule 41.510(1) and the time period to resolve in 41.510(2) begin again with the filing of the amended due process complaint.

41.508(5) *LEA response to a due process complaint.*

a. *General.* If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within ten days of receiving the due process complaint, send to the parent a response that includes the following:

- (1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
- (2) A description of other options that the IEP team considered and the reasons why those options were rejected;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (4) A description of the other factors that are relevant to the agency’s proposed or refused action.

b. Rule of construction. A response by an LEA under 41.508(5)“a” shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.

41.508(6) Other party response to a due process complaint. Except as provided in subrule 41.508(5), the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

281—41.509(256B,34CFR300) Model forms.

41.509(1) Forms available. The department shall develop model forms to assist parents and public agencies in filing a due process complaint and to assist parents and other parties in filing a state complaint; however, the department or LEA may not require the use of the model forms.

41.509(2) Use of forms. Parents, public agencies, and other parties may use the appropriate model form described in subrule 41.509(1), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in subrule 41.508(2) for filing a due process complaint, or the requirements in subrule 41.153(2) for filing a state complaint.

281—41.510(256B,34CFR300) Resolution process.

41.510(1) Resolution meeting.

a. General. Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(1) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(2) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

b. Purpose of meeting. The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

c. When meeting not necessary. The meeting described in 41.510(1)“a” and “b” need not be held if the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in rule 281—41.506(256B,34CFR300).

d. Determining relevant members of IEP team. The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

41.510(2) Resolution period.

a. General. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

b. Timeline for decision. Except as provided in subrule 41.510(3), the timeline for issuing a final decision under rule 281—41.515(256B,34CFR300) begins at the expiration of this 30-day period.

c. Failure of parent to participate: delay of timeline. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

d. Failure of parent to participate: dismissal of complaint. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in subrule 41.322(4), the LEA may, at the conclusion of the 30-day period, request that the administrative law judge dismiss the parent’s due process complaint.

e. Failure of LEA to hold meeting. If the LEA fails to hold the resolution meeting specified in subrule 41.510(1) within 15 days of receiving notice of a parent’s due process complaint or fails to

participate in the resolution meeting, the parent may seek the intervention of the administrative law judge to begin the due process hearing timeline.

41.510(3) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in subrule 41.515(1) starts the day after one of the following events:

- a. Both parties agree in writing to waive the resolution meeting;
- b. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- c. If all parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.

41.510(4) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in 41.510(1) “a” and “b,” the parties must execute a legally binding agreement that is:

- a. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
- b. Enforceable in any state court of competent jurisdiction or in a district court of the United States, or, by the department, including but not limited to through the state complaint process.

41.510(5) *Agreement review period.* If the parties execute an agreement pursuant to subrule 41.510(4), a party may void the agreement within three business days of the agreement’s execution.

281—41.511(256B,34CFR300) Impartial due process hearing.

41.511(1) *General.* Whenever a due process complaint is received under this division, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in this chapter.

41.511(2) *SEA responsible for conducting the due process hearing.* The hearing described in subrule 41.511(1) must be conducted by the department.

41.511(3) *Administrative law judge.*

a. *Minimum qualifications.* At a minimum, an administrative law judge:

- (1) Must not be an employee of the SEA or the LEA that is involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;
- (2) Must possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;
- (3) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (4) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

b. *Rule of construction.* A person who otherwise qualifies to conduct a hearing under 41.511(3) “a” is not an employee of the agency solely because the person is paid by the agency to serve as an administrative law judge.

c. *SEA to maintain list of administrative law judges.* The department shall keep a list of the persons who serve as administrative law judges. The list must include a statement of the qualifications of each of those persons.

41.511(4) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under subrule 41.508(2), unless each of the other parties agrees otherwise.

41.511(5) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on the due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

41.511(6) *Exceptions to the timeline.* The timeline described in subrule 41.511(5) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

- a. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

b. The LEA's withholding of information from the parent that was required under this chapter to be provided to the parent.

281—41.512(256B,34CFR300) Hearing rights.

41.512(1) General. Any party to a hearing conducted pursuant to the rules of this division and Division XII has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- d. Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- e. Obtain written or, at the option of the parents, electronic findings of fact and decisions.

41.512(2) Additional disclosure of information.

a. At least five business days prior to a hearing conducted pursuant to subrule 41.511(1), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

b. An administrative law judge may bar any party that fails to comply with 41.512(2) "a" from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

41.512(3) Parental rights at hearings. Parents involved in hearings must be given the right to:

- a. Have the child who is the subject of the hearing present;
- b. Open the hearing to the public; and
- c. Have the record of the hearing and the findings of fact and decisions described in 41.512(1) "d" and "e" provided at no cost to parents.

281—41.513(256B,34CFR300) Hearing decisions.

41.513(1) Decision of administrative law judge on the provision of FAPE.

a. Subject to 41.513(1) "b," an administrative law judge's determination of whether a child received FAPE must be based on substantive grounds.

b. In matters alleging a procedural violation, an administrative law judge may find that a child did not receive FAPE only if the procedural inadequacies:

- (1) Impeded the child's right to FAPE;
- (2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or
- (3) Caused a deprivation of educational benefit.

c. Nothing in this subrule shall be construed to preclude an administrative law judge from ordering an LEA to comply with procedural requirements under this division.

41.513(2) Reserved.

41.513(3) Separate request for a due process hearing. Nothing in this division shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

41.513(4) Findings and decision to advisory panel and general public. The department, after deleting any personally identifiable information, must:

- a. Transmit the findings and decisions referred to in 41.512(1) "e" to the state advisory panel established under rule 281—41.167(256B,34CFR300); and
- b. Make those findings and decisions available to the public.

281—41.514(256B,34CFR300) Finality of decision. A decision made in a hearing conducted pursuant to this division is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state or federal court.

281—41.515(256B,34CFR300) Timelines and convenience of hearings.

41.515(1) *Timeline.* The public agency must ensure that not later than 45 days after the expiration of the 30-day period under subrule 41.510(2), or the adjusted time periods described in subrule 41.510(3):

- a.* A final decision is reached in the hearing; and
- b.* A copy of the decision is mailed to each of the parties.

41.515(2) Reserved.

41.515(3) *Extensions of time or continuances.* An administrative law judge may grant specific extensions of time or continuances beyond the periods set out in subrule 41.515(1) at the request of either party.

41.515(4) *Hearing time.* Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

281—41.516(256B,34CFR300) Civil action.

41.516(1) *General.* Any party aggrieved by the findings and decision made under this division has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under this division. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.516(2) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

41.516(3) *Additional requirements.* In any action brought under subrule 41.516(1), the court:

- a.* Receives the records of the administrative proceedings;
- b.* Hears additional evidence at the request of a party; and
- c.* Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

41.516(4) *Jurisdiction of United States district courts.* The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.

41.516(5) *Rule of construction.* Nothing in Part B of the Act or this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures under rules 281—41.507(256B,34CFR300) and 281—41.514(256B,34CFR300) must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.

281—41.517(256B,34CFR300) Attorneys' fees.

41.517(1) *General.* In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

- a.* The prevailing party who is the parent of a child with a disability;
- b.* To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- c.* To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) *Prohibition on use of funds.*

a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.

b. Paragraph 41.517(2) "a" does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) *Award of fees.* A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. Amount of fees. Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. When fees and costs may not be awarded.

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

2. The offer is not accepted within ten days; and

3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 281—41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 281—41.510(256B,34CFR300) shall not be considered either of the following:

1. A meeting convened as a result of an administrative hearing or judicial action; or

2. An administrative hearing or judicial action for purposes of this rule.

c. Exception to offer of settlement subrule. Notwithstanding 41.517(3)“b”(1), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. Reduction in attorney fees. Except as provided in 41.517(3)“e,” the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the Act, if the court finds that:

(1) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 281—41.508(256B,34CFR300).

e. Exception to reduction in fees subrule. The provisions of 41.517(3)“d” do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.

281—41.518(256B,34CFR300) Child's status during proceedings.

41.518(1) General. Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under rule 281—41.507(256B,34CFR300), unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

41.518(2) Initial admission to public school. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

41.518(3) Transition from Part C to Part B. If the complaint involves an application for initial services under this chapter from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has reached the age of three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial

provision of special education and related services under subrule 41.300(2), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

41.518(4) *Administrative law judge decision.* If the administrative law judge in a due process hearing conducted by the SEA agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of subrule 41.518(1).

41.518(5) *Mediation requested prior to the filing of a due process complaint.* Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in any such mediation conference must remain in his or her current educational placement.

281—41.519(256B,34CFR300) Surrogate parents.

41.519(1) *General.* Each public agency must ensure that the rights of a child are protected when:

- a. No parent as defined in rule 281—41.30(256B,34CFR300) can be identified;
- b. The public agency, after reasonable efforts, cannot locate a parent;
- c. The child is a ward of the state under the laws of the state; or
- d. The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

41.519(2) *Duties of public agency.* The duties of a public agency under subrule 41.519(1) include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

41.519(3) *Wards of the state.* In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge presiding in the child's case, provided that the surrogate meets the requirements in 41.519(4) "b"(1) and 41.519(5).

41.519(4) *Criteria for selection of surrogate parents.*

- a. The public agency may select a surrogate parent in any way permitted under state law.
- b. Public agencies must ensure that a person selected as a surrogate parent:
 - (1) Is not an employee of the SEA, the LEA, or any other public or private agency that is involved in the education or care of the child;
 - (2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
 - (3) Has knowledge and skills that ensure adequate representation of the child.

41.519(5) *Nonemployee requirement; compensation.* A person otherwise qualified to be a surrogate parent under subrule 41.519(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

41.519(6) *Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 41.519(4) "b"(1), until a surrogate parent can be appointed that meets all of the requirements of subrule 41.519(4).

41.519(7) *Surrogate parent responsibilities.* The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

41.519(8) *Training of surrogate parents.* Training will be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of a surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance. The department will provide continuing education and assistance to AEAs upon request.

41.519(9) *SEA responsibility.* The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—41.520(256B,34CFR300) Transfer of parental rights at age of majority.

41.520(1) *General.* The state provides, when a child with a disability (except for a child with a disability who has been determined to be incompetent under state law) reaches the age of majority under Iowa Code section 599.1, all of the following:

a. General rule.

(1) The public agency must provide any notice required by this chapter to both the child and the parents; and

(2) All rights accorded to parents under Part B of the Act transfer to the child.

b. Special rule: incarcerated eligible individuals. All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

c. Notice requirement. Whenever a state provides for the transfer of rights under Part B of the Act and this chapter pursuant to 41.520(1) “a” or “b,” the agency must notify the child and the parents of the transfer of rights.

41.520(2) *Special rules.* If a court appoints a guardian for an eligible individual who has attained the age of majority under subrule 41.520(1) and the court determines all decisions shall be made by the guardian or specifically determines all educational decisions should be made by the guardian, then rights under subrule 41.520(1) do not transfer but are exercised pursuant to any applicable orders of the court. If a court determines a child who has attained the age of majority under subrule 41.520(1) does not have capacity to make educational decisions under any other applicable statute, then rights under subrule 41.520(1) do not transfer and are exercised by the child’s parent or pursuant to court order. If and when state law provides that a competent authority may determine that an eligible individual who has attained the age of majority under subrule 41.520(1) and who has not been found incompetent by any court under this subrule, the department shall establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child’s eligibility under Part B of the Act if the child can be determined by the competent authority, by clear and convincing evidence, not to have the ability to provide informed consent with respect to the child’s educational program.

281—41.521 to 41.529 Reserved.

281—41.530(256B,34CFR300) Authority of school personnel.

41.530(1) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

41.530(2) *General.*

a. School personnel under this rule may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under rule 281—41.536(256B,34CFR300).

b. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.530(4).

41.530(3) *Additional authority.* For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined

not to be a manifestation of the child's disability pursuant to subrule 41.530(5), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in subrule 41.530(4).

41.530(4) Services.

a. A child with a disability who is removed from the child's current placement pursuant to subrule 41.530(3) or 41.530(7) must receive the following:

(1) Educational services, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(2) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. The services required by 41.530(4) "a" and "c" to "e" may be provided in an interim alternative educational setting.

c. A public agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, only if it provides services to a child without disabilities who is similarly removed.

d. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under rule 281—41.536(256B,34CFR300), school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

e. If the removal is a change of placement under rule 281—41.536(256B,34CFR300), the child's IEP team determines appropriate services under 41.530(4) "a."

41.530(5) Manifestation determination.

a. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the AEA, the LEA, the parent, and relevant members of the child's IEP team, as determined by the parent and the AEA and LEA, must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the failure by the AEA or LEA to implement the IEP.

b. The conduct must be determined to be a manifestation of the child's disability if the AEA, the LEA, the parent, and relevant members of the child's IEP team determine that a condition in either 41.530(5) "a"(1) or (2) was met.

c. If the AEA, the LEA, the parent, and relevant members of the child's IEP team determine the condition described in 41.530(5) "a"(2) was met, the public agency must take immediate steps to remedy those deficiencies.

41.530(6) Determination that behavior was a manifestation. If the AEA, the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must proceed as follows:

a. Conduct a functional behavioral assessment, unless the AEA or LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

c. Except as provided in subrule 41.530(7), return the child to the placement from which the child was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

41.530(7) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

41.530(8) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in rule 281—41.504(256B,34CFR300).

41.530(9) *Definitions.* For purposes of this rule, the following definitions apply:

a. *Controlled substance.* "Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

b. *Illegal drug.* "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

c. *Serious bodily injury.* "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

d. *Weapon.* "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code. A "weapon" under Iowa law is not necessarily a weapon for purposes of this rule unless it meets this definition of a "dangerous weapon."

281—41.531(256B,34CFR300) *Determination of setting.* The child's IEP team determines the interim alternative educational setting for services under 41.530(3), 41.530(4) "e," and 41.530(7).

281—41.532(256B,34CFR300) *Appeal.*

41.532(1) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under rules 281—41.530(256B,34CFR300) and 281—41.531(256B,34CFR300), or the manifestation determination under subrule 41.530(5), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to rule 281—41.507(256B,34CFR300) and subrules 41.508(1) and 41.508(2).

41.532(2) *Authority of administrative law judge.*

a. An administrative law judge under rule 281—41.511(256B,34CFR300) hears and makes a determination regarding an appeal under subrule 41.532(1).

b. In making the determination under subrule 41.532(1), the administrative law judge may do either of the following:

(1) Return the child with a disability to the placement from which the child was removed if the administrative law judge determines that the removal was a violation of rule 281—41.530(256B,34CFR300) or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that

maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

c. The procedures under 41.532(1) and 41.532(2)“*a*” and “*b*” may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

41.532(3) Expedited due process hearing.

a. Whenever a hearing is requested under subrule 41.532(1), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of rule 281—41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 281—41.510(256B,34CFR300) to 281—41.514(256B,34CFR300), except as provided in 41.532(3) “*b*” and “*c*.”

b. The department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge must make a determination within ten school days after the hearing.

c. Unless the parents and LEA agree in writing to waive the resolution meeting described in this paragraph, or agree to use the mediation process described in rule 281—41.506(256B,34CFR300), the procedure is as follows:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of all parties within 15 days of the receipt of the due process complaint.

d. Reserved.

e. The decisions on expedited due process hearings are appealable consistent with rule 281—41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

281—41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services.

41.534(1) General. A child who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this chapter if the public agency had knowledge, as determined in accordance with subrule 41.534(2), that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

41.534(2) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred any of the following occurred:

a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services;

b. The parent of the child requested an evaluation of the child pursuant to this chapter; or

c. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

41.534(3) Exception. A public agency would not be deemed to have knowledge under subrule 41.534(2) under the following conditions:

- a.* The parent of the child has not allowed an evaluation of the child pursuant to this chapter or has refused services under Part B of the Act or this chapter; or
- b.* The child has been evaluated in accordance with this chapter and determined not to be a child with a disability under Part B of the Act and this chapter.

41.534(4) Conditions that apply if no basis of knowledge.

a. General. If a public agency does not have knowledge that a child is a child with a disability, in accordance with subrules 41.534(2) and 41.534(3), prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with 41.534(4) “*b.*”

b. Request for evaluation.

(1) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under rule 281—41.530(256B,34CFR300), the evaluation must be conducted in an expedited manner.

(2) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(3) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with Part B of the Act and this chapter, including the requirements of rules 281—41.530(256B,34CFR300) to 281—41.536(256B,34CFR300) and Section 612(a)(1)(A) of the Act.

281—41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities.

41.535(1) Rule of construction. Nothing in Part B of the Act or this chapter prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

41.535(2) Transmittal of records.

a. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

b. An agency reporting a crime under this rule may transmit copies of the child’s special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, such as by obtaining consent (34 CFR Section 99.30) or in instances where disclosure without consent is permitted (34 CFR Section 99.31).

281—41.536(256B,34CFR300) Change of placement because of disciplinary removals.

41.536(1) General. For purposes of removals of a child with a disability from the child’s current educational placement under rules 281—41.530(256B,34CFR300) to 281—41.535(256B,34CFR300), a change of placement occurs under the following circumstances:

- a.* The removal is for more than ten consecutive school days; or
- b.* The child has been subjected to a series of removals that constitute a pattern based on the following:
 - (1) The series of removals total more than ten school days in a school year;
 - (2) The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - (3) Additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

41.536(2) Rules of construction.

a. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

b. This determination is subject to review through due process and judicial proceedings.

c. Nothing in this rule shall be construed to prohibit LEAs from establishing policies that a change of placement occurs on the eleventh cumulative day of removal, regardless of the factors set forth in 41.536(1)“b.”

41.536(3) *In-school suspensions and other actions.* In determining whether an in-school suspension or other disciplinary action is to be considered a removal for purposes of this rule, an in-school suspension or other disciplinary action will not be considered a removal if all three of the following questions are answered in the affirmative:

- a. Will the child be able to appropriately participate in the general education curriculum?
- b. Will the child be able to receive the services specified in the child’s IEP?
- c. Will the child be able to participate with children without disabilities to the extent provided in the child’s current placement?

281—41.537(256B,34CFR300) State enforcement mechanisms. Notwithstanding 41.506(2)“g” and 41.510(4)“b,” which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in Part B of the Act that would prevent the department from using other mechanisms to seek enforcement of that agreement, such as the state complaint procedure, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—41.538 to 41.599 Reserved.

DIVISION VIII
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

281—41.600(256B,34CFR300) State monitoring and enforcement.

41.600(1) *General.* The state must monitor the implementation of Part B of the Act and this chapter, enforce this chapter in accordance with rule 281—41.604(256B,34CFR300), and annually report on performance under Part B of the Act and this chapter.

41.600(2) *Primary focus of monitoring activity.* The primary focus of the state’s monitoring activities must be on the following:

- a. Improving educational results and functional outcomes for all children with disabilities; and
- b. Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

41.600(3) *Indicators of performance and compliance.* As a part of its responsibilities under subrule 41.600(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 41.600(4) and the indicators established by the Secretary for the state performance plans.

41.600(4) *Priority indicators.* The state must monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas and using such qualitative indicators as are needed to adequately measure performance in those areas:

- a. Provision of FAPE in the least restrictive environment.
- b. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in rule 281—41.43(256B,34CFR300) and in 20 U.S.C. 1437(a)(9).
- c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

41.600(5) *Correction of noncompliance.* In exercising its monitoring responsibilities under subrule 41.600(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by an LEA, the noncompliance is corrected as soon as possible, but in no case later than one year after the state’s identification of the LEA’s noncompliance.

281—41.601(256B,34CFR300) State performance plans and data collection.

41.601(1) General. Each state must have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the Act and describes how the state will improve such implementation.

a. Each state must submit the state's performance plan to the Secretary for approval in accordance with the approval process described in Section 616(c) of the Act.

b. Each state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

c. As part of the state performance plan, each state must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR Section 300.600(d).

41.601(2) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects the data through state monitoring or sampling, the state must collect data on those indicators for each LEA at least once during the period of the state performance plan.

281—41.602(256B,34CFR300) State use of targets and reporting.

41.602(1) General. The state shall use the targets established in the state's performance plan under rule 281—41.601(256B,34CFR300) and the priority areas described in subrule 41.600(4) to analyze the performance of each LEA.

41.602(2) Public reporting and privacy.

a. Public report. The state must:

(1) Report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report under 41.602(2) "b"; and

(2) Make the state's performance plan, the state's annual performance reports, and annual reports on the performance of each LEA located in the state available through public means, including, at a minimum, by posting these documents on the website of the department, distribution to the media, and distribution through public agencies.

(3) If the state collects performance data through state monitoring or sampling, the state must include in its report under 41.602(2) "a"(1) the most recently available performance data on each LEA, and the date the data were obtained.

b. State performance report. The state shall report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data are insufficient to yield statistically reliable information.

281—41.603(256B,34CFR300) Department review and determination regarding public agency performance.

41.603(1) Review. The state shall annually review the performance of each LEA and AEA, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

41.603(2) Determination. Based on the information obtained and reviewed by the state, the state shall determine whether each LEA and AEA:

a. Meets the requirements and purposes of Part B of the Act and of this chapter;

b. Needs assistance in implementing the requirements of Part B of the Act and of this chapter;

c. Needs intervention in implementing the requirements of Part B of the Act and of this chapter;

or

d. Needs substantial intervention in implementing the requirements of Part B of the Act and of this chapter.

41.603(3) *Criteria for determination.* The department shall develop criteria for making the determinations required by subrule 41.603(2).

41.603(4) *Variance of determination.* In making the determination required by subrule 41.603(2), the SEA in its discretion may adjust or vary from the criteria described in subrule 41.603(3) based on unusual, unanticipated, or extraordinary aggravating or mitigating factors, on a case-by-case basis.

41.603(5) *Notice and opportunity for a hearing.* For determinations made under 41.603(2) “*a*” or “*b*,” the state shall provide reasonable notice of its determination. For determinations made under 41.603(2) “*c*” or “*d*,” the state shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to an AEA or LEA; however, if withholding of funds is a remedy associated with a particular determination, the state shall provide a hearing under rule 281—41.605(256B,34CFR300). Under any hearing granted under this rule or rule 281—41.605(256B,34CFR300), the AEA or LEA must demonstrate that the state abused its discretion in making the determination described in subrule 41.603(2).

281—41.604(256B,34CFR300) Enforcement.

41.604(1) *Needs assistance.* If the state determines for two consecutive years that an LEA or AEA needs assistance under 41.603(2) “*b*” in implementing the requirements of Part B of the Act, the state shall take one or more of the following actions:

a. Advise the LEA or AEA of available sources of technical assistance that may help the LEA or AEA to address the areas in which it needs assistance, which may include assistance from the Iowa department of education, other state agencies, technical assistance providers approved by the Secretary, and other federally funded and state-funded nonprofit agencies, and require it to work with appropriate entities. Such technical assistance may include any of the following:

(1) The provision of advice by experts to address the areas in which the LEA or AEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(3) Designating and using distinguished superintendents, principals, special education administrators, special education teachers and other teachers to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the LEA or AEA as a high-risk grantee and impose special conditions on its grant under Part B of the Act.

41.604(2) *Needs intervention.* If the state determines for three or more consecutive years that an LEA or AEA needs intervention under 41.603(2) “*c*” in implementing the requirements of Part B of the Act, the following shall apply:

a. The state may take any of the actions described in subrule 41.604(1).

b. The state shall take one or more of the following actions:

(1) Require the LEA or AEA to prepare a corrective action plan or improvement plan if the state determines that the LEA or AEA should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the AEA or LEA under Part B of the Act.

41.604(3) *Needs substantial intervention.* Notwithstanding subrule 41.604(1) or 41.604(2), at any time that the state determines that an LEA or AEA needs substantial intervention in implementing the requirements of Part B of the Act or of this chapter or that there is a substantial failure to comply with any condition of an LEA’s eligibility or an AEA’s eligibility under Part B of the Act or this chapter, the state shall take one or more of the following actions:

a. Withhold, in whole or in part, any further payments to the LEA or AEA under Part B of the Act.

b. Refer the matter for appropriate enforcement action, which may include referral to the Iowa department of justice or the auditor of state.

41.604(4) *Rule of construction.* The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the state's disposal in its enforcement of this rule or any other rule in this chapter.

281—41.605(256B,34CFR300) Withholding funds.

41.605(1) *General.* As a consequence of a determination made under rule 281—41.603(256B,34CFR300) or enforcement of any provision of Part B of the Act and this chapter, the state may withhold some or all of the funds from an AEA or LEA or a program or service of an AEA or LEA, or may direct an AEA to withhold all or some funds from an LEA or a program or service of an LEA.

41.605(2) *Hearing.* If the state intends to withhold funds, the state shall provide notice and an opportunity for a hearing to the AEA or LEA. If a hearing is requested, the state may suspend payments to an AEA or LEA, or suspend the authority of the AEA or LEA to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part B of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 41.605(1).

41.605(3) *Reinstatement.* If the LEA or AEA substantially rectifies the condition that prompted the initial withholding under subrule 41.605(1), then the state may reinstate payments to the LEA or AEA. If an LEA or AEA disagrees with the state's decision that it has not substantially rectified the condition that prompted the initial withholding under subrule 41.605(1), the LEA or AEA may request a hearing under subrule 41.605(2).

281—41.606(256B,34CFR300) Public attention. Any LEA or AEA that has received notice under 41.603(2) "*b*," "*c*," or "*d*" must, by means of a public notice, take such measures as may be necessary to notify the public within the LEA or AEA of such notice and of the pendency of an action taken pursuant to rule 281—41.604(256B,34CFR300).

281—41.607 Reserved.

281—41.608(256B,34CFR300) State enforcement.

41.608(1) *Prohibition on reduction of maintenance of effort.* If the state determines that an LEA or AEA is not meeting the requirements of Part B of the Act, including the targets in the state's performance plan, the state must prohibit the LEA or AEA from reducing its maintenance of effort under rule 281—41.203(256B,34CFR300) for any fiscal year.

41.608(2) *Rule of construction.* Nothing in this chapter shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act or of this chapter.

281—41.609(256B,34CFR300) State consideration of other state or federal laws. In making the determinations required by rule 281—41.603(256B,34CFR300), in ordering actions pursuant to rule 281—41.604(256B,34CFR300), and in taking any other action under this chapter, the department may consider whether any agency has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of any such law.

281—41.610(256B,34CFR300) Confidentiality. The state shall take appropriate action, in accordance with Section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the state

and by LEAs and AEAs pursuant to Part B of the Act and this chapter, and consistent with rules 281—41.611(256B,34CFR300) to 281—41.626(256B,34CFR300).

281—41.611(256B,34CFR300) Definitions. The following definitions apply to rules 281—41.611(256B,34CFR300) to 281—41.625(256B,34CFR300).

“Destruction” means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

“Education records” means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

“Participating agency” means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act or this chapter.

281—41.612(256B,34CFR300) Notice to parents.

41.612(1) General. The department must give notice that is adequate to fully inform parents about the requirements of rule 281—41.123(256B,34CFR300), including the following information:

- a.* A description of the extent that the notice is given in the native languages of the various population groups in the state;
- b.* A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;
- c.* A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- d.* A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99.

41.612(2) Media announcements required. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

281—41.613(256B,34CFR300) Access rights.

41.613(1) General. Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to rule 281—41.507(256B,34CFR300) or rules 281—41.530(256B,34CFR300) to 281—41.532(256B,34CFR300), or resolution session pursuant to rule 281—41.510(256B,34CFR300), and in no case more than 45 days after the request has been made.

41.613(2) Extent of right to inspect and review. The right to inspect and review education records under this rule includes the following:

- a.* The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- b.* The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- c.* The right to have a representative of the parent inspect and review the records.

41.613(3) Who may inspect and review. An agency may presume that the parent has authority to inspect and review records relating to the parent’s child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

281—41.614(256B,34CFR300) Record of access. Each participating agency must keep a record of parties that obtain access to education records collected, maintained, or used under Part B of the Act,

except access by parents and authorized employees of the participating agency, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

281—41.615(256B,34CFR300) Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—41.616(256B,34CFR300) List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

281—41.617(256B,34CFR300) Fees.

41.617(1) Fees for copies in certain circumstances. Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

41.617(2) No fees permitted for record retrieval. A participating agency may not charge a fee to search for or to retrieve information under this chapter.

281—41.618(256B,34CFR300) Amendment of records at parent's request.

41.618(1) Parent may request amendment. A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

41.618(2) Agency to act on parent's request. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

41.618(3) Agency to inform parent of hearing rights. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—41.619(256B,34CFR300).

281—41.619(256B,34CFR300) Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

281—41.620(256B,34CFR300) Result of hearing.

41.620(1) Information to be amended. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

41.620(2) Information not to be amended. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

41.620(3) Explanation placed in student records. Any explanation placed in the records of the child under this rule must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and, if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—41.621(256B,34CFR300) Hearing procedures. A hearing held under rule 281—41.619(256B,34CFR300) must be conducted according to the procedures in 34 CFR 99.22.

281—41.622(256B,34CFR300) Consent.

41.622(1) When parental consent required. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance

with subrule 41.622(2), unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

41.622(2) *When parental consent not required.* Except as provided in subrules 41.622(3) and 41.622(4), parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

41.622(3) *Parental consent required related to transition.* Parental consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 41.321(2) “c.”

41.622(4) *Parental consent required relating to students enrolled in certain private schools.* If a child is enrolled or is going to enroll in a private school that is not located in the LEA and AEA of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA and AEA where the private school is located and officials in the LEA and AEA of the parent’s residence.

281—41.623(256B,34CFR300) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures under rule 281—41.123(256B,34CFR300) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.624(256B,34CFR300) Destruction of information.

41.624(1) *Parents to be informed when information no longer required.* The public agency must inform parents when personally identifiable information collected, maintained, or used under Part B of the Act or this chapter is no longer needed to provide educational services to the child.

41.624(2) *Mandatory and permissive destruction of information.* The information must be destroyed at the request of the parents. However, a permanent record of a student’s name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. This permanent record must contain the information required by rule 281—12.3(256).

41.624(3) *Rule of construction—no longer needed to provide educational services to the child.* For purposes of this rule, “no longer needed to provide educational services” means that a record is no longer relevant to the provision of instructional, support, or related services and it is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.

281—41.625(256B,34CFR300) Children’s rights.

41.625(1) *General.* The state must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

41.625(2) *Transfer of rights under FERPA.* Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at the age of 18.

41.625(3) *Transfer of rights under Part B of the Act.* If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with rule 281—41.520(256B,34CFR300), the rights regarding educational records in rules 281—41.613(256B,34CFR300) to 281—41.624(256B,34CFR300) must also be transferred to the student. However, the public agency must provide any notice required under Section 615 of the Act to the student and the parents.

281—41.626(256B,34CFR300) Enforcement. The state must have in effect policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with rules 281—41.611(256B,34CFR300) to 281—41.625(256B,34CFR300) are followed and that the requirements of the Act and the rules in this chapter are met.

281—41.627 to 41.639 Reserved.

281—41.640(256B,34CFR300) Annual report of children served—report requirement. The SEA must annually report to the Secretary on the information required by Section 618 of the Act at the times specified by the Secretary, and on forms provided by the Secretary.

281—41.641(256B,34CFR300) Annual report of children served—information required in the report.

41.641(1) *Date of count.* For purposes of the annual report required by Section 618 of the Act and rule 281—41.640(256B,34CFR300), the state and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

41.641(2) *Child's age.* For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

41.641(3) *Count each child under only one disability category.* The SEA may not report a child under more than one disability category.

41.641(4) *Child with more than one disability.* If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

a. If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness.”

b. A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities.”

281—41.642(256B,34CFR300) Data reporting.

41.642(1) *Protection of personally identifiable data.* The data described in Section 618(a) of the Act and in rule 281—41.641(256B,34CFR300) must be publicly reported by each state in a manner that does not result in disclosure of data identifiable to individual children.

41.642(2) *Sampling permitted.* The Secretary permits the SEA to obtain data in Section 618(a) of the Act through sampling.

281—41.643(256B,34CFR300) Annual report of children served—certification. The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under rule 281—41.640(256B,34CFR300) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

281—41.644(256B,34CFR300) Annual report of children served—criteria for counting children. The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that provides them with both special education and related services that meet state standards; provides them only with special education, if a related service is not required, that meets state standards; or, in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet state standards under rules 281—41.132(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

281—41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA. In addition to meeting the other requirements of rules 281—41.640(256B,34CFR300) to 281—41.644(256B,34CFR300), the SEA must establish procedures to be used by LEAs and other

educational institutions in counting the number of children with disabilities receiving special education and related services; set dates by which those agencies and institutions must report to the SEA to ensure that the state complies with rule 281—41.640(256B,34CFR300); obtain certification from each agency and institution that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each agency and institution, and prepare the reports required under rules 281—41.640(256B,34CFR300) to 281—41.644(256B,34CFR300); and ensure that documentation is maintained that enables the state and the Secretary to audit the accuracy of the count.

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) General. Using the methodology required by rule 281—41.647(256B,34CFR300), the state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1) and rule 281—41.647(256B,34CFR300), the state must proceed as follows:

a. Provide for the annual review and, if appropriate, revision of the policies, procedures, and practices used in the identification, placement, or disciplinary actions to ensure that the policies, procedures, and practices comply with the requirements of the Act; and

b. Require the LEA to publicly report on the revision of policies, practices, and procedures described under 41.646(2) “*a*” in a manner consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the Act.

41.646(3) Comprehensive coordinated early intervening services. Except as provided in subrule 41.646(4), any LEA identified under subrule 41.646(1) shall reserve the maximum amount of funds under Section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

a. In implementing comprehensive coordinated early intervening services, an LEA:

(1) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.

(2) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.

(3) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

b. An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified under subrule 41.646(1), including:

(1) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(2) Children with disabilities.

c. An LEA may not limit the provision of comprehensive coordinated early intervening services under this subrule to children with disabilities.

41.646(4) *Exception to comprehensive coordinated early intervening services.* The state shall not require any LEA that serves only children with disabilities identified under subrule 41.646(1) to reserve funds to provide comprehensive coordinated early intervening services.

41.646(5) *Rule of construction.* Nothing in this rule authorizes the state or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this chapter, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

281—41.647(256B,34CFR300) Determining significant disproportionality.

41.647(1) *Definitions.*

“Alternate risk ratio” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

“Comparison group” consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

“Minimum cell size” is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“Minimum n-size” is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“Risk” is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

“Risk ratio” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

“Risk ratio threshold” is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant under subrule 41.646(1).

41.647(2) *Significant disproportionality determinations.* In determining whether significant disproportionality exists in the state or LEA under subrule 41.646(1), the state must do all of the following:

a. *General.* The state must set a:

- (1) Reasonable risk ratio threshold;
- (2) Reasonable minimum cell size;
- (3) Reasonable minimum n-size; and
- (4) Standard for measuring reasonable progress if the state uses the flexibility described in paragraph 41.647(4) “b.”

b. *Flexibility.* The state may, but is not required to, set the standards set forth in paragraph 41.647(2) “a” at different levels for each of the categories described in paragraphs 41.647(2) “f” and 41.647(2) “g.”

c. *Development and review of standards.* The standards set forth in paragraph 41.647(2) “a”:

- (1) Must be based on advice from stakeholders, including state advisory panels, as provided under Section 612(a)(21)(D)(iii) of the Act; and
- (2) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with Section 616 of the Act.

d. Presumption of reasonability. When monitoring for reasonableness under subparagraph 41.647(2)“c”(2), the following are presumptively reasonable:

- (1) A minimum cell size under subparagraph 41.647(2)“a”(2) no greater than ten; and
- (2) A minimum n-size under subparagraph 41.647(2)“a”(3) no greater than 30.

e. Application. The state must apply the risk ratio threshold or thresholds determined in paragraph 41.647(2)“a” to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs 41.647(2)“f” and 41.647(2)“g” and the following racial and ethnic groups:

- (1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;
- (2) American Indian or Alaska Native;
- (3) Asian;
- (4) Black or African American;
- (5) Native Hawaiian or Other Pacific Islander;
- (6) White; and
- (7) Two or more races.

f. Calculation of risk ratio: identification. Except as provided in paragraph 41.647(2)“h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)“e” with respect to:

- (1) The identification of children ages 3 through 21 as children with disabilities; and
- (2) The identification of children ages 3 through 21 as children with the following impairments:
 1. Intellectual disabilities;
 2. Specific learning disabilities;
 3. Emotional disturbance;
 4. Speech or language impairments;
 5. Other health impairments; and
 6. Autism.

g. Calculation of risk ratio: placement and disciplinary removals. Except as provided in paragraph 41.647(2)“h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)“e” with respect to the following placements into particular educational settings, including disciplinary removals:

- (1) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;
- (2) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;
- (3) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of ten days or fewer;
- (4) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than ten days;
- (5) For children with disabilities ages 3 through 21, in-school suspensions of ten days or fewer;
- (6) For children with disabilities ages 3 through 21, in-school suspensions of more than ten days; and
- (7) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

h. Alternate risk ratio. The state must calculate an alternate risk ratio with respect to the categories described in paragraphs 41.647(2)“f” and 41.647(2)“g” if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.

i. Identification as having significant disproportionality. Except as provided in subrule 41.647(4), the state must identify as having significant disproportionality based on race or ethnicity under subrule 41.646(1) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 41.647(2)“f” and 41.647(2)“g” that exceeds the risk ratio threshold set by the state for that category.

j. Reporting under this subrule to the Secretary. The state must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under subparagraphs 41.647(2)“a”(1) through 41.647(2)“a”(4), and the rationales for each, to the U.S. Department of Education at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 41.647(2)“d” must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the state is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

41.647(3) Exception. The state is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs 41.647(2)“f,” 41.647(2)“g,” and 41.647(2)“h,” to determine significant disproportionality if:

a. The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or

b. In calculating the alternate risk ratio under paragraph 41.647(2)“h,” the comparison group in the state does not meet the minimum cell size or minimum n-size.

41.647(4) Flexibility. The state is not required to identify an LEA as having significant disproportionality based on race or ethnicity under subrule 41.646(1) until:

a. The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category described in paragraphs 41.647(2)“f” and 41.647(2)“g” for up to three prior consecutive years preceding the identification; and

b. The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

41.647(5) Rule of construction. Nothing in this rule shall be construed to require identification or classification of any child by impairment.

281—41.648 to 41.699 Reserved.

DIVISION IX
RESERVED

281—41.700 to 41.799 Reserved.

DIVISION X
PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

281—41.800(256B,34CFR300) General rule. The Secretary provides grants under Section 619 of the Act to assist states to provide special education and related services in accordance with Part B of the Act to children with disabilities aged three through five years; and, at a state’s discretion, to two-year-old children with disabilities who will turn three during the school year.

281—41.801 to 41.803 Reserved.

281—41.804(256B,34CFR300) Eligibility. A state is eligible for a grant under Section 619 of the Act if the state is eligible under Section 612 of the Act to receive a grant under Part B of the Act and makes FAPE available to all children with disabilities, aged three through five, residing in the state.

281—41.805 Reserved.

281—41.806(256B,34CFR300) Eligibility for financial assistance. No state or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under Subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the state is eligible to receive a grant under Section 619(b) of the Act.

281—41.807 to 41.812 Reserved.

281—41.813(256B,34CFR300) State administration.

41.813(1) General. For the purpose of administering Section 619 of the Act, including the coordination of activities under Part B of the Act with and providing technical assistance to other programs that provide services to children with disabilities, the state may use not more than 20 percent of the maximum amount the state may reserve under rule 281—41.812(256B,34CFR300) for any fiscal year.

41.813(2) Use for administering Part C. Funds described in subrule 41.813(1) may also be used for the administration of Part C of the Act.

281—41.814(256B,34CFR300) Other state-level activities. The state must use any funds the state reserves under rule 281—41.812(256B,34CFR300) and does not use for administration under rule 281—41.813(256B,34CFR300) for other state-level activities, consistent with 34 CFR Section 300.814.

281—41.815(256B,34CFR300) Subgrants to AEAs. The state shall make subgrants to AEAs consistent with 34 CFR Section 300.815.

281—41.816(256B,34CFR300) Allocations to AEAs. The state must allocate to AEAs the amount described in rule 281—41.815(256B,34CFR300), consistent with 34 CFR Section 300.816.

281—41.817(256B,34CFR300) Reallocation of AEA funds. The state shall reallocate AEA funds under conditions listed and in a manner specified by 34 CFR Section 300.817.

281—41.818(256B,34CFR300) Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under Section 619 of the Act.

281—41.819 to 41.899 Reserved.

DIVISION XI
ADDITIONAL RULES CONCERNING FINANCE AND PUBLIC ACCOUNTABILITY

281—41.900 Reserved.

281—41.901(256B,282) Records and reports. Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum: licensure (certification) and endorsements or recognition requirements for all special education personnel under rules 281—41.401(256B,34CFR300) to 281—41.403(256B); all IEP and IFSP meetings and three-year reevaluations for each eligible individual; and data required for federal and state reporting.

281—41.902(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.903(256B,282) Contractual agreements.

41.903(1) General. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

41.903(2) Specific requirements. Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals maintain responsibility for individuals receiving such special education and related services by:

- a.* Ensuring that all the requirements related to the development of each eligible individual's IEP are met.
- b.* Requiring and reviewing periodic progress reports to ensure the adequacy and appropriateness of the special education and related services provided.
- c.* Conditioning payments on delivery of special education and related services in accordance with the eligible individual's IEP and in compliance with these rules.

281—41.904(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.905(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 will be furnished in a manner consistent with these rules.

281—41.906(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, will be funded through procedures as provided for special education support services. Approved extended school year instructional programs will be funded through procedures as provided for special education instructional programs.

281—41.907(256B,282,34CFR300,303) Program costs.

41.907(1) *Nonresident individual.* Subject to subrule 41.131(6), the program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.907(2) *Contracted special education.* An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies that provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.907(3) *LEA responsibility.* The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as eligible in accordance with these rules unless required by 34 CFR Section 300.104.

41.907(4) *Support service funds.* Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.907(5) *Responsibility for special education for children living in a foster care facility or treatment facility.*

a. Eligible individuals who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement shall remain enrolled in and attend an accredited school in the school district in which the child resided and is enrolled at the time of placement, unless it is determined by the juvenile court or a public or private agency of this state that has responsibility for the child's placement that remaining in such school is not in the best interests of the child. If such a determination is made, the child may be enrolled in the district in which the child is placed and not in the district in which the child resided prior to receiving foster care. The costs of the special education required by this chapter shall be paid, in either case, by the school district of residence of the eligible individual.

b. For eligible individuals who are living in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education shall be paid by the school district of residence of the eligible individual.

c. If the school district of residence of the eligible individual cannot be determined and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.907(6) *Responsibility for special education for individuals after termination of parental rights.* For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.907(7) *Proper use of special education instructional and support service funds.* Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant instructional services under subrule 41.410(1) and special education consultant services that shall utilize special education support service funds for both in-state and out-of-state placements.

41.907(8) *Funding of ECSE instructional options.* Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more of instruction per week. The total hours of participation in special education and general education may be combined to constitute a full-time program.

b. Part-time ECSE instructional services shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education may be combined to constitute a part-time program.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.907(9) *Funding for instructional services.* After an LEA board approves a delivery system for instructional services as described in subrule 41.408(2), the director, in accordance with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. The level of service assigned shall not be a factor in a services or placement decision, and shall be made only after those decisions have been made. One of three levels of service shall be assigned by the director:

a. *Level I.* A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1) "b")

b. *Level II.* A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1) "c")

c. *Level III.* A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1) "d")

41.907(10) *Procedures for billing under subrules 41.907(5) and 41.907(6).* The department may establish procedures by which it determines which district initially pays the costs of special education

and related services and seeks reimbursement in situations where a parent of a child cannot be located, parental rights have been terminated, or parents are deceased.

281—41.908(256B,282) Accountability. The responsible agency shall provide special education and related services in accordance with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP, so long as the individual's IEP was reasonably calculated to confer education benefit and was implemented. Nothing in this rule or this chapter is to be construed to create a right of action against any individual.

281—41.909 to 41.999 Reserved.

DIVISION XII
PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

281—41.1000 and 41.1001

281—41.1002(256B,34CFR300) Special education mediation conference.

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education mediation conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint. The mediation conference shall comply with rule 281—41.506(256B,34CFR300).

a. A request for a special education mediation conference may be in the form of a letter or a pleading or on a form provided by the department. The request will identify the student, LEA and AEA and set forth the facts, the issues of concern, or the reasons for the conference. The letter will be provided to the department, to the AEA, and to the LEA.

b. Within five business days of receipt of the request for the conference, the department will contact all pertinent parties to determine whether participation is desired.

c. A mediation conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The student's complete school record will be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the conference.

e. The individual's complete school record will be available to the participants at the conference if the record is requested in writing at least ten calendar days prior to any scheduling conference call or within two days following the scheduling conference call. The parties may agree to make less than the complete educational record available, or make no educational records available, at the mediation conference.

f. A mediator provided by the department will preside over the conference.

g. If an agreement is reached, a document meeting the requirements of 41.506(2)“f” will be executed.

h. If agreement is not reached at the conference, all parties will be informed of the procedures for filing a due process complaint.

41.1002(2) Placement during proceedings. Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the mediation conference must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) Withdrawals or automatic closures. The initiating party may request a withdrawal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The conference is held, the parties are able to reach an agreement, and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) Confidentiality of discussions. Discussions that occur during the special education mediation conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

281—41.1003(17A,256B) Procedures concerning due process complaints. Due process hearings will be conducted pursuant to these rules, the rules of the department of inspections, appeals, and licensing, and any order made by the presiding administrative law judge.

281—41.1004 to 41.1008 Reserved.

281—41.1009(17A,256B) Witnesses.

41.1009(1) Subpoenas. The director of education has the power to issue, but not to serve, subpoenas for witnesses and to compel the attendance of those thus served and the giving of evidence by them. The subpoenas will be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.1009(2) Attendance of witness compelled. Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.1009(3) Cross-examination. Witnesses at the hearing are subject to cross-examination. An individual whose testimony has been submitted in written form, if available, will be subject to cross-examination by any party necessary for a full and true disclosure of the facts. If the individual is not available and cross-examination is necessary for a full and true disclosure of the facts, the administrative law judge may exclude the individual's testimony in written form.

281—41.1010(17A,256B) Rules of evidence.

41.1010(1) Receiving relevant evidence. Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence that will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.1010(2) Acceptable evidence. Irrelevant, immaterial or unduly repetitious evidence will be excluded. The kind of evidence reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge will give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing is expedited and the interests of the parties are not prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.1010(3) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.1010(4) Administrative notice and opportunity to contest. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties will be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.1010(5) *Discovery.* Discovery procedures applicable to civil actions are available to all parties in due process hearings under this chapter. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. The administrative law judge may exercise such control over discovery, including its nature, scope, frequency, duration, or sequence, as permitted by the Iowa rules of civil procedure, and for such grounds as those rules may provide.

41.1010(6) *Administrative law judge may evaluate evidence.* The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.1010(7) *Decision.* A decision will be made upon consideration of the whole record or such portions that are supported by and in accordance with reliable, probative and substantial evidence.

281—41.1011(17A,256B) Communications.

41.1011(1) *Restrictions on communications—administrative law judge.* The administrative law judge will not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.1011(2) *Restrictions on communications—parties.* Parties or their representatives will not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication will submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.1011(3) *Sanctions.* Any or all of the following sanctions may be imposed upon a party who violates this rule: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.1012(17A,256B) Record.

41.1012(1) *Transcripts.* All recordings or notes by certified court reporters of oral proceedings or the transcripts thereof will be maintained and preserved by the department for at least five years from the date of decision.

41.1012(2) *Hearing record.* The record of a hearing will be maintained and preserved by the department for at least five years from the date of the decision. The record under this division includes the following:

- a.* All pleadings, motions and intermediate rulings.
- b.* All evidence received or considered and all other submissions.
- c.* A statement of matters officially noted.
- d.* All questions and offers of proof, objections and rulings thereof.
- e.* All proposed findings and exceptions.
- f.* Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.1013 Reserved.

281—41.1014(17A,256B) Finality of decision.

41.1014(1) *Decision final.* The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.1014(2) *Notice to department of a civil action.* A party initiating a civil action in state or federal court under rule 281—41.516(256B,34CFR300) shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

41.1014(3) *Filing of certified administrative record.* The department shall file a certified copy of the administrative record within 30 days of receiving the informational copy referred to in subrule 41.1014(2).

281—41.1015(256B,34CFR300) Disqualification of mediator. Any party may request an appointment of a new mediator for any reason listed in subrule 41.1004(1). The department will determine whether such grounds exist and, if so, shall appoint a new mediator.

281—41.1016(17A) Correcting decisions of administrative law judges. An administrative law judge may, on the motion of any party or on the administrative law judge's own motion, correct any error in a decision or order under this chapter that does not substantively alter the administrative law judge's findings of fact, conclusions of law, or ordered relief, including clerical errors, errors in grammar or spelling, and errors in the form of legal citation. Any such correction will be made within 90 days of the date of the order or decision, will relate back to the date of the order or decision, and will not extend any applicable statute of limitations.

281—41.1017 to 41.1099 Reserved.

DIVISION XIII
ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

281—41.1100(256B,34CFR300) References to Code of Federal Regulations. All references in this chapter to regulations found at Part 300 of Title 34 of the Code of Federal Regulations (34 CFR Part 300) are to those final regulations published in the Federal Register on August 14, 2006 (71 Fed. Reg. 46540). All references to any other regulation found elsewhere in Title 34 of the Code of Federal Regulations are to the volume published on July 1, 2006.

281—41.1101(256B,34CFR300) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity remains valid.

281—41.1102(256B,34CFR300) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, is to be construed in a manner consistent with federal law and shall not be construed to confer any different or greater right or responsibility under this chapter.

These rules are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and Part 300 of Title 34 of the Code of Federal Regulations published in the Federal Register on August 14, 2006.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 43
“Pupil Transportation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 285.8
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 285

Public Hearing

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

January 2, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking is intended to benefit the approximately 250,000 Iowa children transported by school buses in Iowa each school day, by ensuring their transportation is safe and efficient.

The current chapter contains verbatim statutory language, unnecessarily restrictive terms, and unenforceable aspirational language. The Department proposes eliminating that language and consolidating rules with similar subject matter to improve the end user’s experience.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts bear the costs of compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s children and families will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact of this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of the proposed rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Department enforces this chapter, with costs offset by the Department's appropriation.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 43 and adopt the following **new** chapter in lieu thereof:

TITLE VIII SCHOOL TRANSPORTATION

CHAPTER 43 PUPIL TRANSPORTATION

DIVISION I TRANSPORTATION ROUTES

281—43.1(285) Intra-area education agency routes.

43.1(1) Bus routes within the boundaries of transporting districts as well as within designated areas will be as efficient and economical as possible under existing conditions.

43.1(2) The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, will not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. A school district may extend the riding time limits up to 15 minutes subsequent to a public hearing. (These limits may be waived upon request of the parents.)

43.1(3) Pupils whose residence is within two miles of an established stop on a bus route are within the area served by the bus and are not eligible for parent or private transportation at public expense to the school served by the bus, except as follows:

- a. Bus is fully loaded.
- b. Physical disability makes bus transportation impractical.

All parents or guardians who are required by their school district to furnish transportation for their children up to two miles to an established stop on a bus route shall be reimbursed pursuant to Iowa Code section 285.1(4).

43.1(4) Transporting districts are to arrange routes to provide the greatest possible convenience to the pupils. The distance for pupils who are required to travel to meet the bus is to be kept to the minimum consistent with road conditions, uniform standards, and legal provisions for locating bus routes.

43.1(5) Each bus route will be reviewed annually by local transportation staff for safety hazards, and a record of the annual review maintained.

281—43.2(285) Interarea education agency routes.

43.2(1) Joint consultation will be held by the area education agency boards involved. The initial steps may be undertaken by the area education agency administrators. If there are no difficulties and agreement is reached, the route is approved and no further action need be taken.

43.2(2) If agreement is not reached in the initial attempt, the administrator of the area education agency in which the applying school is located will advise the superintendent of reasons for failure to reach agreement and request that the superintendent revise the transportation plan to meet the objection and resubmit same.

43.2(3) If the area education agency boards do not reach agreement on the route, the home area education agency administrator will forward the complete record of the case together with disapproved transportation plan to the state department of education. Every effort should be made, however, to settle the matter locally.

43.2(4) All legal provisions, standards and regulations applying to approval and operation of bus routes apply equally to interarea education agency bus routes.

43.2(5) All interarea education agency bus routes are to be approved each year. If there has been no change in the designations, nor in the proposed route, the transportation plan may be made and agreement indicated by letter.

DIVISION II
PRIVATE CONTRACTORS

281—43.3(285) Contract necessary. All private contractors wishing to transport pupils to and from school in privately owned vehicles are to be under contract with the local board of education. This rule does not apply to individuals who transport their own children or other children on a not-for-hire basis.

The contract will include, but not be limited to, all provisions prescribed by the department of education.

281—43.4(285) Uniform charge. The contract will provide for a uniform charge for all pupils transported. No differentiations may be made between pupils of different districts except as provided in Iowa Code section 285.1(12). A private contractor may establish a variance in fees when differences in how transportation is provided are necessary in order to meet student needs.

281—43.5(285) Board to be a party. The contractor may not arrange with individual families for transportation. The contractor undertakes to transport only those families indicated by the board of education.

281—43.6(285) Contract with parents. Parents, guardians, or custodians undertaking to transport other children for hire, in addition to their own, are private contractors. These individuals are to be under contract and obtain an appropriate driver's license and a school bus driver's authorization.

281—43.7(285) Vehicles. Any vehicle used, other than that used by individuals to transport their own children or other children on a not-for-hire basis, is considered to be a school bus and is to meet all requirements for the type of vehicle used, including semiannual inspection. This rule is not intended to govern the use of passenger vehicles during the time the vehicles are not actually engaged in transporting school pupils.

DIVISION III
FINANCIAL RECORDS AND REPORTS

281—43.8(285) Required charges. Full pro rata costs are to be charged and collected for the transportation of all nonresident pupils. No differentiation may be made in charges due to differences in distance or grade in school.

281—43.9(285) Activity trips deducted. Transporting school districts that use their equipment for activity trips, or educational tours, or other types of transportation services as permitted in Iowa Code section 285.10(9) and 285.10(10), are to deduct the cost of trips from the total yearly transportation cost. These costs may not be included in the pro rata costs which determine the charge to sending districts.

DIVISION IV
USE OF SCHOOL BUSES OTHER THAN FOR ROUTES

281—43.10(285) Permitted uses listed. School buses may be used to transport pupils under the following conditions:

43.10(1) The program is a part of the regular or extracurricular program of a public school and has been so adopted and made a matter of record in the minutes of all the boards involved.

43.10(2) The pupils are enrolled in a public or accredited nonpublic school.

43.10(3) The program or activity is sponsored by a school or group of schools cooperatively and is under the direct control of a qualified staff member of a school district.

43.10(4) The bus will be driven by an approved driver holding an appropriate driver's license and a school bus driver's authorization. In addition, the buses will be accompanied by a member of the faculty or other employee of the school or a parent or other adult volunteer as authorized by a school administrator who will be responsible for the conduct and the general supervision of the pupils on the bus and at the place of the activity. This person shall ride the bus. If the faculty member is an approved driver, that person can act both as a driver and faculty sponsor.

43.10(5) School buses may be used by an organization of, or sponsoring activities for, senior citizens, children, individuals with disabilities, and other persons and groups, and for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor under the following conditions:

a. The "school bus" signs are covered and the flashing warning lamps and stop arm made inoperable when the bus is being used in a nonschool-sponsored activity.

b. Transportation outside the state of Iowa is not provided without the approval of the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

c. A chaperone rides each bus to assist the passengers in boarding and disembarking from the bus and to aid them in case of illness or injury.

d. The driver of the bus is approved by the local board of education and possesses an appropriate driver's license and a school bus driver's authorization.

e. The driver of the bus observes all motor vehicle laws for school buses at all times.

43.10(6) The bus meets passenger seating requirements.

a. Each passenger has a seat, with no part of the passenger's body extending into the aisle.

- b. Student passengers have a minimum of 13 inches of allowable seating per person.
- c. For adult groups, no more than two persons occupy a 39-inch seat.
- d. Standees are prohibited in all situations, whether the bus is transporting students or adults.
- e. The maximum number of passengers never exceeds the rated capacity of the vehicle as it is equipped.
- f. Districts with buses utilizing 3-point lap-shoulder belts adopts a board policy regarding use of these lap-shoulder belts by passengers.

DIVISION V
THE BUS DRIVER

281—43.11(285) Driver age. School bus drivers must be at least 18 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's authorization is required.

281—43.12(285) Physical fitness.

43.12(1) General. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization is to undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. The applicant will submit annually to the applicant's employer the signed medical examiner's certificate pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49, indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury and freedom from any communicable disease. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

43.12(2) Insulin-dependent diabetics. A person who is an insulin-dependent diabetic may qualify to be a school bus driver if the person meets all qualifications of Iowa Code section 321.375(3). Such driver is subject to an annual physical examination by a qualified medical examiner as listed in subrule 43.12(1).

281—43.13(285) Authorization.

43.13(1) General. The local board of education or its designee will issue a school bus driver's authorization for each approved driver annually once the provisions of Iowa Code section 321.375 are satisfied.

43.13(2) Authorization to be carried by driver. Every school bus driver is to carry a copy of the driver's school bus driver's authorization at all times when the driver is acting in that capacity.

43.13(3) Authorization denials and revocations. A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code section 321.375(2) may file a complaint with the department against the driver or applicant. The department will notify the driver or applicant that a complaint has been filed and provide the driver or applicant with a copy of the complaint. A hearing will be set for the purpose of determining whether the bus driver's authorization will be denied, suspended, or revoked, or whether the bus driver should receive a reprimand or warning. Hearing procedures in 281—Chapter 6 apply to such proceedings. No school bus driver or applicant may retain or obtain employment if the local district finds that the individual is listed on the sex offender registry under Iowa Code section 692A.121 available to the general public, the central registry for child abuse information established under Iowa Code section 235A.14, or the central registry for dependent adult abuse information established under Iowa Code section 235B.5. A hearing conducted pursuant to Iowa Code section 321.375(3) or 321.376 is to be limited to the question of whether the school bus driver or applicant was incorrectly listed on the registry. The driver or applicant will not serve in the capacity of a school bus driver while the appeal process is being conducted.

281—43.14(321) Fee collection and distribution of funds. The department of education will assess a fee for semiannual school bus inspections for each vehicle inspected by the department. The department will present for payment a fee statement to the owner of each vehicle inspected. For districts transporting pupils through a private contractor under rule 281—43.3(285), the fee statement will be presented to the contracting district for payment.

The department of education will submit an annual budget request for an amount equal to 100 percent of the total projected fees to be collected during the next fiscal year, which is to be based on an amount equal to the number of vehicle inspections completed during the previous school year multiplied by the inspection fee authorized by statute.

DIVISION VI
PURCHASE OF BUSES

281—43.15(285) Local board procedure. The board of education will proceed as follows in purchasing school buses:

43.15(1) Request bids unless the bus is a used or demonstrator bus.

43.15(2) Notify dealers of intent to purchase school transportation equipment and request bids.

43.15(3) Reserve right to reject all bids.

43.15(4) Require all bids to be on comparable equipment that meets all state and federal requirements.

43.15(5) Hold an open meeting for dealers to present merits of their equipment.

43.15(6) Review bids, tabulate all bids, make a record of action taken.

43.15(7) Sign contracts or orders for purchase of school transportation equipment. The purchase agreement must provide that the dealer will deliver equipment that will pass initial state inspection at no further cost to the school.

43.15(8) Notify the department of education of delivery so that arrangements can be made for the initial school bus inspection. No school bus may be put into service until it has passed a pre-use inspection conducted, documented, and reported by the local board of education or its designee on a form prescribed by the department of education. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education.

281—43.16(285) Financing. The board of education may finance purchase of transportation equipment as follows:

43.16(1) The board may pay all of the cost of each bus from funds on hand in the general fund or other funds allowed by statute.

43.16(2) Bonds may be voted to purchase equipment, and funds so derived are to be used for that purpose.

DIVISION VII
MISCELLANEOUS PROVISIONS

281—43.17(285) Semiannual inspection. To facilitate the semiannual inspection program, school and school district officials shall send all vehicles used for student transportation to designated inspection locations as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors. The fee for each vehicle inspected is \$50.

281—43.18(285) Maintenance record. School officials shall cause the chassis of all vehicles used for student transportation, whether publicly or privately owned, to be inspected annually and all necessary repairs made before the vehicle is put into service. The inspection and repairs will be recorded on a form prescribed by the department of education. The completed form is to be signed and dated by the mechanic and carried in the glove compartment of the bus.

281—43.19(285) Drivers' schools. All school bus drivers shall attend classes or schools of instruction as approved by the department of education and provided for in Iowa Code section 321.376(2). All new drivers will, within the first six months of employment, successfully complete the "new driver STOP class" approved by the department. All current school bus drivers are to attend the annual course of instruction. Upon missing a year of instruction, a current driver must successfully complete the course of instruction for new drivers prior to receiving an authorization. The employer of a school bus driver may impose additional training for any new or current driver.

281—43.20(285) Insurance. The board of education will carry insurance on all school-owned buses and see that insurance is carried by all contractors engaged in transporting pupils for the district in the coverages and limits as determined by the board of education.

281—43.21(285) Contract—privately owned buses. The board of education and a contractor who undertakes to transport school pupils for the board, in privately owned vehicles, shall sign a contract that includes the following provisions:

43.21(1) To furnish and operate at the contractor's own expense a legally approved vehicle of transportation transporting only children attending the school designated by the board of education.

43.21(2) To comply with all legal and established uniform standards of operation as required by statute or by legally constituted authorities.

43.21(3) To comply with all uniform standards established for protection of health and safety for pupils transported.

43.21(4) To comply with all rules and regulations adopted by the board of education for the protection of the children, or to govern the conduct of the driver of bus.

43.21(5) To keep bus in good mechanical condition and up to standards required by statutes or by legally constituted authorities.

43.21(6) To take school bus to official inspection when held by state authorities with no additional expense to party of second part.

43.21(7) To use only drivers and substitute drivers who have been approved by the board of education and have been issued a current school bus driver's authorization.

43.21(8) To furnish the board of education an approved certificate of medical examination for each person who is approved by the board of education to drive the bus.

43.21(9) To attend a school of instruction for bus drivers as prescribed by the department of education. (If the owner does not drive the bus, the regular approved driver of the bus shall attend.)

43.21(10) To carry insurance on bus and pupils in the coverages and limits as determined by the board of education, with a copy of the policy filed with superintendent of schools.

43.21(11) To make such reports as may be required by state department of education, area education agency board of education, and superintendent of schools.

43.21(12) To use the school bus only for transporting regularly enrolled students to and from public school and to extracurricular activities approved and designated by the board of education and further to comply with all legal restrictions on use of bus.

43.21(13) To obtain, if possible, the license plate numbers of all vehicles violating the school bus passing law, Iowa Code section 321.372, and file information for prosecution.

43.21(14) To reserve the right of the board of education to change routing of the bus and, if additional mileage is required, allow for an extra cost.

43.21(15) To ensure immoral conduct or the use of alcoholic beverages by the contractor or driver employed by the contractor shall result in appropriate sanctions as provided in Iowa Code section 321.375.

43.21(16) To allow the contract to be terminated on 90-day notice by either party as provided by Iowa Code section 285.5(4).

43.21(17) An agreement that, if the contractor desires to terminate the contract, the school bus will be sold to the board of education at its request as provided in Iowa Code section 285.5(1). This provision does not apply to a passenger vehicle used as a school bus.

281—43.22(285) Contract—district-owned buses. The board of education and a private individual undertaking to transport school pupils for the board in school district-owned vehicles shall sign a contract substantially similar to that prescribed by the department of education. The contract will contain the following provisions:

43.22(1) To conform to all rules of the board of education in and for the district adopted for the protection of the children and to govern the conduct of the person in charge of the conveyance.

43.22(2) To make reports as may be required by the department of education, area education agency, or superintendent of schools.

43.22(3) To conform to all standards for operation of the school buses as provided by statute or by legally constituted authorities.

43.22(4) That the employee is entitled to benefits as outlined in the school board policy for the school district.

43.22(5) To attend a school of instruction for bus drivers as prescribed by the department of education.

43.22(6) That the employer may terminate the contract and dismiss the employee for failure to conform to all laws of the state of Iowa and rules promulgated by the Iowa department of education applicable to drivers of school buses.

43.22(7) That the contract is not in force until the driver presents an official school bus driver's authorization.

281—43.23(285) Railroad crossings. The driver of any school bus will comply with Iowa Code section 321.343, regardless of whether or not there are any pupils in the bus, and regardless of whether or not there is an automatic signal at the crossing. After stopping, the driver shall open the entrance door, shall look and listen for approaching trains, and shall not proceed to cross the tracks until it is safe to do so.

281—43.24(285) Driver regulations.

43.24(1) The driver of a school vehicle shall not smoke in the vehicle or on any school property.

43.24(2) The driver shall not permit firearms or other weapons, nor ammunition, to be carried in the passenger compartment of any school vehicle transporting pupils.

43.24(3) The driver shall not fill the fuel tank while the motor is running or when there are passengers in the vehicle.

43.24(4) The driver shall ensure that aisles and exits are not blocked.

281—43.25(285) Civil defense projects. Civil defense projects may be recognized by the board of directors of any school district as an authorized extracurricular activity.

43.25(1) The use of school buses for field trips and exercises, and the planned use of school buses in connection with actual emergency procedures to be carried on in cooperation with local, state or national authorities, civil or military, is hereby defined as properly incident to such authorized extracurricular activity.

43.25(2) The bus will be driven by an approved driver holding an appropriate driver's license and a school bus driver's authorization except that in actual emergency situations, where approved drivers are not available, other drivers, including students and teachers, may be used if allowed by local school board policy.

281—43.26(285) Pupil instruction. At least twice during each school year, once in the fall and once in the spring, each pupil who is transported in a school vehicle shall be instructed in safe riding practices and participate in emergency evacuation drills. Documentation of these drills will be maintained locally for five years and made available upon request.

281—43.27(285) Trip inspections.

43.27(1) A pretrip inspection of each school vehicle will be performed and recorded prior to each trip to determine if any defects or deficiencies exist that may affect the safety of the vehicle's operation or result in its mechanical breakdown. The pretrip inspection report is to be signed by the driver and

submitted promptly to the person responsible for the school transportation program. Any deficiencies that merit an OOS (out of service) rating pursuant to department of education school bus inspection guidelines must be repaired prior to use of the vehicle. All other deficiencies should be repaired as soon as possible but do not bar the use of the vehicle.

43.27(2) A posttrip inspection of the interior of the school vehicle shall be performed after each trip to ensure no passengers remain.

281—43.28(285) Loading and unloading areas. Restricted loading and unloading areas will be established for school buses at or near schools.

281—43.29(285) Communication equipment. Each school bus is to have a communications system capable of communication between the driver of the bus and the school's base of operations for school transportation.

DIVISION VIII
COMMON CARRIERS

281—43.30(285) Standards for common carriers. This rule applies to any vehicle operated by a common carrier when used exclusively for student transportation to and from school. "Common carrier" refers to a person or entity in the business of transporting goods or people for hire as a public service.

43.30(1) Vehicles.

- a.* The vehicles need not be painted yellow and black as required for conventional school buses.
- b.* The vehicles, while transporting children to and from school, are to be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front is to have the words "School Bus" printed in black letters six inches high, on a background of National School Bus Yellow. The sign on the rear is to be painted National School Bus Yellow and have the words "School Bus" printed in black letters six inches high. The colors are to conform to those described within 281—subrule 44.3(10).

43.30(2) Drivers.

- a.* The driver is to have an appropriate driver's license issued by the Iowa department of transportation.
- b.* The driver is to possess a school bus driver's authorization issued by the Iowa department of education.
- c.* The driver will receive training in accordance with state statutes and rules for school bus drivers.

43.30(3) Seating. Each passenger is to have a seat; standees are prohibited. No passenger may be present in the bed of a pickup when the vehicle is being operated.

43.30(4) Loading and unloading procedures.

- a.* The vehicle is to pull close enough to the curb to prevent another vehicle from passing on its right side.
- b.* If the vehicle is not equipped with flashing warning lights and stop arm, or if use of this equipment is not allowed by law, the pupils, on unloading, are to be instructed to remain at the curb until the bus has pulled away and it is safe for them to cross the street.

43.30(5) Inspection of vehicles.

- a.* Drivers are to perform pretrip inspections of their vehicles to determine if any defects or deficiencies exist that may affect the safety of the vehicle's operation or result in its mechanical breakdown. The pretrip inspection report is to be submitted promptly to the person charged with maintenance of the vehicle. Any defects or deficiencies that merit an OOS (out of service) rating pursuant to department of education school bus inspection guidelines are to be repaired prior to use of the vehicle. All other defects or deficiencies should be repaired as soon as possible but do not bar the use of the vehicle.

- b.* Vehicles are to be inspected semiannually by personnel of the department of education in accordance with the provisions of Iowa Code section 285.8(4).

43.30(6) Other provisions.

a. Local school officials are to provide the carrier with passenger conduct rules and the driver is to abide by the policies and procedures established by the local district.

b. Student instruction for passenger safety is the responsibility of the local school district as specified in rule 281—43.26(285).

These rules are intended to implement Iowa Code chapter 285.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 44
“School Buses”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 285.9(1)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 285

Public Hearing

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

January 2, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking is intended to benefit people who operate or ride on Iowa’s school buses. Each day, Iowa’s school buses carry approximately 250,000 students.

The Department proposes removing rule language that recites statutory text, removing restrictive terms that do not contribute to health and safety, and removing obsolete or unnecessary requirements.

The Department proposes adding rule language specific to buses with alternate fuel sources, such as electric buses (proposed subrule 44.3(26)). Even with this additional language, the Department’s proposal reduces the regulatory burden in this chapter.

In reviewing this chapter, the Department consulted with a broad group of stakeholders, including public safety officials, school leaders, school transportation directors, mechanics, and dealers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School bus operators bear the costs of compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
School bus riders will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no discernible qualitative impact.
 - Qualitative description of impact:

Removing unnecessary language is a qualitative benefit of the proposed rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by inspection fees and a state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenue.

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

Inaction would retain obsolete and unnecessary rule language and fail to address a new market segment (electric buses).

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible. The Department also needed to respond to a new market segment (electric buses).

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44 SCHOOL BUSES

281—44.1(285) Requirements for manufacturers. In order to protect both the boards of education and manufacturers of school transportation vehicles and equipment from misunderstanding and confusion, all manufacturers shall provide equipment meeting all Iowa vehicle construction requirements described

in this chapter as well as all applicable federal motor vehicle safety standards (FMVSS), which include the following:

- 101—Control location, identification, and illumination.
- 102—Transmission shift lever sequence, starter interlock, and transmission braking effect.
- 103—Windshield defrosting and defogging systems.
- 104—Windshield wiping and washing systems.
- 105—Hydraulic braking systems.
- 106—Brake hoses.
- 107—Reflecting surfaces.
- 108—Lamps, reflective devices, and associated equipment.
- 109—New pneumatic tires.
- 110—Tire selection and rims.
- 111—Rearview mirrors.
- 113—Hood latch systems.
- 116—Motor vehicle brake fluids.
- 119—New pneumatic tires for vehicles other than passenger cars.
- 120—Tire selection and rims for motor vehicles other than passenger cars.
- 121—Air brake systems.
- 124—Accelerator control systems.
- 131—School bus pedestrian safety devices.
- 205—Glazing materials.
- 206—Door locks and door retention components.
- 207—Seating systems.
- 208—Occupant crash protection.
- 209—Seat belt assemblies.
- 210—Seat belt assembly anchorages.
- 217—Bus window retention and release.
- 219—Windshield zone intrusion for vehicles with a GVWR of 10,000 pounds or less.
- 220—School bus rollover protection.
- 221—School bus body joint strength.
- 222—School bus passenger seating and crash protection.
- 301—Fuel system integrity.
- 302—Flammability of interior materials.
- 303—Fuel system integrity of compressed natural gas vehicles.
- 304—Compressed natural gas fuel container integrity.

281—44.2(285) School bus—type classifications. A bus owned, leased, contracted to or operated by a school or school district and regularly used to transport students to and from school or school-related activities, but not including a charter bus or transit bus, meets all applicable FMVSS, and is readily identified by alternately flashing lights, National School Bus Yellow (NSBY) paint, and the legend “School Bus.” Schools and school districts in Iowa are not allowed to own or lease motor coaches but may charter them for activities.

44.2(1) Type A. A Type A school bus is a conversion or bus constructed utilizing a cutaway front-section vehicle with a left side driver’s door. This definition includes two classifications: Type A-1, with a gross vehicle weight rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 and less than or equal to 21,500 pounds.

44.2(2) Type B. A Type B school bus is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less; and Type B-2, with a GVWR greater than 10,000 pounds.

44.2(3) Type C. A Type C school bus, also known as a conventional school bus, is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels.

This type of school bus also includes the cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

44.2(4) *Type D.* A Type D school bus, also known as a rear or front engine transit-style school bus, is constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

44.2(5) *Type III.* Type III vehicles are not regular school buses but nonetheless are used to transport students in a school-related context and may be marked as a “school bus.” To qualify as a Type III vehicle, the vehicle may carry a maximum of 12 or fewer people, including the driver, and weigh 10,000 pounds or less. These vehicles will be subject to school bus inspections per Iowa Code and rule.

44.2(6) *Specially equipped.* A specially equipped school bus is a school bus designed, equipped, or modified to accommodate students with special needs.

44.2(7) *Multifunction school activity bus (MFSAB).* A multifunction school activity bus is a school bus whose purposes do not include transporting students to and from home or school bus stops as defined in 49 CFR 571.3. MFSABs meet all FMVSS for school buses except the traffic control requirements (alternately flashing signal and stop arm). These vehicles will be subject to school bus inspections per Iowa Code and rule.

281—44.3(285) School bus body and chassis specifications.

44.3(1) *Aisle.* All emergency doors shall be accessible by a 12-inch minimum aisle. Aisles are to be unobstructed at all times by any type of barrier, seat, wheelchair, tie-down, or other object(s), with the exception of a flip seat that is installed and occupied at a side emergency door position. The track of a track-seating system is exempt from this subrule. A flip seat in the unoccupied (up) position is not to obstruct the 12-inch minimum aisle to any side emergency door.

44.3(2) *Axles.* The front and rear axle and suspension systems are to have gross axle weight rating (GAWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

44.3(3) *Backup warning alarm.* An automatic audible alarm shall be installed behind the rear axle on every school bus/MFSAB and comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA. A variable volume feature is not allowed.

44.3(4) *Body sizes.* Type A vehicles may be purchased with manufacturer’s recommended seating capacities when the chassis is manufactured with rear dual tires.

44.3(5) *Brakes.*

a. Brakes, all, general requirements.

(1) All buses will have either a parking pawl in the transmission or a parking brake interlock that requires the service brake to be applied to allow release of the parking brake.

(2) All brake systems will be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

(3) The brake lines, booster-assist lines, and control cables will be protected from excessive heat, vibration and corrosion and installed in a manner that prevents chafing.

(4) The parking brake system may be of a power-assisted design. The power parking brake actuator should be a device located on the instrument panel within reach of a seated driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the “park” position.

(5) Every vehicle is to be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle’s brake system. A warning signal will be audible and visible to the driver. A Type A vehicle under 10,000 lbs. GVWR may have a visible warning signal only.

(6) The power-operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the “off” position, the parking brake cannot be released until the key switch is turned back to the “on” position.

b. Air brakes, general requirements.

(1) The air pressure supply system will include a desiccant-type air dryer installed according to the manufacturer’s recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

(2) The manufacturer will provide an accessory outlet for other air-operated systems installed in or on the bus. This outlet is to include a pressure protection valve to prevent loss of air pressure in the service brake reservoir.

(3) For air brake systems, an air pressure gauge capable of complying with commercial driver's license (CDL) pre-trip inspection requirements will be provided in the instrument panel.

(4) Air brake systems will include a system for anticomponding of the service brakes and parking brakes.

c. Brakes, all, specific requirements.

(1) The braking system shall include the service brake, an emergency brake that is part of the service brake system and controlled by the service brake pedal, and a parking brake meeting FMVSS at date of manufacture.

(2) An air brake system is required on every chassis meeting one or more of the following:

1. Wheelbase equal to or greater than 274 inches.

2. Designed seating capacity rating greater than 66 passengers. Designed seating capacity, also known as manufacturer's seating capacity, is the actual or theoretical passenger capacity of the vehicle if it were constructed with the maximum number of seating positions.

(3) An air brake system is to comply with the following system and component designs:

1. The system cannot be of wedge design.

2. The system will include an air dryer system having design features equal to or exceeding the Bendix Westinghouse Model AD9. The system is to be self-purging and capable of removing oil, dirt, and moisture. The dryer system will also be equipped with a heater to prevent the freezing of moisture within the system. All plumbing from air compressor to input of air dryer or after-cooler will provide soft flow bends not producing sumps in the air compressor line having direct entry into the dryer.

3. A system of automatic adjustment compensating for service brake wear is to be installed at all wheel positions.

4. The air compressor produces a minimum output of 12.0 cubic feet per minute (CFM).

(4) Vehicles with 10,000 pounds GVWR or less will be equipped with a hydraulic, dual-braking system of manufacturer's standard, with power assist.

44.3(6) Bumper, front.

a. All school buses will be equipped with a front bumper painted glossy black, a chrome front bumper, or a front bumper coated with a black corrosion-resistant texturized material.

b. The front bumper on buses of Type A-2 (with GVWR greater than 14,500 pounds), Type B, Type C, and Type D is to be equivalent in strength and durability to pressed steel channel at least 3/16 inches thick and not less than 8 inches wide (high). The front bumper will extend beyond the forward-most part of the body, grille, hood and fenders and extend to the outer edges of the fenders at the bumper's top line. Type A buses having a GVWR of 14,500 pounds or less may be equipped with an original equipment manufacturer (OEM)-supplied front bumper.

c. The front bumper, except breakaway bumper ends, is to be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis or body.

d. The bumper will be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow hooks/eyes.

e. Tow eyes or hooks are required on Type B, C, and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks are to be installed by the bus manufacturer so as not to project beyond the front bumper.

f. An optional energy-absorbing front bumper may be used, provided its design incorporates a self-restoring, energy-absorbing system of sufficient strength to:

(1) Push another vehicle of similar GVWR without permanent distortion to the bumper, chassis, or body; and

(2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

1. 7.5 mph fixed-barrier impact (FMVSS cart and barrier test).
2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).
3. 20.0 mph into parked passenger car (Type B, C, and D buses of 18,000 pounds GVWR or more).

The manufacturer of the energy-absorbing bumper system is to provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(7) Bumper, rear:

a. All school buses are to be equipped with a rear bumper painted glossy black or coated with a black corrosion-resistant texturized material.

b. The rear bumper is to be pressed steel channel or equivalent material, at least 3/16 inches thick and is to be a minimum of 8 inches wide (high) on Type A-2 vehicles and a minimum of 9½ inches wide (high) on Type A-1, B, C and D buses. The rear bumper will be of sufficient strength to permit its being pushed by another vehicle without permanent distortion to the bumper, body, or chassis.

c. The rear bumper will be wrapped around the back corners of the bus. It is to extend forward at least 12 inches, measured from the rear-most point of the body at the floor line and is to be flush-mounted to the body side or protected with an end panel.

d. The rear bumper will be attached to the chassis frame in such a manner that the bumper may be easily removed. It is to be braced so as to resist deformation of the bumper resulting from a rear or side impact and designed so as to discourage the hitching of rides.

e. The bumper is to extend at least 1 inch beyond the rear-most part of body surface measured at the floor line.

f. Additions or alterations to the rear bumper, including the installation of trailer hitches, are not allowed.

g. An optional energy-absorbing rear bumper may be used, provided a self-restoring, energy-absorbing bumper system attached to prevent the hitching of rides is of sufficient strength to:

- (1) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body; and
- (2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following FMVSS performance standards:

1. 2.0 mph fixed barrier impact (FMVSS cart and barrier test).
2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).
3. 5.0 mph center impact (Part 581, CFR Title 49).

The manufacturer of the energy-absorbing system will provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(8) Certification. The manufacturer(s) will, upon request, certify to the department of education that the manufacturer's product(s) meets Iowa minimum standards on items not covered by FMVSS certification provisions of 49 CFR Part 567.

44.3(9) Color:

a. Chassis will be black. Body cowl, hood, and fenders will be National School Bus Yellow. The flat top surface of the hood may be nonreflective National School Bus Yellow or flat black.

b. Wheels and rims will be gray, black, or National School Bus Yellow. Aluminum wheels are also allowed.

c. The grille is to be gray, black, chrome, or National School Bus Yellow.

d. The school bus body will be painted National School Bus Yellow. (See color standard, Appendix B, National School Transportation Specifications and Procedures Manual 2015.)

e. The body exterior trim will be glossy black, including the exterior lettering, numbering, body trim, rub rails, lamp hoods (if any), and emergency door arrow. This may also include the entrance door and window sashes. In addition, the rear bumper may be covered with a black retroreflective material as described in subrule 44.3(48). When the bus number is placed on the front or rear bumper, the number is to be National School Bus Yellow.

f. As an option, the roof of the bus may be painted white extending down to within 6 inches above the drip rails on the sides of the body, except that the vertical portion of the front and rear roof caps is to remain National School Bus Yellow.

g. Commercial advertising is forbidden on the exterior and in the interior of all school buses.

44.3(10) Construction.

a. The school bus body will be constructed of materials certified to be durable under normal operating conditions and meet all applicable FMVSS at the date of manufacture as certified by the bus body manufacturer.

b. Construction will be reasonably dustproof and watertight.

c. Body joints present in that portion of the Type A school bus body furnished exclusively by the body manufacturer will conform to the performance requirements of FMVSS No. 221. This does not include the body joints created when body components are attached to components furnished by the chassis manufacturer.

d. A flat floor system featuring no wheel wells and no step-up at the rear of the passenger compartment may be used in accordance with the following:

(1) The inside height of the body remains at least 72 inches, when measured in accordance with subrule 44.3(39), when this option is installed.

(2) If this option utilizes a raised floor that is stepped up behind the driver's area, the forward edge of the aisle has a white or yellow stripe and is labeled "Step Up" visible to passengers upon entering the aisle; and a label "Step Down" is visible to passengers as they exit the aisle. Minimum headroom of 72 inches is maintained at all times.

(3) A flat floor design provides for the additional option for a track-mounted seating system using button-type (L track) and a wheelchair securement system meeting Iowa specifications but mounting into the track of the track-seating system. Aisle clearances are maintained in accordance with these rules.

44.3(11) Crossing control arms.

a. Type A, B, and C school buses are to be equipped, and Type D buses may be equipped, with a crossing control arm that is mounted on the right side of the front bumper and that will not open more than 90 degrees. When opened, the crossing control arm will extend in a line parallel to the body side and aligned with the right front wheel.

b. All components of the crossing control arm and all connections are weatherproofed.

c. The crossing control arm is constructed of noncorrodible or nonferrous material or treated in accordance with the body sheet metal standard. See subrule 44.3(40).

d. There are no sharp edges or projections that could cause hazard or injury to students.

e. The crossing control arm extends a minimum of 70 inches from the front bumper when in the extended position. This measurement is to be taken from the arm assembly attachment point on the bumper. However, the crossing control arm does not extend past the ends of the bumper when in the stowed position.

f. The crossing control arm extends simultaneously with the stop arm(s) by means of the stop arm controls.

g. The crossing control arm system is designed to operate in extreme weather conditions, including freezing rain, snow and temperatures below 0 degrees Fahrenheit, without malfunctioning. The crossing control arm itself is constructed of a material that will prevent the arm from prematurely extending or from failing to retract due to sustained wind or wind gusts of up to 40 miles per hour.

h. To ensure that the unit mounts flush and operates properly, the chassis bumper mounting bracket is designed for the specific model chassis on which it will be mounted.

i. A single, cycle-interrupt switch with automatic reset will be installed in the driver's compartment and be accessible to the driver from the driver's seat.

j. The assembly may include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. That device is not to interfere with normal operations of the crossing control arm.

44.3(12) Daytime running lights (DRL). See subrule 44.3(31).

44.3(13) Defrosters.

a. Defrosting and defogging equipment direct a sufficient flow of heated air onto the interior surfaces of the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

b. The defrosting system conforms to SAE J381.

c. The defroster and defogging system is capable of furnishing heated outside ambient air; however, the part of the system furnishing additional air to the windshield, entrance door and step well may be of the recirculating air type.

d. Auxiliary fans are required; however, they are not considered defrosting or defogging systems. See also subrule 44.3(73).

e. Portable heaters shall not be used.

44.3(14) Doors and exits.

a. Service door.

(1) The service door will be heavy-duty power- or manually operated under the control of the driver and designed to afford easy release and prevent accidental opening. When a hand lever is used, no parts come together to shear or crush fingers. Manual door controls do not need more than 25 pounds of force to operate at any point throughout the range of operation. A power-operated door provides for manual operation in case of power failure. In all instances, the power-operated door control is to be located in the steering wheel or to the left or right of the driver.

(2) The primary service door is located on the right side of the bus opposite the driver and within the driver's direct view and will remain closed anytime the vehicle is in motion.

(3) The service door has a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches.

(4) The entrance door is a split-type door that opens outward.

(5) All glass panels are of approved safety glass as defined in subrule 44.3(75). The bottom of each lower glass panel is not more than 10 inches from the top surface of the bottom step. The top of each upper glass panel is not more than 3 inches from the top of the door.

(6) Vertical closing edges on split or folding entrance doors are equipped with flexible material to protect children's fingers.

(7) There is no door to the left of the driver on Type B, C or D vehicles. All Type A vehicles may be equipped with the chassis manufacturer's standard left side (driver's side) door.

(8) All doors are equipped with padding at the top edge of each door opening. Padding is at least 3 inches wide and 1 inch thick and extends horizontally the full width of the door opening.

(9) A door-locking mechanism may be installed in accordance with subrule 44.3(72).

(10) On power-operated service doors, the emergency release valve, switch or device to release the service door is placed above the service door, to the right side of the driver console, or to the left or right of the service door and be clearly labeled. The emergency release valve, switch or device will work in the absence of power.

b. Emergency doors.

(1) Emergency door(s) and other emergency exits comply with the provisions of FMVSS No. 217 and any provision of these rules that exceed FMVSS No. 217.

(2) The exposed area of the upper panel of emergency doors is a minimum of 400 square inches of approved safety glazing. If installed, all other glass panels on emergency doors are of approved safety glazing.

(3) There shall be no steps leading to an emergency door.

(4) The emergency door(s) are equipped with padding at the top edge of each door opening. Padding is at least 3 inches wide and 1 inch thick and extends the full width of the door opening.

(5) There is to be no obstruction higher than $\frac{1}{4}$ inch across the bottom of any emergency door opening. Fasteners used within the emergency exit opening are free of sharp edges or burrs.

c. Emergency exit requirements.

(1) Any installed emergency exit complies with the design and performance requirements of FMVSS No. 217, applicable to that type of exit, whether or not that exit is required by FMVSS No. 217, and complies with any of the requirements of these rules that exceed FMVSS No. 217.

(2) An emergency exit may include either an emergency door or emergency exit-type windows. Where emergency exit-type windows are used, they are to be installed in pairs, one on each side of the

bus. Type A, B, C, and D vehicles will be equipped with a total number of emergency exits as follows for the designed capacities of vehicles:

1. 0 to 42 passengers = 1 emergency exit per side and 1 roof hatch.
2. 43 to 78 passengers = 2 emergency exits per side and 2 roof hatches.
3. 79 to 90 passengers = 3 emergency exits per side and 2 roof hatches.

These emergency exits are in addition to the rear emergency door or rear pushout window/side emergency door combination required by FMVSS No. 217. Additional emergency exits installed to meet the capacity-based requirements of FMVSS No. 217 may be included to comprise the total number of exits specified. All roof hatches are to have design features as specified in subrule 44.3(73).

(3) Side and rear emergency doors and each emergency window exit are equipped with an audible warning device.

(4) Roof hatches are equipped with an audible warning device and work appropriately without the wiring becoming disconnected from the switch.

(5) Rear emergency windows on Type D rear-engine buses have a lifting-assistance device that will aid in lifting and holding the rear emergency window open.

(6) Side emergency windows may be either top-hinged or vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop sign.

(7) On the inside surface of each school bus, located directly beneath or above all emergency doors and windows, is to be a “DO NOT BLOCK” label in a color that contrasts with the background of the label. The letters on this label are at least 1 inch high.

44.3(15) Drive shaft. The drive shaft is to be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground if broken.

44.3(16) Driver’s compartment.

a. A driver’s document compartment or pouch is provided. The document compartment or pouch measures at least 17 inches × 12 inches × 4 inches. If a document pouch, rather than a covered compartment, is provided, it is located on the barrier behind the driver. It will be constructed of a material of equal durability to that of the covering on the barrier and have a lid or cover with a latching device to hold the cover or lid closed.

b. Mobile data terminals are allowed. Programs loaded on the data terminal will be specific to school bus operations such as passenger accountability, routing, navigation, emergency notification, tracking, messaging, and equipment monitoring.

(1) The data terminal is mounted within the driver’s compartment in a location that allows the driver to see the data terminal display screen at a glance but does not obstruct the driver’s view in any direction when the driver is seated in a normal driving position. This would include impeding the view of the road, mirrors, highway signs, signals, other instruments, entrance door, and passengers. The data terminal display screen and audio turn-by-turn instructions may remain active while the bus is in motion.

(2) Overhead mounting of the data terminal is not allowed. The device will not impede space within the aisle and will not be mounted in such a way as to be a snagging hazard in the student loading area of the service door.

(3) The data terminal is securely mounted to the vehicle when in use in such a way as to minimize sharp edges. The device may be removed when not in use.

(4) The data terminal is not to be connected to the passenger compartment sound system.

(5) Distractive manipulation of a data terminal is prohibited while the school bus is being driven. For the purposes of this subparagraph, “driven” means operating a school bus, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays such as picking up or discharging students. “Driven” does not include operating a school bus, with or without the motor running, when the school bus is legally stopped or parked upon the highway for a prolonged period of time.

c. Commercially produced pedal blocks or OEM adjustable pedals are allowed.

44.3(17) Electrical system.

a. Battery, does not include electric powertrain batteries.

(1) The storage batteries have a minimum cold cranking capacity rating (cold cranking amps) equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be necessary, depending upon optional equipment and local environmental conditions.

(2) The manufacturer will securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt or chassis frame so that the battery is accessible for convenient servicing from the outside. When in the stored position, the tray is retained by a securing mechanism capable of holding the tray (with battery[ies]) in position. The battery compartment door or cover, if separate from the tray, is hinged at the front or top. It is secured by a positive operated latching system or other type fastener. The door may be an integral part of the battery slide tray. The door or cover will fit tightly to the body and not present sharp edges or snagging points. Battery cables meet Society of Automotive Engineers (SAE) requirements. Battery cables are of sufficient length to allow the battery tray to fully extend. Any chassis frame-mounted batteries will be relocated to a battery compartment on Type A buses.

(3) All batteries are to be secured in a sliding tray except that on van conversion or cutaway front-section chassis, batteries may be secured in accordance with the manufacturer's standard configuration. The battery cable provided with the chassis is of sufficient length to allow some slack and of sufficient gauge to carry the required amperage.

(4) The top surface area of the inside of the battery compartment (the area likely to come into contact with battery electrical terminals as the result of a blow to, and upward collapse of, the bottom of the battery box in the event of an accident or other event) is covered with a rubber matting or other impact-resistant nonconductive material. The matting is a minimum of 1/8 inch thick and cover the entire top inside surface of the battery box. The matting is securely installed to maintain its position at all times.

(5) Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

b. Alternator.

(1) All Type A and Type B buses with a GVWR of 15,000 pounds or less have a minimum 130-amp alternator. Buses equipped with an electrically powered wheelchair lift, air conditioning, or both are to be equipped with the highest rated capacity available from the chassis OEM.

(2) All buses over 15,000 pounds GVWR are equipped with a heavy-duty truck- or bus-type alternator that has a minimum output rating of 200 amps or higher and that produces a minimum current output of 50 percent of the rating at engine idle speed.

(3) Buses other than those described in subparagraph 44.3(17) "b"(1) equipped with an electrically powered wheelchair lift, air conditioning, or both shall have a minimum alternator output of 240 amps.

(4) A belt-driven alternator is capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (For estimating required alternator capacity, see School Bus Manufacturers Technical Council's publication "School Bus Technical Reference," available at www.nasdpts.org.)

(5) A direct/gear-drive alternator is permissible in lieu of a belt-driven alternator.

c. Electrical components. Materials in electrical components shall contain no mercury.

d. Wiring, chassis.

(1) All wiring conforms to current applicable recommended practices of the Society of Automotive Engineers (SAE). All wiring uses color and at least one other method for identification. The other method is to be either a number code or name code, and each chassis will be delivered with a wiring diagram that illustrates the wiring of the chassis.

(2) The chassis manufacturer of an incomplete vehicle will install a readily accessible terminal strip or connector on the body side of the cowl or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or connector will contain the following terminals for the body connections:

1. Main 100-amp body circuit.
2. Tail lamps.
3. Right turn signal.

4. Left turn signal.
5. Stop lamps.
6. Backup lamps.
7. Instrument panel lights (rheostat controlled by headlamp switch).
- (3) An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits will be provided to the body manufacturer for distribution to the end user.
- (4) Wiring for the headlamp system will be separate from the electronic controlled body solenoid/module.
 - e. *Wiring, body.*
 - (1) All wiring conforms to current applicable SAE recommended practices.
 - (2) All wiring has an amperage capacity exceeding the design load by at least 25 percent. All wiring splices are to be accessible and noted as splices on the wiring diagram.
 - (3) A body wiring diagram, sized to be easily read, will be furnished with each bus body or affixed to an area convenient to the electrical accessory control panel.
 - (4) The body power wire will be attached to a special terminal on the chassis.
 - (5) Each wire passing through metal openings will be protected by a grommet.
 - (6) Wires not enclosed within the body will be fastened securely at intervals of not more than 18 inches. All joints are to be soldered or joined by equally effective connectors, which are to be water-resistant and corrosion-resistant.
 - (7) Wiring will be arranged in circuits, as required, with each circuit protected by a fuse breaker or electronic protection device. A system of color- and number-coding will be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams will be specific to the bus model supplied and include any changes to wiring made by the body manufacturer. The following body interconnecting circuits will be color-coded, as noted:

FUNCTION	COLOR
Left Rear Directional Lamp	Yellow
Right Rear Directional Lamp	Dark Green
Stop Lamps	Red
Back-Up Lamps	Blue
Tail Lamps	Brown
Ground	White
Ignition Feed, Primary Feed	Black

The color of the cables will correspond to SAE J1128, Low-Tension Primary Cable.

- (8) Wiring will be arranged in at least six regular circuits, as follows:
 1. Head, tail, stop (brake), clearance and instrument panel lamps;
 2. Step well lamps, which are actuated when the entrance door is open;
 3. Dome lamps;
 4. Ignition and emergency door signal;
 5. Turn signal lamps; and
 6. Alternately flashing signal lamps.
- (9) Any of the above combination circuits may be subdivided into additional independent circuits.
- (10) Heaters and defrosters will be wired on an independent circuit.
- (11) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) will be provided with independent and properly protected circuits.
- (12) Each body circuit will be coded by number or letter on a diagram of circuits and attached to the body in a readily accessible location.
- (13) Buses may be equipped with a 12-volt power port in the driver's area.

(14) There will be a manual noise suppression switch installed in the control panel. The switch is to be labeled and alternately colored. This switch will be an on/off type that deactivates body equipment that produces noise, including at least the AM/FM radio, heaters, air conditioners, fans and defrosters. This switch will not deactivate safety systems, such as windshield wipers or lighting systems.

44.3(18) Emergency equipment.

a. All Type A, B, C, and D school buses will be equipped with the following emergency equipment mounted forward of front barriers: first aid kit, fire extinguisher, webbing cutter, and body fluid cleanup kit. Three triangular warning devices are required in each vehicle and may be mounted in the driver's compartment or behind the rear seat.

b. All emergency equipment will be securely mounted so that, in the event the bus is overturned, this equipment is held in place. Emergency equipment, with the exception of the webbing cutter mounted in a location accessible to the driver, may be mounted in an enclosed compartment provided that the compartment is labeled in not less than 1-inch letters, stating the piece(s) of equipment contained therein.

c. Fire extinguishers will meet the following provisions:

(1) The bus will be equipped with at least one 5-pound capacity, UL-approved, pressurized dry chemical fire extinguisher complete with hose. The extinguisher will be securely mounted in a heavy-duty automotive bracket so as to prevent accidental release in case of a crash or in the event the bus overturns.

(2) A calibrated or marked gauge is to be mounted on the extinguisher to indicate the amount of pressure in the extinguisher and easily read without moving the extinguisher from its mounted position. Plastic discharge heads and related parts are not acceptable.

(3) The fire extinguisher will have a rating of 2A-10BC or greater. The operating mechanism will be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

(4) All fire extinguishers are to be inspected and maintained in accordance with the National Fire Protection Association requirements.

(5) Each extinguisher will have a tag or label securely attached that indicates the month and year the extinguisher received its last maintenance and the identity of the person performing the service.

d. First aid kit. A first aid kit meeting the national recommendations (most current National School Transportation Specifications and Procedures Manual—first aid kit) is needed on all vehicles used for student transportation.

e. Body fluid cleanup kit. Each vehicle used for student transportation will be equipped with a disposable, removable, and moistureproof body fluid cleanup kit in a disposable container that includes the following items:

(1) An EPA-registered liquid germicide (tuberculocidal) disinfectant;

(2) A fully disposable wiping cloth;

(3) A water-resistant spatula;

(4) Step-by-step directions;

(5) Absorbent material with odor counteractant;

(6) Two pairs of gloves;

(7) One package towelettes;

(8) A discard bag (unlabeled paper bag with a plastic liner and a twist tie). This bag is to be approximately 4 inches × 6 inches × 14 inches. The kit will be removable without the use of tools.

f. Each vehicle used for student transportation will be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. One or more of these devices will be mounted in an easily detachable manner and in a location accessible to the seated driver.

g. Axes are not allowed.

44.3(19) Exhaust system.

a. The exhaust pipe, muffler and tailpipe will be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

b. The tailpipe will be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.

c. The tailpipe may be flush with, or will not extend more than 2 inches beyond, the perimeter of the body for side-exit pipe or the bumper for rear-exit pipe. The exhaust system will be designed such that exhaust gas will not be trapped under the body of the bus.

d. The tailpipe will exit to the left or right of the emergency exit door in the rear of the vehicle or to the left side of the bus in front of or behind the rear drive axle or the tailpipe may extend through the bumper. The tailpipe exit location on all Type A-1 or B-1 buses may be in accordance with the manufacturer's standards. The tailpipe will not exit beneath any fuel filler location, emergency door or lift door.

e. The exhaust system on a chassis will be adequately insulated from the fuel system.

f. The muffler is to be constructed of corrosion-resistant material.

g. The exhaust system on vehicles equipped with a power lift unit may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

h. The design of the aftertreatment systems is not to allow active (non-manual) regeneration of the particulate filter during the loading and unloading of passengers. Manual regeneration systems will be designed such that unintentional operation will not occur.

i. For aftertreatment systems that require diesel exhaust fluid (DEF) to meet federally mandated emissions:

(1) The composition of diesel exhaust fluid (DEF) complies with International Standard ISO 22241-1. Refer to engine manufacturer for any additional DEF requirements.

(2) The DEF supply tank is sized to meet a minimum ratio of 3 diesel fills to 1 DEF fill.

44.3(20) Fenders, front and hood. This subrule does not apply to Type A or D vehicles.

a. The total spread of outer edges of front fenders, measured at the fender line, is to exceed the total spread of front tires when the front wheels are in the straight-ahead position.

b. Front fenders will be properly braced and not require attachment to any part of the body.

c. Chassis sheet metal will not extend beyond the rear face of the cowl.

d. Front fenders and hood may be of manufacturer's standard material and construction.

e. The hood will not require more than 20 pounds of force to open and include design features to secure the hood in an open position.

44.3(21) Fire suppression system. An automatic fire suppression system may be installed. Fire suppression system nozzles will be located in the engine compartment, under the bus, in the electrical panel or under the dash, but they are not to be located in the passenger compartment. The system is to include a lamp or buzzer to alert the driver that the system has been activated.

44.3(22) Floor insulation and covering.

a. The floor structure of Type A, B, C and D school buses will be covered with an insulating layer of either a 5-ply minimum $\frac{5}{8}$ -inch-thick plywood, or a material of equal or greater strength and insulation R-value, having properties equal to or exceeding exterior-type softwood plywood, C-D grade as specified in standards issued by the United States Department of Commerce. All edges will be sealed.

b. Type A buses may be equipped with a minimum $\frac{1}{2}$ -inch-thick plywood meeting the above requirements.

c. The floor in the under-seat area of Type B, C, and D buses, including tops of wheel housings, driver's compartment and toeboard, will be covered with an elastomer floor covering having a minimum overall thickness of .125 inch and a calculated burn rate of 0.1 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302. The floor covering of the driver's area and toeboard area on all Type A buses may be the manufacturer's standard flooring and floor covering.

d. The floor covering in the aisles will be of a ribbed or other raised-pattern elastomer and have a calculated burn rate of 0.1 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302. Minimum overall thickness is .187 inch measured from tops of ribs.

e. Floor covering are to be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material is to be waterproof and of a type recommended by the manufacturer of the floor-covering material. All seams are to be sealed with waterproof sealer. One-piece floor covering is allowed.

f. On Type B, C and D buses, access to the fuel tank sending unit will be provided. The access opening will be large enough and positioned to allow easy removal of the sending unit. Any access opening in the body is capable of being sealed with a screw-down plate from within the body. When in place, the screw-down plate will seal out dust, moisture and exhaust fumes. This plate will not be installed under flooring material.

g. Cove molding or watertight sealant will be used along the sidewalls and rear corners. All joints or seams in the floor covering will be covered with nonferrous metal stripping or stripping constructed of material exhibiting equal durability and sealing qualities.

44.3(23) Frame.

a. The steel frame will have design and strength characteristics corresponding at least to standard practice for trucks of the same general load characteristics that are used for highway service.

b. Any secondary manufacturer that modifies the original chassis frame will guarantee the performance of workmanship and materials resulting from such modification.

c. Extensions of frame lengths are permissible only when alterations are behind the rear hanger of the rear spring or in front of the front hanger of front spring and will not be for the purpose of extending the wheelbase.

d. Holes in top or bottom flanges or side units of the frame and welding to the frame will not be permitted except as provided or accepted by the chassis manufacturer.

e. Frame lengths are to be established in accordance with the design criteria for the complete vehicle.

44.3(24) Fuel system.

a. The fuel system will comply with FMVSS No. 301, Fuel System Integrity. On Type A-1 and A-2 vehicles, the fuel tank may be of the manufacturer's standard construction.

b. On chassis with a wheelbase greater than 170 inches, at least one fuel tank of 60-gallon capacity will be provided and installed by the manufacturer. Chassis with a wheelbase of 170 inches or less will be equipped with at least one fuel tank of 25-gallon minimum capacity, as provided and installed by the manufacturer.

c. The fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle by the manufacturer. Tanks are to be mounted directly to the chassis frame, filled, and vented outside the body, in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

d. Fuel filtration is to be accomplished by means of the following:

(1) Gasoline-powered systems—one in-line fuel filter is to be installed between the fuel tank and the engine.

(2) Diesel-powered systems—one mounted fuel filter with water/fuel separator is to be supplied and installed by the engine manufacturer.

44.3(25) Fuel system, alternative fuels. An alternative fuel is defined as liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), electricity, hydrogen, methanol, ethanol, clean diesel, biodiesel, reformulated gasoline, or any type of hybrid system. Vehicles that operate on an alternative fuel are to meet the following provisions:

a. Chassis will meet all standards of this rule.

b. Chassis will meet all applicable FMVSS standards including the fuel system integrity standards of FMVSS No. 301 or FMVSS No. 303 and FMVSS No. 304.

c. OEMs and conversion systems using CNG or LPG will comply with NFPA standards in effect at the time of manufacture (Standard 52, "Compressed Natural Gas Vehicular Fuel Systems," and Standard 58, "Liquefied Petroleum Gases Engine Fuel Systems").

d. LNG-powered buses will comply with NFPA Standard 57, "Liquefied Natural Gas Vehicular-Fueled Systems," and be equipped with an interior/exterior gas detection system. All natural gas-powered buses will be equipped with a fire detection and suppression system.

e. All materials and assemblies used to transfer or store alternative fuels are to be installed outside the passenger/driver compartment.

f. The total weight will not exceed the GVWR when loaded to rated capacity.

g. The manufacturer supplying the alternative fuel equipment are to provide the owner and operator with adequate training in fueling procedures, scheduled maintenance, troubleshooting, and repair of alternative fuel equipment. Overflow protection device (OPD) testing are to be done yearly by a tester trained in this procedure and whose training has been documented. Documentation of the annual OPD valve test will be a label or identification tag affixed to the step well of the bus, signed and dated by the test person with permanent marker. The label will indicate the expiration date of the successful test.

h. All on-board fuel supply containers will meet all appropriate provisions of the ASME code, the DOT regulations, or applicable FMVSS and NFPA standards.

i. All fuel supply containers will be securely mounted.

j. All safety devices that may discharge to the atmosphere will be vented to the outside of the vehicle. The discharge line from the safety relief valve on all school buses will be located in a manner appropriate to the characteristics of the alternative fuel. Discharge lines are not to pass through the passenger compartment and are to be kept clear with flapper-valve or other device that will allow low-pressure discharge but prevent clogging by foreign matter or insects.

k. A positive, quick-acting ($\frac{1}{4}$ turn), shut-off control valve will be installed in the gaseous fuel supply lines as close to the fuel supply containers as possible. The controls for this valve are to be placed in a location easily operable from the exterior of the vehicle. The location of the valve control will be clearly marked on the exterior surface of the bus.

l. A grounding system is required for grounding of the fuel system during maintenance-related venting.

m. Storage batteries for hybrid power systems will be protected from crash impacts; encased in a nonconductive, acid-resistant compartment; and well-ventilated to preclude the possibility of hydrogen gas buildup.

n. Additional specific specifications for electric vehicles.

(1) All electric school bus systems will be in full compliance with all applicable FMVSS and all Society of Automotive Engineers (SAE) standards that are applicable at time of manufacture.

(2) Batteries of high voltage will meet manufacturer's specifications and comply with the following provisions:

1. The propulsion power source (batteries, fuel cells, etc.) will be located outside the passenger compartment and not be accessible from the interior of the school bus. The power source will be located in between or under chassis frame rails protected by a steel cage. Extended range power sources, if located outside the frame rails, will be protected by a steel cage.

2. High voltage batteries will have a main service disconnect device that does not allow high voltage outside the battery system. This disconnect device will not be in or accessible from the passenger area. Any disconnect device will be clearly marked on the bus body adjacent to each cutoff switch and easily recognized in the event of a crash.

3. High voltage batteries will be designed to prevent the passenger compartment from becoming energized.

4. All batteries will be designed to prevent any dangerous fluids or fumes from entering the passenger area.

5. All high voltage access areas, including the charging port, will be equipped with a lock or otherwise secured to prevent unauthorized access.

(3) Batteries of low voltage will have a low voltage battery shutoff switch installed in the vicinity of the low voltage battery compartment in an area not easily accessible to the driver or passengers. The location of the low voltage battery shutoff switch will be clearly labeled on the exterior of the vehicle.

(4) The charging system will comply with the following provisions:

1. The charging connection point will be outside the passenger compartment.

2. While charging, the transmission/propulsion system will be rendered inoperative.

3. The charging port will be located behind a door or an access panel in accordance with manufacturer standards, with the door or access panel clearly labeled with the location of the charging port. The port will include a status light to indicate the charging status of the battery.

(5) A DC-DC converter will be provided and deliver a minimum of 200 amps at 12VDC. The converter system will incorporate a ground fault interrupt (GFI) that disconnects/isolates the high voltage batteries in the event of a shorted circuit or water intrusion.

(6) Heaters will be capable of heating the passenger and driver's compartments to a comfortable temperature.

(7) The ignition switch circuit will be linked to the battery management system and will prevent the driving of the vehicle while it is connected to an external battery charging source and designed so that when the ignition switch is off, the high voltage is positively disconnected.

(8) The instrument panel will monitor and display battery health. This displayed information will include:

1. High voltage battery state of charge and range in miles.
2. Electric motor temperature.
3. Battery discharge and regeneration rates.
4. Battery health (as applicable: temperature, battery cell balancing, etc.).

(9) Electric vehicles will comply with all identification per subrule 44.3(34). The bus will also display specific electric vehicle markings as provided below.

1. The outer layer of insulation or wiring conduit for drive system high-voltage wiring will be industry standard orange color or otherwise labeled as "HIGH VOLTAGE".

2. All high-voltage components will be labeled with a "HIGH VOLTAGE" marking/warning. Each door, cover, or other panel or enclosed compartment that affords immediate access to any high voltage area will be plainly marked with a hazard warning label that reads "WARNING—HIGH VOLTAGE" or "DANGER—HIGH VOLTAGE". This label will be located in a highly conspicuous place.

3. An electric vehicle identifying label of no less than 2 inches in height will be affixed on the right rear corner of the bus body, on the right side of the bus rearward of the entrance door, and to the left side of the bus aft of the driver's window.

4. Additional lettering/imagery may be located on both sides of the bus along the roof cap starting above the service door and ending no further back than the forward edge of the second passenger window, but none is to be placed on/in any window.

5. Electric vehicle image graphics may be used in combination with words.

(10) The operating range will be OEM design and capable of operating with a range of 100 miles or more.

(11) The propulsion/drivetrain system is exempted from all internal combustion engine specifications.

(12) All seats will be mounted to eliminate contact with batteries and underside of the bus if seat replacement or reconfiguration is necessary.

(13) All electric school buses will produce adequate sound for pedestrian alert while in motion below 20 miles per hour.

(14) Overall system protection will include:

1. Wire, cable, and conductor insulation in the high voltage system will provide adequate insulation for the voltage used and for ambient temperatures ranging from -15°F to 120°F.

2. All high voltage circuits will provide adequate and automatic protection against electrical overloads or malfunctions caused by short circuits, charging/discharging faults, battery overheating, electrical overheating, degraded battery health, or other excessive current conditions through the use of fuses, circuit breakers, and ground fault interruption.

3. Prior to any type of automatic shutdown, a warning or maintenance indicator will display in the driver console to notify the driver of impending shutdown or the need for immediate maintenance and allow enough time to safely reposition and stop the bus via a gradual derating of propulsion prior to complete automatic shutdown.

44.3(26) Fuel system, fuel fill opening and cover. Where an opening in the school bus body skirt is needed for access to the fuel fill cap, the opening will be large enough to permit filling the fuel tank without the need for special fuel nozzle adapters, a funnel, or other device. The opening will be equipped

with a forward hinged cover held closed by a spring or other conveniently operated device. The cover may be of a lockable design. Type A buses are exempt from the requirement of a cover.

44.3(27) Governor. An electronic engine speed limiter will be provided and set to limit engine speed, not to exceed the maximum revolutions per minute as recommended by the engine manufacturer.

44.3(28) Handrails. At least one handrail is to be installed. The handrail will be a minimum of 1 inch in diameter and be constructed from corrosion-resistant material(s). The handrail(s) will be designed to assist passengers during entry or exit and to prevent entanglement, as evidenced by the passing of the National Highway Traffic Safety Administration (NHTSA) string and nut test.

44.3(29) Heating and air conditioning.

a. The heater will be hot-water combustion type, electric heating element, or heat pump.
b. If only one heater is used, it will be a fresh-air or combination fresh-air and recirculation type.
c. If more than one heater is used, additional heaters may be recirculating air type.
d. The heating system will be capable of maintaining bus interior temperatures as specified in SAE test procedure J2233.

e. Auxiliary fuel-fired heating systems are permitted, provided that they comply with the following:

- (1) Heater(s) may be direct hot air or connected to the engine's coolant system.
- (2) An auxiliary heating system, when connected to the engine's coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the bus's heating system.
- (3) Auxiliary heating systems must be installed pursuant to the manufacturer's recommendations and will not direct exhaust in a manner that will endanger bus passengers.
- (4) Auxiliary heating systems that operate on diesel fuel are to be capable of operating on #1, #2 or blended diesel fuel without the need for system adjustment.
- (5) The auxiliary heating system is to be low voltage.
- (6) Auxiliary heating systems will comply with all applicable FMVSS including FMVSS No. 301 as well as SAE test procedures.

f. Heater hoses will be adequately supported to guard against excessive wear due to vibration. The hoses will not dangle or rub against the chassis or any sharp edges and not interfere with or restrict the operation of any engine function. Heater hoses will conform to SAE Standard J20c, "Coolant System Hoses." Heater lines, cores, and elements on the interior of the bus are to be shielded to prevent scalding or burning of the driver or passengers.

g. Each hot water system installed by a body manufacturer will include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Type A and B buses, the valves may be installed in another accessible location.

h. Each hot water heating system will be equipped with a device that is installed in the hot water pressure line that regulates the water flow to all heaters and that is located for convenient operation by the driver while seated.

i. All combustion heaters will comply with current Federal Motor Carrier Safety Regulations.

j. Accessible bleeder valves will be installed in an appropriate place in the return lines of body manufacturer-installed heaters to remove air from the heater lines.

k. Access panels will be provided to make heater motors, cores, elements, and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

l. Air-conditioning systems may be installed in accordance with the following:

(1) Evaporator cases, lines and ducting (as equipped) will be designed so that all condensation is effectively drained to the exterior of the bus below floor level under all conditions of vehicle movement without leakage on any interior portion of the bus.

(2) Any evaporator or ducting system will be designed and installed so as to be free of injury-producing projections or sharp edges. Installation will not reduce compliance with any FMVSS applicable to the school bus. Ductwork will be installed so that exposed edges face the front of the bus and do not present sharp edges.

(3) Any evaporators used are to be copper-cored (aluminum or copper fins acceptable), except that the front evaporator, if provided by a Type A chassis manufacturer, may be aluminum-cored.

(4) Air intake for any evaporator assembly(ies) except for the front evaporator of a Type A bus will be equipped with replaceable air filter(s) accessible without disassembly of the evaporator case.

(5) On buses equipped for the transportation of persons with disabilities, the evaporator and ducting will be placed high enough so that they will not obstruct existing or potential occupant securement shoulder strap upper attachment points. This clearance will be provided along the entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

(6) The total air-conditioning system will be warranted, including parts and labor, for at least two years and include compressor-mounting bracketry and hardware and any belts which, directly or indirectly, drive the compressor(s). Air-conditioning compressor applications are to be approved in writing by the chassis engine manufacturer, stating that the installations will not void or reduce the engine manufacturer's warranty or extended service coverage liabilities in any way.

(7) All components requiring periodic servicing are to be readily accessible for servicing.

(8) Parts and service manuals are to be provided for the entire system including compressor(s), wiring (includes wiring diagram), evaporators, condensers, controls, hoses and lines.

(9) Electrical requirements for the air-conditioning system will be provided to the customer prior to vehicle purchase or, in the case of an after-purchase installation, prior to installing the air-conditioning system to ensure that adequate electrical demands imposed by the air-conditioning system are capable of being met.

(10) The installed air-conditioning system should cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4 feet above the floor at the longitudinal centerline of the bus. The three points are near the driver's location; at the midpoint of the body; and 2 feet forward of the emergency door, or for Type D rear engine buses, 2 feet forward of the end of the aisle. Test conditions will be those as outlined in the National School Transportation Specifications and Procedures Manual 2015.

44.3(30) Heating system, provisions for:

a. The engine is to be capable of supplying coolant per SBMTC-001, Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment, of the School Bus.

b. For Type A vehicles with GVWR of 10,000 pounds or less, the chassis manufacturer will provide a fresh-air front heater and defroster of recirculating hot water type. See also subrules 44.3(13) and 44.3(29).

44.3(31) Headlamps.

a. The headlamp switch will be of adequate ampere capacity to carry the load of the clearance and identification lamps in addition to the headlamps and tail lamps since these will be activated by the same switch.

b. There will be a manually operated switch for selection of high- or low-beam distribution of the headlamps.

c. The headlight system will be wired separately from the body-controlled solenoid.

d. A daytime running lamp (DRL) system will be provided.

44.3(32) Hinges. All exposed metal passenger-door hinges subject to corrosion will be designed to allow lubrication without disassembly. All passenger-door hinges will be securely bolted to the bus body. Metal screws are not acceptable.

44.3(33) Horn. The bus is to be equipped with a horn(s) of standard make and tested in accordance with SAE J377, Horn—Forward Warning—Electric—Performance, Test, and Application.

44.3(34) Identification.

a. The body will bear the words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of the body or on attached signs. The lettering is to be placed as high as possible without impairment of its visibility. The lettering will conform to Series B of Standard Alphabets of Highway Signs. "SCHOOL BUS" lettering will have a reflective background or, as an option, may be illuminated by backlighting.

b. The bus, whether school-owned or contractor-owned, will have displayed at the beltline on each side of the vehicle the official public school district or nonpublic school name in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

Examples:

- (1) Blank community school district.
- (2) Blank independent school district.
- (3) Blank consolidated school district.

If there is insufficient space due to the length of the name of the school district, the words “community,” “independent,” “consolidated,” and “district” may be abbreviated. If, after these abbreviations, there is still insufficient space available, the words “community school district” may be replaced by the uppercase letters “CSD”.

c. Buses privately owned and operated by an individual or individuals and used exclusively for transportation of students will bear the name of the owner, at the beltline on each side of the vehicle in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

d. The words “RATED CAPACITY,” along with the appropriate number indicating the rated pupil seating capacity of the bus, are to be printed to the left of the entrance door, at least 6 inches below the name of the school district and on the bulkhead of the bus above the right windshield. The letters will be black in color and at least 2 inches in height. The word “CAPACITY” may be abbreviated and shown as “CAP.” where necessary.

e. The number of the bus will be printed in not less than 5-inch nor more than 8-inch black letters, except as otherwise noted in this subrule, and displayed on both sides, the front and the rear of the bus. The location of the bus number is at the discretion of the vehicle owner except that the number:

- (1) Will be located to the rear of the service door not more than 36 inches from the ground on the right side of the bus and at the same respective position on the left side of the bus.
- (2) Will be yellow if located on either the front or rear bumper.
- (3) May be placed on the roof of the bus at a position representing the approximate lateral and longitudinal midpoint of the bus. The bus number will be black and measure not less than 24 inches in length.
- (4) Will not be located on the same line as the name of the school district on either side of the bus, on the emergency door, or in a location that will interfere with the words “SCHOOL BUS.”

f. Buses privately owned by individuals, a company, or a contractor will also bear the name of the owner, followed by the word “OWNER” in not more than 2-inch characters printed approximately 6 inches below the bus capacity on the right side of the bus.

g. Symbols, characters or letters, for the purpose of vehicle or route identification by students, may be displayed below the belt line or in the lower, split-sash, glass portion of the third passenger window from the front on the service entrance side of the bus. Such symbols, characters or lettering, if used, will not exceed 36 square inches. This provision applies to all school buses regardless of date of purchase.

h. Symbols identifying the bus as equipped for or transporting students with special needs will be displayed. See subrule 44.4(2).

i. The words “UNLAWFUL TO PASS WHEN LIGHTS FLASH” is to be displayed on the rear emergency door of the bus between the upper and lower window glass sections. The letters are to be black and not less than 2 inches nor more than 6 inches in height. If there is not sufficient space on the emergency door, letter size may be reduced upon approval of the department of education.

j. The word “BATTERY” in 2-inch black letters will be placed on the door covering the battery opening.

k. Pressure-sensitive markings of vinyl material may be used for the lettering mentioned in this subrule in lieu of painting.

l. Any lettering, including the name of the school’s athletic team(s), numbers, drawings, bumper stickers, characters, holiday decorations, or mascot symbols other than the bus manufacturer’s registered trademarks or those specifically noted in paragraphs 44.3(35) “a” through “k” above are prohibited.

m. Fuel type will be clearly displayed in 2-inch letters either on the fuel door or directly above the fuel door. Examples:

Gasoline or Gasoline Only
Diesel or Diesel Fuel or Diesel Only
Propane or Propane Only
Diesel Exhaust Fluid (DEF)

n. A “No Trespassing” sign may be affixed to the face of the top step in 2-inch black letters on a white background.

44.3(35) Instruments and instrument panel.

a. Chassis will be equipped with an instrument panel having, as a minimum, the following instrumentation: (Lights in lieu of gauges are not acceptable except as noted.)

- (1) Speedometer.
- (2) Odometer with accrued mileage including tenths of miles unless tenths of miles are registered on a trip odometer.
- (3) Voltmeter with graduated scale.
- (4) Oil pressure gauge.
- (5) Water temperature gauge.
- (6) Fuel gauge.
- (7) High-beam headlamp indicator.
- (8) Air pressure gauge, where air brakes are used. A light indicator in lieu of a gauge is permitted on vehicles equipped with hydraulic-over-hydraulic brake system.
- (9) Turn signal indicator.
- (10) Glow-plug indicator light, where appropriate.
- (11) Tachometer required on vehicles 14,500 pounds GVWR and greater.

b. Gauges will be displayed as single-gauge installations or as gauges contained in a multifunction instrument display. The multifunction instrument display will comply, as a minimum, with the following design criteria:

- (1) The driver must be able to manually select any displayable function of the gauge on a multifunction display whenever desired.
- (2) Whenever an out-of-limits condition occurs, which would be displayed on one or more functions of a multifunction gauge, the multifunction gauge controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated warning light as well as having the multifunction gauge automatically display the out-of-limits indications. Should two or more functions displayed on the multifunction gauge go out of limits simultaneously, the multifunction gauge should automatically sequence between those functions continuously until the condition(s) is corrected.
- (3) The use of a multifunction instrument display does not relieve the requirement of audible warning devices pursuant to this subrule.

c. All instruments will be easily accessible for maintenance and repair.

d. Instruments and gauges will be mounted on the instrument panel so each is clearly visible to the driver in a normal seated position.

e. The instrument panel will have rheostatically controlled lamps of sufficient candlepower to illuminate all instruments, gauges, and the shift selector indicator for automatic transmission.

44.3(36) Insulation.

a. Thermal insulation in the ceiling and walls will be fire-resistant, UL-approved, and approximately 1½-inch thick with a minimum R-value of 5.5. Insulation will be installed in such a way as to prevent it from sagging.

b. Roof bows will be insulated in accordance with paragraph 44.3(36)“a.”

44.3(37) Interior.

a. The interior of the bus is to be free of all unnecessary projections, including luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lapped joints, the forward panel will be lapped by the rear panel and exposed edges will be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and tow chains. See also subrule 44.3(61).

b. Radio speakers are permitted in the passenger compartment area only. No radio speaker, other than that which is necessary for use with two-way communication equipment, will be located within the driver's compartment area. All radio speakers will be flush-mounted with the roof or side panels and free of sharp edges.

c. The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

d. Every school bus will be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source does not exceed 85 dBA when tested according to the procedure found in Appendix B, National School Transportation Specifications and Procedures Manual 2015.

e. An access panel will be provided, front and rear, so lights and wiring for the 8-light warning system may be repaired or serviced without removing ceiling panels.

f. Ceiling material designed to reduce noise within the driver compartment or passenger compartment may be installed by the manufacturer.

g. An electronic "child check" monitor will be installed. This monitor will operate in such a way as to require the driver to physically walk to the back of the bus to disengage the monitor system after having first shut off the engine of the bus.

h. Mobile Wi-Fi Internet and USB ports are allowed, in accordance with other provisions of subrule 44.3(37).

i. On-board interior bus camera heads are allowed within the passenger area of the bus. Camera heads are not to extend more than 1½ inches from the ceiling and are to have rounded edges as much as possible. Camera heads will not be mounted directly above the aisle. Exterior cameras are allowed.

j. Electronic student detection systems are allowed on both the interior and exterior of the bus. Interior systems will detect students left behind after the bus is shut off. Exterior systems will detect students in the danger zones.

44.3(38) Lamps and signals.

a. All lamps and lamp components will meet or exceed applicable standards established by the Society of Automotive Engineers (SAE), the American Association of Motor Vehicle Administrators (AAMVA), and FMVSS. These lamps will be of incandescent or LED design.

b. Clearance lamps. The body will be equipped with two amber clearance lamps at the front and two red clearance lamps at the rear mounted at the highest and widest portion of the body.

c. Identification lamps. The bus will be equipped with three amber identification lamps on the front and three red identification lamps on the rear. Each group will be evenly spaced not less than 6 or more than 12 inches apart along a horizontal line near the top of the vehicle.

d. Intermediate side marker lamps. On all buses over 30 feet long, one amber side lamp is necessary on each side, located midway between the front and rear clearance lamps.

e. Stop/tail (brake) lamps. Buses will be equipped with four combination, red stop/tail lamps meeting SAE specifications. Each lamp will have double filament lamp bulbs or LEDs that are connected to the headlamp and brake-operated stop lamp circuits. These should be positioned as follows:

(1) Two combination lamps with a minimum diameter of 7 inches or, if a shape other than round, a minimum of 38 square inches of illuminated area will be mounted on the rear of the bus just to the inside of the turn signal lamps.

(2) Two combination lamps with a minimum diameter of 4 inches or, if a shape other than round, a minimum of 12 square inches of illuminated area will be mounted on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps will be activated by the service brakes and emit a steady light when illuminated. Type A-2 buses with bodies supplied by the chassis manufacturer may have the manufacturer's standard stop and tail lamps.

f. Items described in paragraphs 44.3(38) "b," "c," "d," and "e" will be connected to the headlamp switch.

g. Backup lamps. The bus body will be equipped with two white rear backup lamps. All vehicles will be equipped with lamps at least 4 inches in diameter or, if a shape other than round, a minimum of 13

square inches of illuminated area. All lamps will have a white or clear lens and meet SAE specifications. If backup lamps are placed on the same line as the brake lamps and turn signal lamps, they will be to the inside. Exterior perimeter lighting behind rear axle, activated by reverse switch, is allowed.

h. Interior lamps. Interior lamps will be provided that adequately illuminate the interior aisle and the step well. Step well lights and exterior boarding lights are required and will be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open. In addition, the following interior lamps will be provided:

(1) Supervisor's light. The rearmost ceiling light or a separate light may be used as a supervisor's light and will be activated by a separate switch controlled by the driver.

(2) Driver's area dome light. This light will have a separate switch controlled by the driver and illuminate the driver's compartment area.

(3) Body instrument panel lights will be controlled by a rheostat switch.

(4) On buses equipped with a monitor for the front and rear lamps of the school bus, the monitor will be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit will be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

i. License plate lamp. The bus will be equipped with a rear license plate illuminator. This lamp may be combined with one of the tail lamps.

j. Reflectors. Reflectors will be securely attached to the body with sheet metal screws or another method having equivalent securement properties and installed in accordance with the requirements of FMVSS No. 108; however, the vehicle will, as a minimum, be equipped with the following:

(1) Two amber reflectors, one on each side at the lower front and corner of the body approximately at floor level and back of the door on the right side, and at a similar location on the left side. For all buses over 30 feet long, an additional amber reflector is necessary on each side at or near the midpoint between the front and rear side reflectors.

(2) Four red reflectors, one at each side at or near the rear and two on the rear, one at each side.

(3) Reflectors are to be mounted at a height not more than 42 inches or less than 30 inches above the ground on which the vehicle stands.

k. Warning signal lamps.

(1) Buses will be equipped with two red lamps at the rear of the vehicle and two red lamps at the front of the vehicle.

(2) In addition to the four red lamps described above, four amber lamps will be installed so that one amber lamp is located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. The system of red and amber signal lamps will be wired so that amber lamps are energized manually and the red lamps are automatically energized (sequential), with amber lamps being automatically de-energized, when the stop signal arm is extended or when the bus service door is opened. An amber pilot light and a red pilot light will be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

(3) The area immediately around the lens of each alternately flashing signal lamp is to be black. In installations where there is no flat vertical portion of body immediately surrounding the entire lens of the lamp, there will be a circular or square band of black immediately below and to both sides of the lens, on the body or roof area against which the signal lamp is seen from a distance of 500 feet along the axis of the vehicle. Black visors or hoods, with a minimum depth of 4 inches, may be provided.

(4) Red lamps will flash at any time the stop signal arm is extended.

(5) All flashers for alternately flashing red and amber signal lamps will be enclosed in the body in a readily accessible location.

(6) Strobe lights are permissible.

(7) Additional electronic/lighted warning devices mounted on the rear of the bus are allowed. Each design will be evaluated and approved by Iowa department of education personnel per established criteria.

(8) Supplemental warning lights may be installed by the vehicle owner. The supplemental warning lights may be mounted to the front and rear of all Type A, B, C and D school buses and will meet the following provisions:

1. Will be wired into the existing 8-way warning light system, operate only with the existing red lights of that system, and use the same flash pattern.

2. Will be a four-light system (two front, two rear) and will not be mounted directly to either the front or rear bumper.

- Front lights will be located between the outer edge of the grill opening and the outer edge of the headlight(s), and sit horizontally rather than vertically. The lens of the light will be approximately perpendicular to the ground and to the outside edge of the bus body.

- Rear lights will be located 1 inch to 3 inches above the bumper, with a maximum of 4 inches above the bumper; will be located at least 1 inch inboard from the outside edge of the bus, but left and right of the emergency door; and will sit horizontally rather than vertically. The lens of the light will be approximately perpendicular to the ground and to the outside edge of the bus body.

l. Turn signal lamps.

(1) The bus body will be equipped with amber rear turn signal lamps that meet SAE specifications and are at least 7 inches in diameter or, if a shape other than round, a minimum of 38 square inches of illuminated area. These signal lamps will be connected to the chassis hazard warning switch to cause simultaneous flashing of turning signal lamps when needed as a vehicular traffic hazard warning. Turn signal lamps are to be placed as far apart as practical, and their centerline will be approximately 8 inches below the rear window. Type A-2 conversion vehicle lamps will be at least 21 square inches in lens area and in the manufacturer's standard color.

(2) Buses will be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side will be mounted rearward of the stop signal arm, and the turn signal lamp on the right side will be mounted rearward of the service door.

m. A white flashing strobe light rated for outdoor use and weather-sealed will be installed on the roof of the bus not less than 1 foot or more than 18 inches from the rear center of the bus. The strobe light will be located to the rear of the rearmost emergency roof hatch to prevent the roof hatch from diminishing the effectiveness of the strobe light. In addition:

(1) The strobe light will have a single clear lens emitting light 360 degrees around its vertical axis and will not extend above the roof more than the maximum legal height pursuant to Iowa Code section 321.456.

(2) The strobe light will be controlled by a separate switch with an indicator light that when lit will indicate that the strobe light is turned on.

(3) The light will be used in fog, rain, snow, or at times when visibility is restricted. The light may also be used as determined to be appropriate.

(4) Each model strobe light will meet the provisions of SAE J845 Class 1.

n. Pedestrian safety crossing lights are allowed and will activate automatically in conjunction with the stepwell and boarding lights.

44.3(39) Measurements.

a. Interior body height will be 72 inches or more, measured metal to metal, at any point on the longitudinal centerline from the front vertical bow to the rear vertical bow. Inside body height of Type A-2 buses will be 62 inches or more.

b. Overall height, length and width of the bus will not exceed the maximums allowed by the department of transportation.

44.3(40) Metal treatment.

a. All metal, except high-grade stainless steel or aluminum, used in construction of the bus body will be zinc-coated or aluminum-coated to prevent corrosion. This provision applies to such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

b. All metal parts that will be painted will be, in addition to above requirements, chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed to improve paint adhesion.

c. In providing for these provisions, particular attention will be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.

d. As evidence that the above requirements have been met, samples of materials and sections used in construction of the bus body will be subjected to cyclic corrosion testing as outlined in SAE J1563.

44.3(41) Mirrors.

a. The interior mirror will be either clear view laminated glass or clear view glass bonded to a backing that retains the glass in the event of breakage. The mirror will have rounded corners and protected edges. All Type A buses will have a minimum of a 6-inch × 16-inch mirror; and Type B, C, and D buses will have a minimum of a 6-inch × 30-inch mirror.

b. Each school bus will be equipped with exterior mirrors meeting the requirements of FMVSS No. 111. Mirrors will be easily adjustable, but rigidly braced so as to reduce vibration.

c. All exterior mirrors will be heated.

d. Systems offering a design feature permitting the driver to remotely adjust rearview mirrors from the driver's compartment will be utilized.

e. The right-side rearview mirrors will be unobstructed by the unwiped section of the windshield.

f. Stainless steel mirror brackets are allowed.

g. An interior mirror utilizing a secondary screen linked to an exterior camera is allowed. However, the secondary screen must revert to a mirror status when the bus is moving forward.

44.3(42) Mounting.

a. The chassis frame will support the rear body cross member. Except where chassis components interfere, the bus body will be attached to the chassis frame at each main floor sill in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

b. Isolators will be placed at all contact points between the body and chassis frame and secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

c. The body front will be attached and sealed to the chassis cowl to prevent entry of water, dust, and fumes through the joint between the chassis cowl and body.

d. The refurbishing or reconditioning of a body-on-chassis school bus is limited to the repair and replacement of school bus body or chassis components. The original body and chassis, as certified by the OEMs, will be retained as a unit upon completion of repairs. It is not permissible to exchange or interchange school bus bodies and chassis. The refurbisher or reconditioner will certify that the vehicle meets all state and federal construction standards in effect as of the date of manufacture and will provide suitable warranty on all work performed. See also subrule 44.6(1).

44.3(43) Mud flaps.

a. Mud flaps or guards are required and provided and installed by the body manufacturer or manufacturer's representative for both front and rear wheels.

b. Front mud flaps or guards will be of adequate size to protect body areas vulnerable to road debris from wheels and mounted so as to be free of wheel movement at all times.

c. Rear mud flaps or guards will be comparable in size to the width of the rear wheelhousing and reach within approximately 9 inches of the ground when the bus is empty. They will be mounted at a distance from the wheels to permit free access to spring hangers for lubrication and maintenance and to prevent their being damaged by tire chains or being pulled off while the vehicle is in reverse motion.

d. All mud flaps will be constructed of rubber or a rubber composite. Vinyl or plastic is not acceptable.

44.3(44) Openings. All openings in the floorboard or fire wall between the chassis and passenger compartment, such as for gearshift selector and parking brake lever, will be sealed.

44.3(45) Passenger securement seating system.

a. All vehicles will conform to all FMVSS at date of manufacture.

b. Unless otherwise provided by FMVSS, school bus seats may be equipped with passenger securement systems for passengers with disabilities in accordance with 281—Chapter 41 when the child's individual education program staffing team determines that special seating and positioning are necessary during transportation. When a child securement system is necessary, the seat, including seat frame, seat cushion, belt attachment points, belts and hardware, will comply with all applicable FMVSS at the time of manufacture.

c. Children transported in child safety seats will be secured to a school bus seat utilizing a seat belt-ready seat frame, according to the child safety seat manufacturer's instructions.

44.3(46) Public address system. A public address system permitting interior, exterior or both interior and exterior communication with passengers may be installed.

44.3(47) Radio/communication system. Each school bus will have a communication system to allow communication between the driver of the bus and the school's base of operations for school transportation. This system will be a two-way radio, cellular phone, or similar device as allowed by local and state policies regarding use of handheld communication equipment.

44.3(48) Retroreflective material.

a. Retroreflective material will be provided in accordance with the following:

(1) The rear of the bus body is marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material that conforms with the requirements of FMVSS No. 131. The perimeter marking of rear emergency exits per FMVSS No. 217 or the use of retroreflective "SCHOOL BUS" signs partially accomplish the objective of this provision. To complete the perimeter marking of the back of the bus, strips of retroreflective NSBY material, a minimum of 1 inch and a maximum of 2 inches in width, is applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus. Vertical strips are applied at the corners connecting these horizontal strips. Multifunction school activity buses (MFSABs) are exempt from these color requirements.

(2) "SCHOOL BUS" signs, if not of lighted design, are marked with reflective NSBY material comprising background for lettering of the front and rear "SCHOOL BUS" signs.

(3) Sides of the bus body are marked with reflective NSBY material at least 1¾ inches in width, extending the length of the bus body and located within 6 inches above or below the floor line or on the beltline.

b. Front and rear bumpers may be marked diagonally 45 degrees down to centerline of pavement with 2-inch +/- ¼ inch wide strips of noncontrasting reflective material. This material will appear black during daylight hours; however, it will be seen as a reflective material during periods of reduced light conditions when a direct light source strikes the material.

44.3(49) Road speed control. A road speed control device or a vehicle cruise control may be utilized.

44.3(50) Rub rails.

a. One rub rail located on each side of the bus at, or no more than 8 inches above, the seat level will extend from the rear side of the entrance door completely around the bus body (except for emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

b. One rub rail located at, or no more than 10 inches above, the floor line will cover the same longitudinal area as the upper rub rail, except at wheel housings, and will extend only to radii of the right and left rear corners.

c. Rub rails at or above the floor line will be attached at each body post and all other upright structural members.

d. Each rub rail will be 4 inches or more in width in its finished form, be of 16-gauge steel or suitable material of equivalent strength, and be constructed in corrugated or ribbed fashion.

e. Rub rails will be applied to outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this provision. For all buses using a rear luggage or rear engine compartment, rub rails need not extend around rear corners.

f. The bottom edge of the body side skirts will be stiffened by application of a rub rail, or the edge may be stiffened by providing a flange or other stiffeners.

g. Rub rails will be painted black or be covered with black retroreflective material.

44.3(51) Seating, crash barriers.

a. All school buses (including Type A) will be equipped with restraining barriers that conform to FMVSS No. 222.

b. Crash barriers will be installed conforming to FMVSS No. 222; however, all Type A-2 school bus bodies will be equipped with padded crash barriers, one located immediately to the rear of the driver's seat and one at the service door entrance immediately to the rear of the step well.

c. Crash barriers will be constructed with materials that enable the crash barriers and passenger seats to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the National School Transportation Specifications and Procedures Manual 2015. Fire block material, when used, will include the covering of seat bottoms.

d. All crash/restraining barriers will be the same height as the passenger seating height in the bus.

44.3(52) Seating, driver: Buses will be equipped with a Type 2 lap belt/shoulder harness seat belt assembly for the driver. This assembly may be integrated into the driver's seat. The seat belt assembly and anchorage will meet applicable FMVSS. The design will also meet the following additional provisions:

a. The lap portion of the belt will be anchored or guided at the seat frame by a metal loop or other such device attached to the right side of the seat to prevent the driver from sliding sideways out of the seat.

b. There will be a minimum of 7 inches of adjustment of the "D" loop of the driver's shoulder harness on a nonintegrated style of seat belt assembly.

c. The driver's seat belt assembly will incorporate high-visibility material. An audible alarm is also allowed.

44.3(53) Seating, passenger:

a. All seats, component parts, seat anchorage, cushion depth, seat back height, rump width, and seat-to-seat or seat-to-barrier measurements will comply with applicable federal requirements as of the date of manufacture, including FMVSS No. 217 and No. 222.

b. Seat-to-seat and seat-to-barrier measurements will be on a label permanently affixed to the bus.

c. Jump seats or portable seats are prohibited; however, use of a flip seat at any side emergency door location in conformance with FMVSS No. 222, including required aisle width to side door, is acceptable. Any flip seat will be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms will be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats will be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in an upright position. The seat cushion will be designed to rise to a vertical position automatically when not occupied.

d. Passenger seats will be constructed with materials that enable them to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the most current National School Transportation Specifications and Procedures Manual. Fire block material, when used, will include the covering of seat bottoms.

e. Seat cushions will contain a positive locking mechanism that requires removal of a security device before the seat may be unlatched.

f. For Type C and D buses, the distance between the rearmost portion of the seat backs of the rear row of seats and outside rear of the bus body (rear seat buffer zone), measured at the floor line, will be at least 8 inches. For Type A buses, the distance will be at least 6 inches.

44.3(54) Seating, passenger restraints:

a. Lap belts will not be installed on passenger seats in large school buses (over 10,000 pounds GVWR) except in conjunction with child safety restraint systems that comply with the provisions of FMVSS No. 213, Child Restraint Systems.

b. Three-point lap-shoulder belts will be installed in all new buses. The restraint system shall include a flexible design feature, thus allowing three-two seating on the same 39-inch seat, depending on student size.

44.3(55) Shock absorbers: Buses will be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

44.3(56) Steering gear:

a. The steering gear will be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

b. If external adjustments are necessary, the steering mechanism will be accessible.

c. No changes will be made in the steering apparatus, including the addition of spinners or knobs that are not approved by the chassis manufacturer.

- d. There will be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.
- e. Power steering is required and will be of the integral type with integral valves. Electric power-assisted steering systems are allowed.
- f. The steering system will be designed to provide a means for lubrication of all wear points, if wear points are not permanently lubricated.
- g. Tilting and telescopic steering wheels are acceptable.

44.3(57) Steps.

- a. The first step at the service door will be not less than 10 inches and not more than 14 inches from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door will be 11 inches to 16 inches from the ground. A step well guard/skid plate will be installed by the manufacturer on all Type D vehicles.
- b. Step risers will not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.
- c. Steps will be enclosed to prevent accumulation of ice and snow. See subparagraph 44.4(2) "g"(1) for exception.
- d. Steps will not protrude beyond the side body line.

44.3(58) Step treads.

- a. All steps, including floor line platform area, will be covered with an elastomer floor covering having a minimum overall thickness of 3/16 inch.
- b. The step covering will be permanently bonded to a durable backing material that is resistant to corrosion.
- c. Step treads will have a 1½-inch white or yellow nosing as an integral piece without any joint.
- d. Step treads will have abrasion resistance, slip resistance, weathering resistance, and flame resistance as outlined in the National School Transportation Specifications and Procedures Manual 2015.
- e. A 3-inch white or yellow rubber step edge at floor level, flush with the floor covering, will be provided.
- f. Step treads will have a calculated burn rate of .01 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302, Flammability of Interior Materials.
- g. A spray-on application type material that meets all other step tread requirements may be used in lieu of the floor covering described in paragraph 44.3(58) "a." The material will be applied not only to the interior surfaces of the service door step treads but also to the exterior if the exterior is not covered by undercoating.

44.3(59) Stirrup steps.

- a. There will be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning.
- b. Steps or cutouts are permitted in the front bumper only, in lieu of the stirrup steps, if the windshield and lamps are easily accessible for cleaning from that position.

44.3(60) Stop signal arm.

- a. The stop signal arm will be a flat 18-inch octagon exclusive of brackets for mounting. Stop arms or other warning devices will not extend more than 30 inches beyond the side of the bus body. All lamps and lamp components will comply with the requirements of FMVSS No. 131.
- b. Both surfaces of the sign will be covered with reflectorized material having a reflective capability equal to or exceeding that of 3M Corporation high-intensity sheeting.
- c. The application of the reflective sheeting material will be in accordance with the sheeting manufacturer's suggested application process. All copy will be sharply defined and clean cut.
- d. The stop arm blade will be mounted in the area below the driver's window on the left side of the bus.
- e. A second stop signal arm will be installed on the left side at or near the left rear corner of Type C and D school buses and meet the requirements of FMVSS No. 131.

f. Each stop arm blade will be automatically extended upon activation of the red warning signal lamp system and remain extended until the red signal lamps are deactivated. In addition, each stop arm blade will be equipped with two double-faced, 4-inch, alternately flashing red lights. The use of strobe lamps in the stop arm blade is acceptable.

g. A wind guard will be installed that prevents air currents from circulating behind the blades.

h. The stop arm will be vacuum-, electric-, or air-operated; and the system will positively hold the sign in extended or retracted position to prevent whipping in the wind.

i. If the air for an air-operated stop arm comes from the regular air brake system, the body manufacturer will provide the necessary check valve and pressure reduction valve to safeguard the air supply for brake application.

j. The two double-faced, 4-inch flashing lights may be replaced with an LED illuminated, high-visibility display, spelling out the word “STOP” visible to the front and rear. This lighting system will comply with applicable FMVSS prior to installation.

44.3(61) *Storage compartments.*

a. A storage container for tools, tire chains, and tow chains may be located either inside or outside the passenger compartment; but, if inside, it will have a cover (seat cushion may not serve this purpose) capable of being securely latched and fastened to the floor, convenient to either the service or emergency door.

b. Luggage compartments are allowed. Compartments will include a door and a means of holding the door in an open position when the compartment is being loaded or unloaded.

44.3(62) *Suspensions.* The capacity of springs or suspension assemblies will be commensurate with the chassis manufacturer’s GVWR rating.

44.3(63) *Sun shield.*

a. For Type B, C, and D vehicles, an interior adjustable transparent sun shield not less than 6 inches × 30 inches with a finished edge will be installed in a position convenient for use by the driver. An interior adjustable transparent driver’s side mounted sun shield of manufacturer’s specification is allowed.

b. On all Type A buses, the sun shield will be the manufacturer’s standard.

44.3(64) *Tires and rims.*

a. Tires and rims of the proper size and tires with a load rating commensurate with the chassis manufacturer’s gross vehicle weight rating (GVWR) will be provided.

b. Tires will be of tubeless, steel-belted, radial (standard or low-profile) construction.

c. “Bud” type, hub-piloted steel rims are required. Multipiece and “Dayton” rims are prohibited. Manufactured non-ferrous spacers are required between steel and aluminum rims.

d. Dual tires will be provided on all vehicles listed in rule 281—44.2(285), except Type III and Type A1 vehicles.

e. All tires on a vehicle will be of the same size, and the load range of the tires will meet or exceed the GVWR as specified in FMVSS No. 120.

f. Spare tires are not necessary; however, if specified, the spare tire will be located outside the passenger compartment. The spare tire will not be attached to any part of the rear portion of the body including the emergency door, bumper or roof. If a tire carrier is necessary, it will be suitably mounted in an accessible location outside the passenger compartment.

g. Recapped tires are permissible as replacements on equipment now in operation for use on rear wheels only, providing tires are guaranteed by the seller. Recapped tires are not permissible where single rear wheels are used.

h. Tires, when measured on any two or more adjacent tread grooves, will have a tread groove pattern depth of at least 4/32 of an inch on the front wheels and 2/32 of an inch on the rear wheels. No measurement will be made where tire bars, humps, or fillets are located. On Type A-1 and Type A-2 buses, the tread groove pattern depth will be at least 4/32 of an inch. Where specific measurement points are provided by the tire manufacturer, they will be utilized in determining tires approved for service. This provision also applies to buses now in service.

i. Tire pressure equalizing systems for dual rear wheels are acceptable.

j. Wheel check indicators for lug nuts are allowed.

44.3(65) *Tow hooks, front.* Tow eyes or hooks are necessary on Type B, C and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks will be installed by the manufacturer so as not to project beyond the front bumper.

44.3(66) *Tow hooks, rear.* Two rear tow hooks are necessary on all school buses. Rear tow hooks will be attached to the chassis frame and located under the rear bumper so the hook portion is under the body.

44.3(67) *Traction-assisting devices.* Traction-assisting devices including hopper-sanders, tire chains or automatic traction chains may be installed.

44.3(68) *Transmission.*

a. Automatic transmissions will provide for not less than three forward speeds and one reverse speed. The shift lever, if applicable, will provide a detent between each gear position when the gear selector quadrant and shift lever are not steering column-mounted.

b. Automatic transmissions will have a transmission shifter interlock controlled by the application of the service brake to prohibit accidental engagement of the transmission.

44.3(69) *Trash container and holding device.*

a. When a trash container is placed on the school bus, it will comply with the following:

- (1) Meet the requirements of FMVSS No. 302, Flammability of Interior Materials.
- (2) Be no greater than 20-quart capacity.
- (3) Be secured by a holding device that is designed to prevent movement and to allow easy removal and replacement.

b. The container will be placed in an accessible location in the driver's compartment of the school bus subject to department of education approval. The container will not obstruct the aisle of the bus, access to safety equipment or passenger use of the service entrance door.

c. Trash containers meeting the requirements of paragraph 44.3(69) "a" are allowable behind the rear seat.

44.3(70) *Turning radius.*

a. A chassis with a wheelbase of 264 inches or less will have a right and left turning radius of not more than 42½ feet, curb-to-curb measurement.

b. A chassis with a wheelbase of 265 inches or more will have a right and left turning radius of not more than 44½ feet, curb-to-curb measurement.

44.3(71) *Undercoating.*

a. The entire underside of the bus body, including floor sections, cross member and below floor line side panels, and chassis front fenders will be coated with rustproofing material for which the material manufacturer has issued to the bus body manufacturer a notarized certification that materials meet or exceed all performance standards of SAE J1959, Sept. 2003 Edition.

b. Undercoating material will be applied with suitable airless or conventional spray equipment to the undercoating material manufacturer's recommended film thickness and show no evidence of voids in cured film.

c. The undercoating material will not cover any exhaust components of the chassis.

d. If chassis is built as a separate unit, the chassis manufacturer or its agents are responsible for providing undercoating to the chassis areas.

44.3(72) *Vandal lock.*

a. The school bus may be equipped with a vandal locking system for securing the service entrance, emergency, and wheelchair lift door(s).

b. The vandal locking system will include the following design features:

(1) The entrance door is to be locked by an exterior key with a dead bolt, a remote control (cable) device or an electric device. The system is to prevent the door from being accidentally locked by any motion the bus may encounter during its normal operation. This provision does not apply to Type A vehicles with a left-side driver's door.

(2) When the bus is equipped with a rear-mounted engine, the emergency door and rear emergency exit window are to be locked by an interior slide bolt that will activate a buzzer when the door or

emergency exit window is locked and the ignition of the bus is turned on. The locking mechanism is to be capable of being locked or unlocked without the use of a separate key or other similar device.

(3) The engine starting system of the bus will not operate if the rear or side emergency door or rear emergency exit window over the rear engine compartment is locked from either the inside or outside of the bus.

(4) Hasp-type devices is not to be attached to the bus for the purpose of securing any door or window.

44.3(73) Ventilation.

a. The body ventilation system on Type A, B, C and D buses will include one or more combination roof ventilation/emergency escape hatches in accordance with subrule 44.3(14). The ventilation system will be capable of being controlled and have sufficient capacity to maintain a proper quantity of air under operating conditions without the opening of windows except in extremely warm weather.

b. Each combination roof ventilation/emergency escape hatch will be installed by the school bus body manufacturer or the body manufacturer's approved representative and will have the following design and installation features:

(1) Multiposition fresh air ventilation.

(2) Release handle(s) permitting operation as an emergency exit(s), accessible inside and outside the vehicle.

(3) An audible warning system that sounds an alarm in the driver's compartment area when the emergency roof hatch is unlatched will be installed as a design feature by the manufacturer.

(4) When more than one ventilation/emergency roof hatch is necessary, one will be installed forward of the intersection of the horizontal and longitudinal midpoints of the bus in a low-pressure area of the roof. The second unit will be installed on the roof in a location behind the rear axle. When only one ventilation/emergency roof hatch is necessary, it will be installed in a low-pressure area of the roof at or near the longitudinal midpoint of the bus.

(5) Ventilation/emergency escape hatches may include static-type nonclosable ventilation.

c. Auxiliary fans will be installed and meet the following provisions:

(1) Two adjustable fans will be installed on Type B, C and D buses. Fans for left and right sides will be placed in a location where they can be adjusted for maximum effectiveness and do not obstruct vision to any mirror.

(2) Fans will be a nominal 6-inch diameter except where noted below.

(3) Fan blades are to be covered with a protective cage. Each fan will be controlled by a separate switch capable of two-speed operation.

(4) Type A buses will have at least one fan that has a nominal diameter of at least 4 inches and meets the above requirements.

44.3(74) Wheelhousings.

a. The wheelhousing will be attached to the floor sheets in such a manner as to prevent any dust, water or fumes from entering the bus body. Wheelhousings will be constructed of at least 16-gauge steel or other material capable of withstanding passenger or other expected loads applied internally or externally without deformation.

b. The inside height of the wheelhousing above the floor line will not exceed 12 inches.

c. The wheelhousing will provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

44.3(75) Windshield and windows.

a. All glass in windshield, windows, and doors will be of approved safety glass consistent with American National Standard, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, ANSI/SAE Z-26.1-1990, mounted so the permanent mark is visible, and of sufficient quality to prevent distortion of view in any direction.

b. Glass in windshields may be heat-absorbing and may contain a shaded band across the top. Location of "fade out" will be above the upper limit for maximum visibility.

c. Each full side window, other than emergency exits designated to comply with FMVSS No. 217, will be split-sash type and provide an unobstructed emergency opening of at least 9 inches high, but not

more than 13 inches high, and 22 inches wide, obtained by lowering the window. When the driver's window consists of two sections, both sections will be capable of being moved or opened.

d. The school bus body manufacturer may design and install a protective device over the inside, lower window glass of a rear emergency door to protect it from being damaged or broken during normal operation. The protective device will be securely mounted by the manufacturer, be free of projections that might harm passengers, and permit visibility through the device to the area outside and to the rear of the bus.

e. Tinted glazing capable of reducing the amount of light passing through a window may be installed consistent with rules established by the department of public safety relating to automotive window transparency standards, except that the following windows shall be of AS-II clear glass rating:

- (1) All glass to the immediate left of the driver.
- (2) All glass forward of the driver and service door.
- (3) All glass in the service entrance door.

44.3(76) Windshield washer system.

a. All buses will be equipped with electric wet-arm windshield washers that conform to the body manufacturer's recommendation as to type and size for the bus on which they are to be used. The windshield washer system on Type A and A-2 vehicles may be of the manufacturer's standard design.

b. The washer control(s) will be located within easy reach of the driver.

44.3(77) Windshield wiper system.

a. For Type A vehicles, windshield wipers will be supplied by the chassis manufacturer and be of the manufacturer's standard design.

b. Type B, C and D buses will be equipped with two positive-action, two-speed or variable-speed electric windshield wipers. Windshield wipers will have an intermittent wiping feature and be operated by a single switch.

c. The wipers will be operated by one or more electric motors of sufficient power to operate wipers. If one motor is used, the wipers will work in tandem to give a full sweep of the windshield.

d. Wiper control(s) will be located within easy reach of the driver and designed to move the blades from the driver's view when the wiper control is in the "off" position.

e. Windshield wipers will meet the requirements of FMVSS No. 104.

281—44.4(285) Construction of vehicles for children with mobility disabilities. The following apply to vehicles constructed for the transportation of children with mobility disabilities of such severity that the children are unable to use the regular service door entrance. Vehicles constructed for transporting these children will meet all FMVSS relating to school bus construction and Iowa school bus construction requirements as described in rules 281—44.1(285) and 281—44.3(285). The following standards also apply:

44.4(1) General provisions.

a. Certification of these vehicles as multipurpose passenger vehicles due to capacity rating do not relieve the manufacturer of the responsibility to provide a completed vehicle meeting all FMVSS for school buses as well as rules 281—44.1(285) through 281—44.3(285) relating to the construction of a school bus.

b. Alteration of the interior of the vehicle is permissible if all seats and barriers, component parts, anchorages, wheelchair securement devices, and placement of seats and barriers and wheelchair securement devices comply with federal provisions as of date of manufacture. All equipment will be supplied by the original manufacturer and installed per the original manufacturer's specification. Alteration that would return the vehicle to conventional passenger seating will include removal of all wheelchair securement devices, removal of the power lift, and rendering the special service door inoperable.

c. Any school bus that is used for the transportation of children who use a wheelchair or other restraining devices that prevent use of the regular service entrance will be equipped with a power lift located on the right side of the bus body located either forward of or behind the rear wheels on a Type A, B, C, or D bus.

d. The actual rated seating capacity following modification of a vehicle will be placed at locations indicated in paragraph 44.3(34) “e.”

44.4(2) Specific provisions.

a. *Aisle.* Aisles leading from the wheelchair placements to the special service door and either the service door or one 30-inch wide emergency door will be a minimum of 30 inches in width.

(1) Aisles leading from wheelchair placements to all other doors will be at least 20 inches in width.

(2) A wheelchair securement position will not be located directly in front of a power lift door.

b. *Barriers.*

(1) Barriers will comply with and be installed as required by federal standards as of date of manufacture.

(2) A heavy-duty padded barrier or stanchion will be provided immediately to the rear of the step well opening extending from the side wall of the bus to approximately the aisle to prevent a person from accidentally falling into the step well opening from floor level. A barrier or stanchion as mentioned above will also be placed directly behind the driver.

(3) The power lift mechanism will be padded and protected to prevent a child from accidentally getting any part of the child’s body caught in the power lift mechanism or special service door at any time.

(4) All crash/restraining barriers will be the same height as the passenger seating height in the bus.

c. *Glazing.* Tinted glazing may be installed in all doors, windows, and windshield.

d. *Heaters.* An additional heater(s) may be installed in the rear portion of the bus on or behind wheel wells.

e. *Identification.* Buses with wheelchair lifts used for transporting children with physical disabilities will display the International Symbol of Accessibility located on the front and rear of the vehicle below the window line. Emblems will be white on blue, shall not exceed 12 × 12 inches in size, and may be reflectorized.

f. *Power lift.*

(1) The power lift will meet all FMVSS and ADA requirements at the time of manufacture.

(2) The power lift may be located either forward of or behind the rear wheels of the vehicle on the right side of Type A, B, C and D buses.

(3) All lift controls will be portable and conveniently located on the inside of the bus near the special service door opening. Controls will be easily operable from inside or outside the bus. A master cut-off switch controlling on/off power to the lift will be located in the driver’s compartment. There will be a means of preventing the lift platform from falling while in operation due to a power failure.

(4) Power lifts will be equipped so they may be manually raised or lowered in the event of power failure of the power lift mechanism.

(5) All edges of the platform will be designed to restrain a wheelchair and to prevent the operator’s feet from being entangled during the raising and lowering process.

(6) A circuit breaker, fuse, or other electrical protection device will be installed between the power source and the lift motor if electrical power is used.

(7) When hydraulic pressure is used in the lifting process, the system will be equipped with adjustable limit switches or bypass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full “up” position or full “down” position.

(8) All exposed parts of the power lift that are in direct line with the forward or rearward travel of a wheelchair student or attendant will be padded with energy-absorbing material.

(9) Power lifts are not allowed on vehicles with single rear wheels.

g. *Ramps.* Ramps are not permitted on Type A, B, C, and D buses.

h. *Regular service entrance.*

(1) An additional fold-out or slide-out step may be provided that will provide for the step level to be no more than 6 inches from the ground level to assist persons with disabilities that prohibit the use of the standard entrance step. This step, when stored and not in use, will not impede or in any way block the normal use of the entrance.

(2) On power lift-equipped vehicles, service entrance steps will be the full width of the step well, excluding the thickness of the doors in the open position.

(3) In addition to the standard handrail required in all buses, an additional handrail may be provided on all specially equipped school buses. If so equipped, this rail will be located on the opposite side of the entrance door from the required rail and will meet the same provisions for handrails.

i. Seating and seating arrangements.

(1) All seat spacing, seats, and related components will comply with applicable federal standards as of date of manufacture.

(2) All seats are to be forward facing. Side-facing seats are prohibited.

(3) Seat frames may be equipped by the school bus body manufacturer with rings or other devices to which passenger restraint systems may be attached.

j. Special light. Light(s) will be placed inside the bus to sufficiently illuminate the lift area and activated from the door area.

k. Special service opening.

(1) There will be an enclosed service opening located on the right side (curb side) of the body to accommodate a wheelchair lift on Type A, B, C and D buses.

(2) The opening will be at least 52 inches high and 40 inches wide and with doors open will be of sufficient width to allow for the installation of various power lifts and related accessories as well as a lifting platform at least 32 inches wide.

(3) The opening will be positioned far enough to the rear of the regular service door opening to prevent interference of the special service door(s) opening with the regular service doors.

(4) A drip molding will be installed above the opening to effectively divert water from the entrance.

(5) Doorposts, headers, and all floor sections around this special opening will be reinforced to provide strength and support equivalent to adjacent side wall and floor construction of an unaltered model.

(6) A header pad at least 3 inches wide, extending the width of special service door, will be placed above the opening on the inside of the bus.

l. Special service door(s).

(1) All doors will open outwardly.

(2) All doors will have positive fastening devices to hold doors in the open position.

(3) All doors will be equipped with heavy-duty hinges and will be hinged to the side of the bus.

(4) All doors will be weather sealed; and on buses with double doors, each door will be of the same size and constructed so a flange on the forward door overlaps the edge of the rear door when closed.

(5) If optional power doors are installed, the design will permit release of the doors for opening and closing by the attendant from the platform inside the bus.

(6) When manually operated dual doors are provided, the rear door will have at least a one-point fastening device to the header. The forward-mounted door will have at least three-point fastening devices: One will be to the header, one will be to the floor line of the body, and the other will be into the rear door. These locking devices will afford maximum safety when the doors are in the closed position. The door and hinge mechanism is to be of a strength that will provide the same type of use as that of a standard entrance door.

(7) If the door is made of one-piece construction, the door will be equipped with a slidebar, cam-operated locking device.

(8) Each door will have installed a safety glass window, set in a waterproof manner, and aligned with the lower line of adjacent sash and as nearly as practical to the same size as other bus windows.

(9) Door materials, panels, and structural strength will be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering, and other exterior features will match adjacent sections of the body.

(10) The door(s) will be equipped with a device(s) that will actuate a flashing visible signal located in the driver's compartment when the door(s) is not securely closed. (An audible signal is not permitted.)

m. Special student restraining devices.

(1) Each wheelchair station will be equipped with a lap and torso restraint system that meets applicable FMVSS.

(2) Special restraining devices such as shoulder harnesses, lap belts, and chest restraint systems may be installed to the seats providing that the devices do not require the alteration in any form of the school bus seat, seat cushion, framework, or related seat components. These restraints are for the sole purpose of restraining passengers.

(3) All child safety restraint systems will comply with the requirements of FMVSS No. 213, Child Restraint Systems.

n. Wheelchair securement systems.

(1) Securement systems for wheelchairs will meet or exceed applicable FMVSS.

(2) All wheelchair securement systems or devices will be placed in the vehicle so that, when secured, both wheelchair and occupant are facing toward the front of the vehicle. Fastening devices resulting in a side-facing wheelchair and occupant are not permissible.

(3) Straps or seat-belt devices running through the wheels of the wheelchair or around the student seated in the wheelchair for the purpose of securing the wheelchair to the floor are not acceptable.

(4) The wheelchair securement system(s) will be located in a school bus so that when a wheelchair is not secured in place the floor attachment system does not extend above the floor level more than ½ inch.

281—44.5(285) Type III vehicles.

44.5(1) General information. These vehicles may be used for student transportation in accordance with the following general provisions:

a. The vehicle will be an OEM product and manufactured as a family-type or multipurpose passenger vehicle (MPV).

Vehicles used exclusively for driver's education are exempt from these provisions.

b. The manufacturer's rated capacity of this vehicle, which is determined only by the OEM on the date of manufacture, will not exceed 12 persons including the driver. The capacity rating may not be changed or modified except by the OEM, dealer, or remanufacturer. Secondary stage or vehicle conversion manufacturers will not establish vehicle capacity. Seating capacities that vary from the OEM are required by NHTSA to be identified by an alterer's certification and information label that shall be affixed to the frame of the driver's door.

(1) Vehicles with a capacity of ten or fewer passengers including the driver may be acquired new or used.

(2) Vehicles with a capacity of 11 or 12 passengers, including the driver, may only be acquired used. For purposes of this subrule, "used" means a vehicle that has had a title transfer from a dealer to one or more previous retail owners.

c. Alteration of a vehicle, following manufacture by the OEM, is prohibited. This includes the addition or removal of seats, wheelchair securement devices, and power lifts. Ramps are allowed on the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements. The following exceptions apply:

(1) OEM options or other manufacturer's accessories not in violation of these standards may be installed.

(2) Seats may be added or removed as long as the seating capacity does not exceed the capacity as certified by the OEM or on the label installed according to paragraph 44.5(1) "b."

d. The vehicle will not carry more passengers than there are seat belts as installed by the manufacturer.

e. The vehicle will not be painted the color known as national school bus glossy yellow.

f. The vehicle will not be equipped with a stop arm or flashing warning signal lamps.

g. This vehicle will load and unload students off the traveled portion of the roadway.

44.5(2) Special equipment.

a. Interior liner. An interior liner that covers all exposed ceiling girders, sidewall posts, or other structural projections is to be provided and installed by the manufacturer.

b. The vehicle, while transporting students to and from school, will display a sign, visible to the rear, with the words “SCHOOL BUS.” The sign will be national school bus glossy yellow with black letters 6 inches high. The sign will be a type that can be removed, dismounted, or covered when the vehicle is not transporting pupils to and from school.

c. A sign with the words “THIS VEHICLE STOPS AT ALL RAILROAD CROSSINGS,” visible to the rear, may be used where appropriate and not in conflict with current statutes. If used, the words will be black letters on a yellow background. The sign will be of a type that can be dismounted, turned down, or covered when the vehicle is not transporting pupils to and from school.

d. Special brake lamps. The vehicle may be equipped with two roof-mounted lights not greater than 4 inches in diameter and positioned horizontally on the roof at least 36 inches apart. The lights will be connected to the brake lamp circuit of the vehicle’s electrical system and will operate only when the brakes are applied. When lit, the lamps will be red and visible only to the rear.

e. First aid kit. A first aid kit meeting the national recommendations (most current National School Transportation Specifications and Procedures Manual—first aid kit) is required on all vehicles used for student transportation.

f. Fire extinguisher. The vehicle will carry a dry chemical fire extinguisher of at least 2½-pound capacity with a rating of 2A-10BC. The extinguisher will be equipped with a calibrated or marked gauge. Plastic discharge heads and related parts are not acceptable.

g. Each vehicle will be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. This device will be mounted in a location accessible to the seated driver in an easily detachable manner.

h. Each vehicle will be equipped with a body fluid cleanup kit.

i. Each vehicle will be equipped with a backup alarm beeper capable of a minimum of 112 db.
NOTE: This is effective for 2007 model year vehicles and newer.

j. Trailer hitches are allowed on Type III vehicles in accordance with the manufacturer’s rated towing capacity. Students are not allowed to be transported in the vehicle when the vehicle is being used to tow.

44.5(3) *Applicability of standards.* The above standards apply to all vehicles (except as noted in paragraph 44.5(2) “i”) of this type and those currently in service used to transport students.

281—44.6(285) Repair, replacement of school bus body and chassis components following original equipment manufacture.

44.6(1) *Body and chassis repair following an accident.*

a. A school bus that has been involved in an accident in which there is damage to the body or chassis components may be repaired to the extent that such repair is possible and that the damaged component can be returned to the OEM’s specification and function.

b. The individual or company making the repairs is to certify to the vehicle’s owner that all repairs have been made in accordance with the original vehicle or component manufacturer’s recommendations using OEM’s materials and parts, or their guaranteed equal.

c. Repairs are not to cause the vehicle to no longer comply with any FMVSS in effect and applicable at the time the vehicle or component was manufactured.

44.6(2) *New technology and equipment approval procedure.* It is the intent of these rules to accommodate new technologies and equipment that will better facilitate the transportation of students to and from school and related activities. A new technology, piece of equipment or component that meets the following criteria may be adopted under the following conditions pending formal rule adoption:

a. The technology, equipment or component will not compromise the effectiveness or integrity of any major safety system, unless it completely replaces the system.

b. It will not diminish the safe environment of the interior of the bus.

c. It will not create additional risk to students who are boarding or exiting the bus or are in or near the school bus loading zone.

d. It will not create undue additional activity or responsibility for the driver.

e. It will not generally decrease the safety or efficiency of the bus.

f. It will generally provide for a safer or more pleasant experience for the occupants and pedestrians in the vicinity of the bus or generally assist the driver or make the driver's many tasks easier to perform.

g. A pilot test for the purpose of evaluating the performance of the new technology, product or vehicle component may be conducted at the direction of the school transportation consultant with the approval of the director of the department of education. The pilot test will include a minimum of five, but not more than ten, applications of the technology, product or component at locations and over a period of time to be mutually agreed upon by the department and the manufacturer of the product.

h. The cost of the technology, product or vehicle component and its installation is the responsibility of the manufacturer unless other arrangements are made prior to testing or evaluation.

i. An evaluation of the product's performance shall be conducted by department staff, and if the product is determined to meet the criteria listed in paragraphs 44.6(2) "a" to "f," measures will be taken as soon as practicable to formally approve the product.

j. A technology, product or component not recommended for approval by the department will immediately be removed from vehicles upon which pilot tests were being conducted; and its use will be discontinued by schools or individuals serving as pilot test sites, upon receipt of written notice from the department of education.

These rules are intended to implement Iowa Code sections 285.8 and 321.373.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 46
“Career and Technical Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 258.3A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 258

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking is intended to benefit Iowa students in career and technical education (CTE) programs, including their families, current employers, and future employers.

The current chapter, which was comprehensively revised in 2017, contains unnecessarily restrictive language and verbatim statutory text, which are not necessary to achieve the public policy outcomes. The proposed chapter includes citations to Iowa Code chapter 256 as amended by 2023 Iowa Acts, Senate File 514.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the costs of compliance.
 - Classes of persons that will benefit from the proposed rulemaking:
CTE students, their families, and their future employers will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation and federal CTE funds.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 46 and adopt the following **new** chapter in lieu thereof:

TITLE IX VOCATIONAL EDUCATION CHAPTER 46 CAREER AND TECHNICAL EDUCATION

281—46.1(256) Federal Act accepted. The provisions of the Act of Congress known as the Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended, and the benefit of all funds appropriated under said Act and all other Acts pertaining to career and technical education, are accepted.

281—46.2(256) Definitions. As used in this chapter, the definitions in Iowa Code section 256.125 apply. Additionally, “shared program” means a program or portion of a program offered through an agreement pursuant to Iowa Code section 256.13.

281—46.3(256) State board for career and technical education. The state board of education constitutes the board for career and technical education. In that capacity, the board will approve the multiyear state plan developed by the director in accordance with applicable federal laws and regulations governing career and technical education.

281—46.4(256) Career and technical education service areas. Districts shall comply with rule 281—46.5(256) in offering programming pursuant to this rule. Instructors teaching courses pursuant to this rule are to hold and maintain appropriate licensure pursuant to Iowa Code chapter 256, subchapter VII, part 3.

46.4(1) Grades 7-8. Pursuant to 281—Chapter 12, districts will offer career exploration and development in grades 7 and 8. Career exploration and development is designed so that students are appropriately prepared to create an individual career and academic plan pursuant to 281—Chapter 49, incorporate foundational career and technical education concepts aligned with the six career and technical education service areas as defined in subrule 46.4(2), and incorporate relevant twenty-first century skills.

46.4(2) Grades 9-12. Pursuant to 281—Chapter 12, districts will offer career and technical education programming in the following service areas:

- a.* Agriculture, food, and natural resources, including the career cluster of agriculture, food, and natural resources.
- b.* Information solutions, including the career clusters of arts, audio and video technology, and communications; and information technology.
- c.* Applied sciences, technology, engineering, and manufacturing, including the career clusters of architecture and construction; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics.
- d.* Health sciences, including the career cluster of health science.
- e.* Human services, including the career clusters of education and training; human services; hospitality and tourism; government and public administration; and law, public safety, corrections, and security.
- f.* Business, finance, marketing, and management, including the career clusters of business, management, and administration; finance; and marketing.

281—46.5(256) Standards for career and technical education. The board will adopt content standards for the career and technical education service areas. Districts will include, at a minimum, the content standards for career and technical education service areas adopted pursuant to this rule in career and technical education programs as the standards are adopted by the board.

281—46.6(256) Career and technical education program approval and review.

46.6(1) Secondary program approval. All career and technical education programs offered by a district are to be approved by the department. As a condition for approval, a district will comply with the following paragraphs.

a. Data collection and analysis. A district, for each program, will conduct an analysis of appropriate data and information related to the program and occupational fields applicable to the program. For purposes of this subrule, data includes, at a minimum, program enrollment numbers and trends by high school, course completion rates and trends, data needed under federal statutes governing career and technical education, and labor market information and socioeconomic and demographic data elements as provided by the partnership.

b. Program report and self-study. A district will create a program report and self-study for each offered program. The program report and self-study includes the following minimum criteria:

(1) Program overview. This section includes an overview of the program's purpose, a summary of data and information as described under paragraph 46.6(1) "a" and any conclusions drawn from this data and information, and an analysis of future trends in occupations associated with the program.

(2) Statement of program goals, objectives, and outcomes. This section includes clear statements of the program's goals, objectives, and outcomes, including a justification of the program's goal(s), objective(s), and outcome(s) based on the review conducted under subparagraph 46.6(1) "b" (1), and describes methods which will be used to measure the program's stated outcomes.

(3) Competencies. This section describes the established program competencies aligned with state standards pursuant to rule 281—46.5(256) and the program's goals, objectives, and outcomes; includes evidence of advisory committee approval of competencies, technical skill assessment tool(s), and proficiency benchmarks; includes evidence of postsecondary approval of competencies and technical skill assessment tool(s); outlines and describe the coherent sequence of coursework which constitutes the program, including any related foundational and concurrent enrollment coursework, depicted in a plan of study template; describes processes utilized to employ contextualized and effective work-based, project-based, and problem-based learning approaches; describes efforts to integrate career and technical education student organization(s) into the program, if applicable; and describes processes utilized to review and update the curriculum, ensuring continued relevancy to the occupational field.

(4) Student assessment. This section describes how the program will assess student outcomes established under subparagraph 46.6(1) "b" (2) and program competencies established under subparagraph 46.6(1) "b" (3) and the established technical skill assessment tool(s) to measure competencies, utilizing industry-approved technical skill assessments, where available and appropriate.

(5) Educational resources. This section describes key equipment and materials currently used in instruction; processes to determine whether the equipment is relevant and up to date; processes to maintain the equipment; and new equipment needs, with a description of how the proposed new equipment would improve the program.

(6) Advisory council. This section describes how the program engages with the business community to recruit members for the advisory council pursuant to rule 281—46.8(258) and includes a current member list with titles and company; describes advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; details and describes the advice the advisory council has suggested for the program and any actions or results taken by the program which stem from this advice as well as any advice not acted upon by the program; and includes, as an appendix to the narrative, advisory council minutes from the prior year.

(7) Partnerships. This section describes how the program's curriculum is integrated with other curricular offerings required of all students; describes the articulation, contractual agreements for shared courses with community colleges, and other agreements with community colleges and other postsecondary institutions; and describes how the program partners with counselors at various levels to assist all students and stakeholders in the exploration of pathway opportunities within the service area.

(8) Removing barriers. This section describes how the program removes barriers for all students to access education opportunities both while in and beyond high school.

c. Feedback. The district will submit the program report and self-study completed under paragraph 46.6(1) "b" to the partnership for peer review and feedback. The partnership is to complete a review of the program report and self-study and provide the district with recommendations and feedback based on that review. The partnership's recommendations will be documented and submitted to the department and the district. The partnership will include in the recommendations a determination of whether the program should or should not receive department approval. A program must be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership's recommendations. The partnership's recommendations will be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study will be submitted by the district to the department.

d. Department approval. Final approval of programs is reserved to the department. Approval will be awarded to a program if clear evidence of compliance with the criteria established in this rule

is provided in the program report and self-study under paragraph 46.6(1) “b.” A program which fails to be approved by the department will have one year to address identified deficiencies and resubmit for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

46.6(2) *Postsecondary program approval.* All community college career and technical education programs will be approved through the process established in 281—Chapter 21.

46.6(3) *Secondary program review.* The program review process will ensure that 20 percent of secondary career and technical education programs are reviewed on an annual basis and that career and technical education programs meet standards adopted by the board. The review will include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the costs are proportionate to educational benefits received, the career and technical education curriculum is articulated and integrated with other curricular offerings required of all students, the programs would permit students with career and technical education backgrounds to pursue other educational interests in a postsecondary institutional setting, and the programs remove barriers for all students to access educational and employment opportunities.

a. Secondary program review. As a condition of continuing approval, districts will comply with the following provisions for career and technical education program review. Units of instruction necessary under rule 281—46.4(258) are to have students from each participating high school enrolled. Each district that sends students to a shared program with another district that is used by the sending district to fulfill rule 281—46.4(258) is to have students from the sending district enrolled in the shared program.

(1) Conclusions drawn from annual program measurement. A district will, for each program, annually review and evaluate program outcomes and student assessment data. The district will document any conclusions drawn from the review and evaluation of program outcomes and student assessment data, and how those conclusions impact the future direction of the program. In addition to and as a result of this review, the district will identify program strengths, in order of importance, and describe how these strengths will be maintained; perceived barriers to accomplishing the program’s goal(s) and objective(s); and primary opportunities for improvement, in order of importance, and how these opportunities for improvement will be addressed. The district will also review program enrollment and participation data by high school to determine if students from each participating high school have access to the program. The district will describe how the district is ensuring access to the program for all students from each participating high school.

(2) Revision of program goals, objectives, and outcomes. The district is to update and make appropriate revisions to the program, including goals, objectives, and outcomes, as outlined in the program report and self-study based on the results of the activities prescribed under subparagraph 46.6(3) “a”(1).

b. Feedback. The district will submit the program report and self-study completed under subparagraph 46.6(3) “a”(2) to the partnership for peer review and feedback. The partnership will complete a review of the program report and self-study and provide the district with recommendations and feedback based on the review. The partnership’s recommendations are to be documented and submitted to the department and the district. The partnership will include in the recommendations a determination of whether the program should or should not receive department approval. A program is to be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership’s recommendations. The partnership’s recommendations will be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study will be submitted by the district to the department.

c. Department approval. Final approval of programs will be reserved for the department. Approval will be awarded to a program if clear evidence of compliance with the criteria established in this rule is provided in the program report and self-study under this rule. A program which fails to be approved by the department will have one year to address identified deficiencies and resubmit

for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

46.6(4) *Postsecondary program review.* The postsecondary program review process is to ensure career and technical education programs meet standards adopted by the board. The review will include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the program costs are proportionate to educational benefits received, the curriculum is articulated and integrated with other curricular offerings required of all students, the program provides opportunities for students to pursue other educational interests in a postsecondary institutional setting, and the program removes barriers for all students to access educational and employment opportunities.

a. Process. Each community college will establish a process which ensures at least 20 percent of career and technical education programs are reviewed on an annual basis. The department will ensure compliance with this paragraph through the community college accreditation process established in 281—Chapter 21.

b. Components. The following minimum components will be addressed through the process outlined in paragraph 46.6(4) “*a.*”

(1) Industry or professional standards. Community colleges will utilize standards established and recognized by industry or professional organizations when available and appropriate. In lieu of these standards, community colleges will develop program standards through a structured group interview process, which involves committees of incumbent workers within an occupational cluster analyzing standards which include new and emerging technologies, job seeking, leadership, entrepreneurial, and occupational competencies. This analysis includes identifying standards that ensure program participants have access to instruction which leads to employment and further training. All standards will be analyzed for the reinforcement of academic skills.

(2) Program standards. Additional standards to be addressed during the program review include currency of curriculum; faculty qualifications; professional development; adequacy of equipment and facilities; student outcomes, in terms of student demographics to include gender, race and ethnicity, national origin, and disability; enrollment retention, completion, and replacement rates; articulation; and employment rates and wages.

(3) Advisory council. The community college will document how the program engages with the business community to recruit members for the advisory council under rule 281—46.8(258). Program review documentation will include a current member list with titles and employer; advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; advice the advisory council has suggested for the program; and any actions or results taken by the program which stem from this advice.

(4) Articulation. Teachers and administrators from both secondary and postsecondary instructional levels (when applicable) meet to identify competencies required at each level and to jointly prepare agreements of articulation between secondary and postsecondary levels for specific occupational areas. Such joint articulation efforts will facilitate the secondary-postsecondary transition and help reduce duplication between the two levels.

46.6(5) *Program modification.* Any modifications to a program are to be approved by the department. Modification includes a change to the courses in the program, a change to the description of a program, discontinuing a program or option, a change to instructional or occupational classification, or changes in program entrance requirements.

281—46.7(258) Accreditation standards not met.

46.7(1) The following are conditions under which a district has failed to meet accreditation standards:

a. A district fails to submit a program for approval under rule 281—46.6(256).

b. A program fails to comply with the corrective action process outlined in paragraph 46.6(1) “*d*” or 46.6(3) “*c.*”

46.7(2) Any findings under subrule 46.7(1) will be documented and reviewed as part of the comprehensive desk audit established under Iowa Code section 256.11(10) “*a*”(1).

a. A program identified under paragraph 46.7(1) “*a*” will not be used by a district to satisfy the minimum education program for career and technical education specified under 281—paragraph 12.5(5) “*i*.” Such a program is ineligible to receive funds distributed under rule 281—46.9(258).

b. A program identified under paragraph 46.7(1) “*b*” will not be used by a district to satisfy the minimum education program for career and technical education specified under 281—paragraph 12.5(5) “*i*.”

281—46.8(258) Advisory council.

46.8(1) *General.* The board of directors of a school district or community college that maintains a career and technical education program receiving federal or state funds under this chapter will appoint an advisory council, which is governed by Iowa Code section 256.132. An advisory council established under this rule is to meet at least twice annually.

46.8(2) *Joint advisory council.* A school district and a community college that maintain a career and technical education program receiving federal or state funds may create a joint local advisory council which may serve in place of an advisory council under subrule 46.8(1).

46.8(3) *Regional advisory council.* A regional advisory council established by a regional career and technical education planning partnership approved by the department pursuant to rule 281—46.10(258) may serve in place of an advisory council under subrule 46.8(1).

46.8(4) *Membership.* The membership of each advisory council established under this rule is to consist of public members from multiple businesses within the occupation or occupational field related to the career and technical education program and of other stakeholders with expertise in the occupation or occupational field related to the career and technical education program. There will be a good-faith effort to include secondary and postsecondary career and technical education teachers from related secondary and postsecondary programs on the advisory council.

281—46.9(258) Distribution of career and technical education funds.

46.9(1) An approved regional career and technical education planning partnership is eligible to receive state funds for school districts and community colleges participating in the regional career and technical education planning partnership for purposes allowed under subrule 46.10(6).

a. At the beginning of a fiscal year, the department will assign to each partnership a portion of the total designated career and technical education funds appropriated to the department. The department will disburse funds to a partnership following approval of the multiyear plan pursuant to subrule 46.10(2).

b. Each partnership will be assigned a portion of the total career and technical education funds based on the following formula:

(1) Half of the total career and technical education funds to be disbursed equally between the approved partnerships.

(2) Half of the total career and technical education funds to be disbursed based on the number of students enrolled in approved career and technical education programs.

46.9(2) All federal funds shall be spent pursuant to the state plan pursuant to the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended.

46.9(3) An approved regional career and technical education planning partnership receiving funds under this rule will comply with financial monitoring processes established by the department.

a. At the end of the state fiscal year, the fiscal agent of an approved regional career and technical education planning partnership will submit to the department financial forms and other evidence documents necessary for the department to complete a comprehensive review of all transactions completed during the previous fiscal year which involve state and federal funds issued to the approved regional career and technical education planning partnership by the department. Documentation will be submitted by the regional career and technical education planning partnership in a manner prescribed by the department.

b. Instances of transactions involving state and federal funds issued to an approved regional career and technical education planning partnership that are found to be noncompliant with state and federal

regulations governing the use of such funds, including subrule 46.10(6), will be documented by the department.

(1) The fiscal agent of the approved regional career and technical education planning partnership will be notified of any instances of noncompliance, and prepare, in consultation with the regional career and technical education planning partnership and department, a corrective action plan. The plan will, at a minimum, detail the policies and procedures to be implemented by the fiscal agent to ensure that subsequent transactions involving state and federal funds issued to the regional career and technical education planning partnership are compliant with applicable state and federal regulations.

(2) The corrective action plan is to be approved by the regional career and technical education planning partnership and submitted to the department for approval through the annual approval process established under subrule 46.10(2). The department will review and approve or deny approval of the corrective action plan. A regional career and technical education planning partnership required to create a corrective action plan must secure approval of the corrective action plan to be awarded continuing approval. A regional planning partnership that fails to secure continuing approval is subject to paragraph 46.10(2) “c.”

281—46.10(258) Regional career and technical education planning partnerships. Regional career and technical education planning partnerships are established to assist school districts in providing an effective, efficient, and economical means of delivering high-quality secondary career and technical education programs.

46.10(1) Establishment. Partnerships will be established to serve all school districts in the state no later than June 30, 2017.

a. There is established in the state no fewer than 12 and no greater than 15 regions in which partnerships may operate.

b. A partnership will be considered established if approved pursuant to subrule 46.10(2).

c. Convening the regional career and technical education planning partnership is the joint responsibility of the area education agency and community college located within the region. In convening the partnership, the area education agency and community college will secure the participation of interim members of the partnership. When selecting interim members, the area education agency and community college are to ensure the membership provisions of subrule 46.10(3) are satisfied.

46.10(2) Approval. All partnerships will be approved by the department. As a condition of approval, each partnership will meet the following provisions:

a. *Approval.* Each partnership adopts bylaws in a manner and format prescribed by the department. The partnership submits to the department the partnership’s bylaws, a membership list which clearly denotes the membership under subrule 46.10(3) and the chair, vice-chair, and secretary, the designated fiscal agent for the partnership, minutes from recent meetings, and a schedule of future meetings.

b. *Continuing approval.* By June 30, 2018, and for each subsequent year, each partnership is to adopt a multiyear plan satisfying subrule 46.10(5). The multiyear plan and documents under paragraph 46.10(2) “a” will be reviewed and, as necessary, revised on an annual basis by the partnership and submitted to the department. To maintain approval, the partnership will maintain evidence that the duties assigned to the partnership under subrule 46.10(4) are performed on a continuing basis. In awarding continuing approval, the department will consider documented findings from the financial monitoring process established under subrule 46.9(3).

c. *Failure to maintain approval.* If the department denies or grants conditional approval of a partnership, the director, in consultation with the partnership, will establish a plan detailing all areas of deficiency and prescribing the procedures that must be taken to achieve approval and a timeline for completion of the prescribed procedures. A final plan will be submitted to the director within 45 days following notice of the department denying or granting conditional approval of a partnership. The partnership will continue to perform the duties assigned to the partnership under subrule 46.10(4) for the duration of the timeline established in the plan. If at the end of the timeline established in the plan the

noted deficiencies have not been adequately addressed, the partnership will be denied approval. Within one year of the action to deny approval of the partnership, the director will establish a plan which details how the partnership will be merged or restructured.

d. Resolution of disputes. In the event of a dispute regarding the assignment of a district to a partnership under this rule, the director will first attempt to mediate the dispute. If mediation is unsuccessful, the director will schedule a hearing to obtain testimony. At the sole discretion of the director, the hearing may be held electronically or in person. The director will issue within ten days after the hearing a written decision which is a final administrative decision.

46.10(3) Membership. The membership of each partnership will consist of stakeholders in a position to contribute to the development and successful implementation of high-quality career and technical education programs. Each district which falls within the boundaries of the partnership will be represented on the partnership. Once established pursuant to subrule 46.10(1), the partnership is responsible for identifying and maintaining appropriate membership. Membership of the partnership will include the following:

a. The superintendent of a school district within the regional planning partnership, or the superintendent's designee.

b. The president of a community college within the regional planning partnership, or the president's designee.

c. The chief administrator of an area education agency within the regional planning partnership, or the chief administrator's designee.

d. Representatives of a regional work-based learning intermediary network.

e. Representatives of regional economic and workforce entities including regional advisory boards established under Iowa Code section 84A.4.

f. Representatives of business and industry, including representatives of regional industry sector partnerships.

g. Career and technical education teachers and faculty.

46.10(4) Duties. The partnership will perform the following duties on a continuing basis.

a. Develop a multiyear plan pursuant to subrule 46.10(5), which is to be updated annually.

b. Collect and review all relevant plans pursuant to the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended; career and academic plans under 281—Chapter 49; and regional labor market, socioeconomic, and demographic information for purposes of facilitating the program review process specified under paragraph 46.10(4) “f” and regional activities specified in the state plan developed under the aforementioned federal Act.

c. Ensure compliance with standards adopted by the board for regional career and technical education planning partnerships.

d. Appropriately expend career and technical education funds in accordance with subrule 46.10(6) assigned to the partnership pursuant to rule 281—46.9(258).

e. Collect, review, and make available to districts appropriate labor market, socioeconomic, and other state, regional, or national information necessary for completing the program approval and review process pursuant to rule 281—46.6(256).

f. Review career and technical education programs of school districts within the region and recommend to the department career and technical education programs for approval in accordance with subrules 46.6(1) and 46.6(3).

g. Coordinate and facilitate advisory councils for career and technical education programs and, as necessary, establish regional advisory councils to serve in the same capacity as local advisory councils.

h. Plan for regional centers with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

46.10(5) Multiyear plan. The multiyear plan developed by the partnership will outline the partnership's goals, objectives, and outcomes; how the partnership will execute the authority and duties assigned to the partnership; how the partnership will secure collaboration with secondary schools, postsecondary educational institutions, and employers to ensure students have access to high-quality

career and technical education programming, including career academies, that aligns career guidance, twenty-first century career and technical education and academic curricula, and work-based learning opportunities that empower students to be successful learners and practitioners; and how the partnership will ensure compliance with standards established under this rule. In addition, the multiyear state plan will include the following components:

a. Goals, objectives, and outcomes. The plan will detail the partnership's goals, objectives, and outcomes, which will include the following goals:

(1) Promote career and college readiness through thoughtful career guidance and purposeful academic and technical planning practices.

(2) Promote high-quality, integrated career and technical education programming, including career academies and the delivery of quality career and technical education programs by school districts in fulfillment of rule 281—46.4(256) comprised of secondary exploratory and transitory coursework to prepare students for higher-level, specialized academic and technical training aligned with labor market needs.

(3) Afford students the opportunity to access a spectrum of high-quality work-based learning experiences through collaboration with a work-based learning intermediary network.

(4) Afford all students equitable access to programs and encourage the participation of underrepresented student populations in career and technical education programming.

b. Process to measure goals, objectives, and outcomes. The plan will outline the processes to be used by the partnership to measure all goals, objectives, and outcomes established pursuant to paragraph 46.10(5) "a."

c. Program approval and review process. The plan will outline the process the partnership will utilize in reviewing career and technical education programs of school districts within the region based on standards established in rule 281—46.6(256). The process will detail how 20 percent of programs will be reviewed on an annual basis. The partnership will provide a written five-year program review schedule which clearly indicates the specific year in which a program is to be reviewed within the five-year cycle.

d. Advisory councils. The plan will outline the process that the partnership will utilize in coordinating and facilitating local advisory councils for career and technical education programs under rule 281—46.8(258) and establishing regional advisory councils to serve in the same capacity as local advisory councils, as necessary.

e. Use of funds. The plan will detail the partnership's budget including intended use of funds designated to the partnership pursuant to rule 281—46.9(258). The intended use of funds will comply with subrule 46.10(6) and be clearly connected to the goals, objectives, and outcomes of the partnership established under paragraph 46.10(5) "a" and the needs of career and technical education programs and teachers as identified through the program approval and review process under rule 281—46.6(256).

f. Planning for regional centers. The plan will outline the process that the partnership will utilize in planning for regional centers, consistent with rule 281—46.12(258), with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

g. Meeting regularly. The plan will outline the intended schedule of partnership meetings for a five-year period. The partnership will meet at least twice per academic year.

h. Annual review of multiyear plan. The plan will outline the process to be utilized by the partnership to annually review and, as necessary, revise the plan. This process is to ensure that all members and stakeholders are included in the review and revision of the plan. The partnership will maintain a written record of all reviews of and revisions to the plan.

i. Assurance statement. The plan shall include, in a format prescribed by the department, an assurance that in all operations of and matters related to the partnership, the partnership does not discriminate against individuals protected under federal and state civil rights statutes.

46.10(6) Secondary career and technical education funds. An approved regional career and technical education partnership may use funds received from state and federal sources on behalf of school districts and community colleges participating in the regional career and technical education planning partnership for the following:

a. Staffing and resources to ensure the minimum duties and responsibilities assigned to the regional planning partnership under subrules 46.10(4) and 46.10(5) are satisfactorily executed. The partnership will ensure adequate staffing and resources are committed to these purposes prior to allocating funds for any use authorized under paragraph 46.10(6)“*b.*”

b. To offer regional career and technical education professional development opportunities; coordinate, maintain, and support a career guidance system pursuant to 281—Chapter 49 and related work-based learning opportunities for students; and purchase career and technical education equipment and curricular resources to include standard classroom consumable supplies directly related to and necessary for the course curriculum, other than basic consumable supplies that will be made into products to be sold or used personally by students, teachers, and other persons.

281—46.11(258) Career academies.

46.11(1) *Establishment and responsibilities.* A career academy may be established under an agreement between a single school district and a community college, or by multiple school districts and a community college organized into a regional career and technical education planning partnership pursuant to rule 281—46.10(258). A career academy established under this rule will be a career-oriented or occupation-oriented program of study that includes a minimum of two years of secondary education, which may fulfill the sequential unit requirement in one of the four service areas pursuant to 281—subrule 12.5(5), includes concurrent enrollment programming aligned with a postsecondary education program which meets the requirements of 281—Chapter 22, and is approved by the director. A career academy will do all of the following:

a. Utilize regional career and technical education planning partnerships outlined in rule 281—46.10(258) in an advisory capacity to inform the selection and design of the career academy and establishment of industry standards.

b. Establish a program of study that meets all of the following criteria:

(1) Is designed to meet industry standards and prepare students for success in postsecondary education and the workforce.

(2) Integrates academic coursework; includes foundational and transitory career and technical education coursework; includes work-based learning; and utilizes the individual career and academic planning process established under 281—Chapter 49.

(3) Integrates as a portion of the career academy a hands-on, contextualized learning component.

(4) Allows students enrolled in the academy an opportunity to continue on to an associate degree and, if applicable, a postsecondary baccalaureate degree program.

46.11(2) *Contract or agreement.* A career academy must receive approval from district and community college boards participating in the career academy. A contract or 28E agreement is to set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and be signed by all participating parties and be in effect prior to initiation of a career academy. An assurance form, as defined by the department, which specifies that the career academy includes all the components under this rule will be sent to the director.

46.11(3) *Faculty.* Faculty providing college credit instruction in a career academy program of study will meet community college faculty minimum standards as specified in 281—subrule 24.5(1) and the quality faculty plan as approved by the community college board pursuant to 281—subrule 24.5(7). Instructors teaching courses that provide only secondary level credit are to have appropriate secondary licensure pursuant to Iowa Code chapter 256, subchapter VII, part 3.

46.11(4) *Compliance.* Districts and community colleges will maintain compliance with the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. §2301 et seq., as amended, in implementing career academies.

46.11(5) *Data collection.* Data collection and enrollment reporting is to contain such items as determined by the department.

281—46.12(258) Regional centers. The state board will adopt standards pertaining to regional centers. The standards include those which provide for increased and equitable access to high-quality career

and technical education programs and require that regional centers incorporate appropriate educational programs, meet appropriate state and federal regulations for safety and access, maintain adequate participation, and are located within an appropriate distance of participating high schools, and that transportation is provided to all students.

46.12(1) *Minimum requirements.* As a condition for approval, a regional center will comply with standards adopted by the board and consist of a minimum of four career academies on site. A regional center will be compatible with the development of a statewide system of regional centers serving all students. A regional center will serve either of the following:

- a. A combined minimum of 120 students from no fewer than two school districts.
- b. A minimum of four school districts.

46.12(2) *Approval.* The director will approve all facilities meeting the standards for regional centers under this rule.

281—46.13(423F) Career academy incentive fund. A career academy incentive fund is a competitive grant program established by the department to expand opportunities for students to access high-quality career and technical education programming through innovative partnerships between school districts and community colleges.

46.13(1) *Allowable expenses.* Funding issued under this rule will be used by the recipient for purposes outlined in the proposal approved by the department to support the development of career academy infrastructure, including regional centers as defined under rule 281—46.12(258). For purposes of this rule, allowable expenses include the following:

- a. Purchase and improvement of grounds, including the legal costs relating to the property acquisition and surveys of the property.
- b. Construction of buildings and roads to buildings.
- c. Purchase or lease-purchase option agreements for buildings.
- d. Rental of facilities under Iowa Code chapter 28E.
- e. Purchase, lease, or lease-purchase of equipment or technology exceeding \$500 in value per purchase or lease-purchase transaction. “Equipment” means both equipment and furnishings.
- f. Repair, remodel, reconstruction, improvement, or expansion of buildings and the additions to existing buildings.

46.13(2) *Applicants.* Institutions eligible to apply for funds include a school district as defined under rule 281—12.2(256) or community college as defined under Iowa Code chapter 260C.

46.13(3) *Application proposals.* Institutions seeking funds under this rule shall submit an application proposal to the department in a format prescribed by the department. An application for funding that includes more than one institution will designate a single institution to receive funds on behalf of all participating institutions. At a minimum, all applications will include one school district and one community college, though applications consisting of multiple school districts and a community college are encouraged.

a. *Service area and aligned occupation.* Program information will be collected to identify the aligned service area and in-demand occupation as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14).

b. *Offerings and enrollments.* Information will be provided on all career academy offerings made available by the participating institutions. All school districts will provide actual or estimated enrollment by high school in each of the offered career academies over the proceeding five-year period.

c. *Program structure.* Each proposal will include a response to the following components:

(1) A sequence of coursework, inclusive of all aligned middle school, high school, and postsecondary offerings that constitute the career academy. The sequence of coursework is developed collaboratively between the school district or school districts and community college, and is to be depicted in a template provided by the department.

(2) A description and evidence of integrated project-, problem-, and work-based learning experiences.

(3) Identification of the third-party industry certifications either made available to the student through the program or which the program prepares the student to complete.

d. Partnerships. If applicable, the applicant will provide information on all partnering institutions, and the extent to which each partnering institution is contributing resources to the initiative, including funds, staff, equipment, or other related resources.

e. Business and industry involvement. If applicable, the applicant will provide information on business and industry involvement, including input solicited on offerings, donation of equipment, and contribution of funds.

f. Approved contracts. Each district participating in the career academy will submit as evidence the contract approved by the district's board established pursuant to subrule 46.11(2).

46.13(4) Criteria for evaluating proposals.

a. Priority. Application proposals will be ranked and sorted according to the following priorities:

(1) First priority. Proposals for new career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) will receive priority consideration.

(2) Second priority. Proposals for existing career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) will receive second-priority consideration.

(3) Third priority. Proposals for new or existing career academies delivered through partnership arrangements other than a regional center, including but not limited to individual career academy offerings delivered by one school district, will receive third-priority consideration.

b. Occupational alignment. Proposals for career academies aligned with high-demand occupations as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14) will be given preferential consideration.

c. Improving access. Proposals for career academies that demonstrate that the grant funds will result in improved access to career and technical education programs for all students enrolled in participating school districts, including underrepresented and nontraditional students, as well as underserved geographical areas, will be given preferential consideration.

d. Program structure. The proposals will be evaluated to determine the extent to which the components of paragraph 46.13(3)“c” are evident in the career academy program.

e. Additional criteria. Subject to paragraphs 46.13(4)“a” and “b,” proposals will be evaluated against additional criteria including the following:

(1) Actual or projected enrollment for each participating high school over a five-year period is of sufficient size to support robust and sustainable offerings and justify the request for funding.

(2) Cumulative offerings provide students with access to a diverse array of coursework in multiple career and technical education service areas.

(3) If programming is delivered at an off-site location, the sending school district provides transportation to participating students.

f. Budget. Institutions will submit a complete budget for the proposal, including a comprehensive summary of costs and a complete list of funding sources to be put toward implementing and sustaining the initiative.

g. Regional center plan. Evidence will be provided to the department that the regional planning partnership established under this chapter and in which the applicants are participating members has developed a plan for regional centers under paragraph 46.10(4)“h.” The plan will identify any underserved areas of the region, including areas of low career and technical education enrollment and program offerings.

46.13(5) Awarding grants. The department may fully or partially award funds for proposals submitted pursuant to subrule 46.13(3).

a. The department will award funds for first-priority proposals that meet the criteria established in rank order. The department may award funds for second- and third-priority proposals based on availability of funds.

b. A grant award issued under this rule will not exceed \$1 million. A first-priority proposal selected for funding will receive an award of no less than \$1 million. A second-priority proposal selected for funding will receive an award of no less than \$250,000.

46.13(6) *Distribution of awarded grants.* The department will award funds to the designated fiscal agent for approved proposals according to a payment schedule set by the department in consultation with the applicant. Initiatives approved for funding under this rule are to be completed within the agreed-upon time frame established in the payment schedule, with final payment awarded upon receipt of evidence that the initiative was completed as specified in the approved proposal, unless a waiver issued at the discretion of the director grants the recipient additional time to complete the approved proposal. Any unclaimed award balance will be used by the department to fund future initiatives under this rule.

These rules are intended to implement Iowa Code chapter 258.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 62
“State Standards for Progression in Reading”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 279.68
State or federal law(s) implemented by the rulemaking: Iowa Code section 279.68

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking is intended to improve reading proficiency in the early elementary grades. The amendments remove restrictive terms and unnecessarily duplicative statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s school districts bear the costs of compliance with the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
This proposed rulemaking benefits children in early elementary grades and their families.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 62 and adopt the following **new** chapter in lieu thereof:

CHAPTER 62 STATE STANDARDS FOR PROGRESSION IN READING

281—62.1(256,279) Assessment of reading proficiency. All school districts shall assess reading proficiency of all students, pursuant to this rule.

62.1(1) Assessment at beginning of school year. A school district will assess all students enrolled in kindergarten through grade three at the beginning of each school year for the students' level of reading or reading readiness.

62.1(2) Subsequent assessments throughout school year. A school district will provide to all students additional, brief assessments of reading achievement in a manner specified by the department, using assessments that meet the standards described in subrule 62.1(5).

62.1(3) Progress-monitoring instruments. For students identified as being persistently at risk in reading, as well as students who are becoming persistently at risk in reading, a school district will

monitor the students' progress in reading with instruments that meet the standards in subrule 62.1(5), in at least a frequency specified by the department.

62.1(4) *Statewide or locally determined assessments.* Assessments may be locally determined or statewide, including an annual standard-based assessment, provided that all assessments for purposes of implementing this chapter meet the standards described in subrule 62.1(5).

62.1(5) *Standards for approval for assessments.* Any assessment of reading or reading readiness under this rule and used to implement this chapter is to meet the following minimum standards before use by a school district:

a. Standards for all assessments. Any assessment used under this chapter, including instruments described in paragraphs 62.1(5) "b" and "c," is to meet department-adopted minimum standards for reliability and validity, at the appropriate grade level and for the skills assessed. In addition, all assessments are to have information available concerning administration time per student, access to student data after completion, and amount of teacher training required.

b. Standards for universal-screening instruments. Any assessment used for universal-screening purposes under this chapter is to meet department-adopted minimum standards for the following statistical measures: area under the curve and specificity/sensitivity.

c. Standards for progress-monitoring instruments. Any assessment used for progress-monitoring purposes under this chapter is to meet department-adopted standards for number of forms of demonstrated equivalence and for the following statistical measure: reliability of slope.

d. Department publication of approved assessments. The department will annually publish or update a list of assessments approved pursuant to this subrule. Approved assessments will have a demonstrated ability to predict future reading performance.

62.1(6) *Basic levels of reading proficiency on approved assessments.* The department will determine benchmarks for basic levels of reading proficiency to be used with approved assessments based on the ability to predict meaningful future outcomes of a student's reading performance that is sufficient to master appropriate grade four reading skills prior to the student's promotion to grade four.

62.1(7) *Assessment measures.* Assessments administered to implement this chapter, when taken as a whole, are to measure phonemic awareness, phonics, fluency, vocabulary, and comprehension.

62.1(8) *Noncompliant assessments.* Assessments that do not meet the provisions of this rule may not be used by any school district to implement this chapter.

281—62.2(256,279) Tools for evaluating and reevaluating reading proficiency. The department identifies the following attributes of tools that may be used in evaluating and reevaluating reading proficiency:

62.2(1) *Locally determined or statewide assessments.* In evaluating and reevaluating students who are or may be at risk or persistently at risk in reading, school districts are to use assessments that meet the standards referenced in subrule 62.1(5).

62.2(2) *Alternative assessments.* If a school district determines, based on the clear and unique facts of a particular student's case, that a particular student needs an alternative assessment to determine proficiency in reading, in addition to the assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1), the alternative assessment is to be founded on scientifically based research and reasonably calculated to provide equivalent information about the student's reading, in addition to information provided by the assessments referred to in rule 281—62.1(256,279) and subrule 62.3(1).

62.2(3) *Portfolio reviews.* School districts may review a portfolio of a student's work to determine reading proficiency. Portfolio reviews are to be conducted using standard review criteria that are founded on scientifically based research. A portfolio review may be used along with assessments in rule 281—62.1(256,279) and subrule 62.2(1), but not be used in lieu of such assessments. The department is to maintain a list of portfolio review criteria that are adequate under this subrule.

62.2(4) *Teacher observation.* A student may initially be identified as being persistently at risk in reading proficiency based on teacher observation. A teacher observation under this subrule is to be based on department-approved observation criteria. Teacher observation shall not be used to determine that a student continues to be persistently at risk in reading.

62.2(5) *Other tools.* The department may identify additional tools for use in evaluating and reevaluating reading proficiency, so long as those tools are founded on scientifically based research.

62.2(6) *Alternate assessment.* If an individual with a disability has been determined to need an alternate assessment aligned to alternate academic achievement standards in reading, pursuant to rule 281—41.320(256B,34CFR300), that individual is to receive such alternate assessment, as well as alternate universal screening and progress monitoring pursuant to this chapter on instruments approved by the department.

62.2(7) *Noncompliant tools.* Tools that do not meet the provisions of this rule shall not be used by any school district to implement this chapter.

281—62.3(256,279) Identification of a student as being persistently at risk in reading.

62.3(1) *Definition of “persistently at risk in reading.”* A student is determined “persistently at risk” under the standard in Iowa Code section 279.68(1) “a.” A student is “at risk in reading” if the student did not meet the grade-level benchmark for one of the two most recent screening assessments administered pursuant to this chapter.

62.3(2) *Determination of a persistent risk in reading.*

a. In initially determining whether a student is persistently at risk in reading as defined in subrule 62.3(1), the school district will consider assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1) or teacher observations that meet the criteria referenced in subrule 62.2(4).

b. In determining whether a student continues to be persistently at risk in reading, a school district will consider assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1), with specific attention given to progress-monitoring results under subrule 62.2(3).

62.3(3) *Services offered to all students who are persistently at risk in reading.* A school district will provide intensive reading instruction to any student who is persistently at risk in reading. A school district will continue to provide the student with intensive reading instruction until the student is reading at grade level, at grade levels beyond grade three if necessary, as determined by the student’s consistently proficient performance on valid and reliable measures of reading ability that meet the provisions of rule 281—62.1(256,279). All services provided under this subrule will comply with rule 281—62.4(256,279).

62.3(4) *Notice to parents.* The district will comply with Iowa Code section 279.68(2) “b” and “c.”

281—62.4(256,279) Successful progression for early readers. Each school district shall provide the following:

62.4(1) *Intensive instructional services.* A school district will provide students who are persistently at risk in reading with the services specified in Iowa Code section 279.68(2) “a.”

62.4(2) *Reading enhancement and acceleration development initiative.* The intensive instructional services described in subrule 62.4(1) will be provided to all students in kindergarten through grade three who are identified as being persistently at risk in reading. The services will meet the specifications in the following paragraphs:

a. A school district will provide intensive instructional services during regular school hours, in addition to the regular reading instruction.

b. A school district will provide a reading curriculum that meets the standards of subrule 62.4(3).

62.4(3) *Reading curriculum for students who are persistently at risk in reading.* A curriculum that does not meet the standards of this subrule shall not be used to implement this chapter. To implement this subrule, a school district will provide a curriculum that meets the following guidelines and specifications:

a. Assists students assessed as persistently at risk in reading to develop the skills to read at grade level. Assistance shall include but not be limited to strategies that formally address dyslexia, when appropriate. For purposes of this paragraph, “dyslexia” means a specific learning disability that is neurobiological in origin, is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities, and may include difficulties that typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, as well as secondary consequences such

as problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

b. Provides skill development in phonemic awareness, phonics, fluency, vocabulary, and comprehension.

c. Is supported by scientifically based research in reading.

d. Is implemented by certified instructional staff with appropriate training and professional development. Such training and professional development will meet the provisions of 281—Chapter 83.

e. Is implemented by certified instructional staff with fidelity, which meets such standards for fidelity of implementation that the department may adopt.

f. Includes a scientifically based and reliable assessment, which meets the provisions of rule 281—62.1(256,279).

g. Provides initial and ongoing analysis of each student's reading progress, which meets the provisions of rule 281—62.1(256,279), with notice provided to parents pursuant to subrule 62.4(4).

h. Is implemented during regular school hours.

i. Provides a curriculum in core academic subjects to assist the student in maintaining or meeting proficiency levels for the appropriate grade in all academic subjects.

62.4(4) Parent notice, involvement and support. At a minimum and in addition to other provisions of this chapter, school districts will provide the following to all parents or guardians of students who are persistently at risk in reading:

a. At regular intervals, a school district will apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.

b. In addition to required reading enhancement and acceleration strategies provided to students, a school district will provide parents or guardians of students who are persistently at risk in reading with a plan outlined in a parental contract, including participation in regular parent-guided home reading.

62.4(5) Report to the department. Each school district will report to the department the specific intensive reading interventions and supports implemented by the school district pursuant to this chapter. The department will annually prescribe the components of required or requested reports.

62.4(6) Rule of construction: students who are at risk in reading. Subject to paragraphs 62.4(6) “a” and “b,” school districts may voluntarily provide additional services and interventions to students who are “at risk in reading” as defined in subrule 62.3(1).

a. School districts will provide progress monitoring to students who are “at risk in reading.”

b. If a student who was previously “persistently at risk” and is currently identified as “at risk” and falls below the grade-level benchmark on a locally determined number of progress monitoring probes, the student will be provided services under this rule until the next screening assessment administered pursuant to this chapter.

281—62.5(256,279) Ensuring continuous improvement in reading proficiency.

62.5(1) General. To ensure all children are reading proficiently by the end of third grade, each school district will comply with the provisions of Iowa Code section 279.68(3) “a.”

62.5(2) Relationship between this chapter and the department's general accreditation standards. In addition to subrule 62.5(1), the department will consider compliance with and performance under this chapter in its enforcement of the general accreditation standards and school improvement process described in 281—Chapter 12.

281—62.6(256,279) Miscellaneous provisions.

62.6(1) Services beyond third grade. Students who are identified as persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction. Nothing in this chapter prohibits a school district from determining a student above third grade is persistently at risk in reading or from providing services to a student so identified.

62.6(2) Database. In implementing subrule 62.4(5), the department may require school districts to enter assessment and progress monitoring data into a statewide database.

62.6(3) *Accredited nonpublic schools.* Nothing in this chapter prevents an accredited nonpublic school from voluntarily complying with this chapter. Nothing in this chapter prevents the department from offering universal screening or progress monitoring instruments to accredited nonpublic school students or prevents the department from allowing inclusion of those students' data in the database described in subrule 62.6(2).

62.6(4) *Rule of construction.* Nothing in this chapter obligates a school district to select a particular assessment, instrument, tool, curriculum, or program, so long as the assessment, instrument, tool, curriculum, or program used meets the provisions of this chapter.

These rules are intended to implement Iowa Code section 279.68.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 63
“Educational Programs and Services for Pupils in Juvenile Homes”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 282.34
State or federal law(s) implemented by the rulemaking: Iowa Code sections 282.30 and 282.31

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This rulemaking is intended to support the education of children who are placed in shelter and detention homes by the juvenile court.

This chapter contains outdated, unnecessarily restrictive, and unnecessarily repetitive language, which the Department proposes to remove. Additionally, the Department proposes revisions to rule 281—63.11(282) to provide additional staffing flexibility to area education agencies (AEAs).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
AEAs and school districts will bear the costs of this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Children who are subject to the jurisdiction of the juvenile court will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Inaction would retain obsolete, inflexible, and unnecessary rule language.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
None.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63 EDUCATIONAL PROGRAMS AND SERVICES FOR PUPILS IN JUVENILE HOMES

281—63.1(282) Definitions.

63.1(1) Special programs cited in Iowa Code section 282.30 are referred to as juvenile shelter care homes and juvenile detention homes, and are referred to jointly as juvenile homes.

63.1(2) For purposes of this chapter, “school corporation” refers to school districts, state-approved charter schools, area education agencies, and community colleges.

63.1(3) For purposes of this chapter, “aides” refers to aides and paraeducators as defined in Iowa Code section 272.12.

281—63.2(282) Forms.

63.2(1) The department of education will provide forms, which may be electronic or web-based, to area education agencies (AEAs) for submitting program and budget proposals and for submitting claims, which are due according to Iowa Code section 282.31(1) “a.”

63.2(2) The department of education will also provide forms, which may be electronic or web-based, to AEAs for use by the juvenile homes requesting educational services, which are due according to the timelines in Iowa Code section 282.31 “b”(2). An AEA is to file a budget amendment for a newly established juvenile home requesting educational services 90 days prior to the initial delivery of the educational services.

281—63.3(282) Budget amendments. An AEA is to amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment is also necessary if actual expenditures vary significantly from expenditures which were budgeted. A significant variance in actual expenditures means that the amount of funding which would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

281—63.4(282) Area education agency responsibility. An AEA shall provide or make provision for an appropriate educational program pursuant to Iowa Code section 282.30(1) “a.” The provision of the educational program is to be pursuant to a written agreement which identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

281—63.5(282) Educational program.

63.5(1) *Methods of program provision.* The AEA will provide the educational program by a manner specified by Iowa Code section 282.30(1) “b,” by enrolling the child in the educational program provided in the juvenile home, or by another delivery method with the approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA will contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

63.5(2) *Final determination.* In the absence of a decision of a court regarding a child’s educational placement, the AEA where the child is living will make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration will be given to:

a. A preference for continuance of the child’s educational program that was in place prior to the child’s placement in the home. For students in custody of the state’s child welfare agency, school stability and the student’s ability to remain in his or her school of origin will be prioritized to the maximum extent appropriate consistent with the child’s best interest.

b. Placement into the least restrictive environment.

c. Development of a plan for future educational programming.

d. The provisions of the court order if the child was placed in the facility by a court.

e. Factors including, but not limited to, the child’s emotional or physical state, the child’s safety and the safety of others, the child’s identified or assessed academic abilities, and the projected duration of stay in the home.

63.5(3) *Cooperation with area education agency.* The AEA of the child’s district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child will cooperate pursuant to Iowa Code section 282.30(2).

63.5(4) *Summer school programs.* Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code section 282.31(5), and are considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

281—63.6(282) Special education. The AEA will establish policies and procedures for screening and evaluating students living in juvenile homes who may need special education.

63.6(1) *Assignment.* A diagnostic-educational team will be assigned by the AEA in which each program is located. This diagnostic-educational team includes individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are provided a special education program pursuant to an individualized education program (IEP).

63.6(2) *Duties.* The duties of this diagnostic-educational team include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

63.6(3) *Role of director of special education.* It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other provisions of 281—Chapter 41 are adhered to for students provided a special education program pursuant to an IEP who are served in juvenile homes. In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

281—63.7(282) Other AEA services.

63.7(1) *Educational services.* Personnel from the educational services division of the local AEA will be made available to each program. Personnel will assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

63.7(2) *Media services.* Personnel from the media services division of the local AEA will be made available to each program. All services that are made available to local education agencies within the particular AEA are to be made available to these programs and students.

63.7(3) *Other responsibilities.* In addition to the above-mentioned responsibilities, AEA personnel will assist with coordination of program curricula with the curricula of the local district in which the home is located and with the transition of students from these programs to subsequent program placement. This coordination includes the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

281—63.8(282) Curriculum. Each program will use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student's educational program. The content of each student's program is to be sufficient to enable the student to earn credit while participating in the program.

281—63.9(282) Disaster procedures. Each home will maintain a written plan containing emergency and disaster procedures that are clearly communicated to and periodically reviewed with staff.

281—63.10(282) Maximum class size.

63.10(1) Maximum class size in shelter care homes. The following maximum class size-to-staff ratio will be used in shelter care homes:

<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
10 or fewer	1	1 aide
More than 10 through 20	2	1 aide with more than 10 but fewer than 15 students 2 aides with 15 through 20 students
More than 20 through 30	3	2 aides with more than 20 but fewer than 25 students 3 aides with 25 through 30 students

63.10(2) Maximum class size in detention homes. The class size-to-staff ratio used in detention homes will be the same as that defined in subrule 63.10(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it will be no greater than the following class size-to-staff ratio:

<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
Fewer than 10	1	1 aide with 5 or fewer students 2 aides with more than 5 students
10 through 20	2	2 aides with fewer than 15 students 3 aides with 15 through 20 students
More than 20 through 30	3	3 aides with fewer than 25 students 4 aides with 25 through 30 students

Support for this staffing ratio is to be provided with the juvenile home budget proposals and with the juvenile home claims.

63.10(3) When a classroom is located in an off-site facility, a full-time educational aide may be assigned for each off-site classroom in addition to the number allowed in subrule 63.10(1) or 63.10(2).

63.10(4) The department of education may waive subrules 63.10(1), 63.10(2), and 63.10(3) if student characteristics such as the age range of students in the home or the percentage of students in the home involved in adult criminal proceedings necessitate a different class size-to-staff ratio. Any variance from the maximum prescribed class size-to-staff ratio must be approved by the department of education on an annual basis. Support for the waiver request is to be provided with the juvenile home budget proposals and with the juvenile home claims.

63.10(5) Average daily membership for determining class size in subrules 63.10(1) to 63.10(4) for the juvenile home budget proposals is based on the actual average daily membership from the year previous to the base year, average daily membership to date in the base year, and factors known at the time of the budget proposals which would impact the average daily membership in the budget year.

63.10(6) If the number of teachers and aides as determined in subrules 63.10(1), 63.10(2), and 63.10(3) was appropriately estimated for the juvenile home budget proposal and was approved by the department of education, and the actual number of teachers or aides is determined to be in excess of maximum class sizes based on the actual average daily membership of students on the juvenile home claims, the department of education may waive subrule 63.10(1), 63.10(2), or 63.10(3).

63.10(7) If the educational program at any one juvenile home is provided in more than one classroom location and using multiple classroom locations results in a different number of teachers and aides than would have been allowed if the students were in one classroom, the department of education may waive subrules 63.10(1) and 63.10(2). Support for the waiver request is to be provided with the juvenile home budget proposals annually.

63.10(8) The AEA will develop policies and procedures to monitor and ensure that the educational program is provided sufficient instructional staff.

281—63.11(282) Teacher certification and preparation.

63.11(1) Certification. At least one teacher who is assigned to these programs shall hold Iowa certification for Instructional Strategist I or II, or both, as appropriate to the grade level and needs of the students served.

63.11(2) In-service. Each teacher is to be provided appropriate in-service education opportunities annually in areas defined through needs assessments.

281—63.12(282) Aides. Educational aides will be provided preservice and in-service opportunities consistent with duties to be performed and work under the direct supervision of the teacher.

281—63.13(282) Accounting. Revenues, expenditures, and balances of the juvenile home programs will be accounted for in the manner provided in Uniform Financial Accounting for Iowa LEAs and AEAs, except as otherwise noted in these rules.

63.13(1) Fund. Juvenile home instructional programs will be accounted for in a special revenue fund. The fund balances are to be maintained in the special revenue fund at year end, and the continuance or disposition of positive or negative fund balances will be determined by the department of education.

63.13(2) Tuition. Tuition paid or received will be calculated as follows:

a. If juvenile home students not requiring special education attend a local school district, other than the district of residence, tuition is to be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district. In lieu of paying tuition to the local school district for these students, the AEA may request the local school district to account for these students through the foster care facility claim process.

b. Tuition for students provided a special education program pursuant to an IEP will be paid by the district of residence, in accordance with the rules of special education and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will notify the district of residence if the child was being served on the third Friday in September by the district in which the home is located or by the AEA. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will also notify the district of residence if the child was being served on December 1 by the district in which the home is located or by the AEA.

281—63.14(282) Revenues. Revenues include:

1. Funding received pursuant to Iowa Code section 282.31,
2. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,
3. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and
4. Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

281—63.15(282) Expenditures. Expenditures may include actual instructional expenditures, student support services expenditures, instructional staff support services expenditures, administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program will be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space is to be adequate for the number and needs of children in the juvenile home instructional program.

63.15(1) Instructional expenditures. Instructional expenditures include:

a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides.

b. Purchased services, supplies, and equipment, which are customarily considered instructional expenditures.

c. Intrafund transfers.

d. The department of education will annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP will not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation will not exceed twice the maximum amount calculated.

63.15(2) *Student and instructional staff support services and student transportation services expenditures.* Among the services included in these categories are guidance services, transportation services, curriculum development, and library and instructional technology. Expenditures may include salaries, employee benefits, purchased services, supplies, equipment, and intrafund transfers.

63.15(3) *Administrative support services, operation and maintenance of plant services, and interfund transfers.* Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

a. Intrafund transfers and actual costs of general administration services provided to the juvenile home program. Expenditures for general administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Intrafund transfers and actual costs of division administrative services provided to the juvenile home program. Expenditures for division administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount is to be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services is to be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as provided in subrule 63.15(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services is to be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

63.15(4) *Unauthorized expenditures.* Expenditures do not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for rental expenditures for classroom facilities when adequate space is available at the juvenile home or AEA.

63.15(5) *Charges for AEA services.* As provided by rule 281—63.6(282), subrule 63.7(1), or subrule 63.7(2), juvenile home students will have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

281—63.16(282) Claims. AEAs will submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

The number of classrooms being provided by each AEA is to be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE will be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

Each teacher will keep a daily register pursuant to Iowa Code section 294.4.

The average daily membership of students of school age living in juvenile homes who are being provided an educational program will be reported on the budget proposals and claims. "Average daily membership (ADM)" means the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "Aggregate days" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student is considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM will be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

281—63.17(282) Audits. AEAs will make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

281—63.18(282) Waivers. A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraph 63.15(1) "d," 63.15(3) "a," 63.15(3) "b," 63.15(3) "e," or 63.15(3) "g," or subrule 63.15(4) or 63.15(5). The AEA may annually request the waiver and will include the waiver request and the evidence specified by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 281—63.2(282) or 281—63.3(282). An approved waiver related to rent payment to the juvenile home does not necessitate an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

If the department denies a waiver request, the AEA which was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

It is the intent of the department of education to waive provisions of this chapter only when it is determined that they would result in unequal treatment of the AEAs or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 and 282.31.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapters 64 and 67
“Child Development Coordinating Council”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 279.51

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 256A and section 279.51

Public Hearing

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

January 2, 2024
9 to 9:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa 50319

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

The current chapters provide grant support for a preschool program (281—Chapter 64) and a family support program (281—Chapter 67), both for at-risk children and families and both administered by the Department of Education on behalf of the Child Development Coordinating Council (CDCC). Both programs are supported by an annual legislative appropriation.

Because of similar standards and objectives, the Department proposes consolidating the two chapters into one. The current chapters contain unnecessarily restrictive terms and unneeded duplication of statutory text. Additionally, by consolidating these two chapters into one, the Department proposes reducing rules that are duplicative between the chapters.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
CDCC grantees will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Children and families served by CDCC grantees will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 64 and adopt the following **new** chapter in lieu thereof:

CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

281—64.1(256A,279) Purpose. These rules structure the child development coordinating council and set forth its operating procedures.

281—64.2(256A,279) Definitions applicable to this chapter.

“Council” means the child development coordinating council.

“Department” means the department of education.

“Grantee” means the applicant designated to a grant under this chapter.

“Parent” means biological, adoptive, surrogate, or foster parent, or guardian.

281—64.3(256A,279) Child development coordinating council. The council members are set forth in Iowa Code section 256A.2. The Iowa resident parent will be chosen by the Iowa Head Start Association.

281—64.4(256A,279) Procedures.

64.4(1) A quorum consists of two-thirds of the voting members.

64.4(2) When a quorum is present, a position passes when approved by a majority of voting members.

64.4(3) The council will meet at least four times per year and may meet more often at the call of the chair or a majority of voting members.

64.4(4) The chairperson and vice-chair will be elected by the council for a term of two years. After the initial two-year term as vice-chair, the vice-chair will assume the role of chairperson for a term of two years.

281—64.5(256A,279) Duties. The duties of the council are provided in Iowa Code sections 256A.3 and 279.51.

281—64.6(256A,279) Application process. The council will advise the department to announce through public notice the opening of an application period for both division I and division II of this chapter.

281—64.7(256A,279) Request for proposals. Applications for grants under either division of this chapter will be distributed by the department upon request. Proposals not containing the specified information or not received by the specified date will not be considered. All applications are to be submitted in accordance with instructions in the requests for proposals and are to be submitted to the department.

281—64.8(256A,279) Notification of applicants. The council will advise the department to notify applicants of the decision to approve or disapprove the proposal within 45 days of the deadline for applications. Negotiations may be required. Successful applicants will be requested to have an official with vested authority sign a contract with the department.

281—64.9(256A,279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the council may withdraw the award offer.

281—64.10(256A,279) Evaluation. The grantee will cooperate with the council and provide requested information to determine how well the goals and objectives of the project are being met.

281—64.11(256A,279) Contract revisions and budget reversions. The grantee will immediately inform the department of any revisions in the project budget. The department and the grantee may negotiate a revision to the contract to allow for expansion or modification of services but will not increase the total amount of the grant. Grant funds unencumbered or unobligated at the conclusion of the program period revert to the department. The program period concludes at the end of the five-year grant cycle, if an annual renewal grant within the five-year grant cycle is not awarded, or at any time the grant is discontinued during the five-year grant cycle.

281—64.12(256A,279) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be

terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and cancel as many outstanding obligations as possible.

281—64.13(256A,279) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion, whenever it is determined by the council that the grantee has failed to comply substantially with the conditions of the contract. The grantee will be notified in writing by the department of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and cancel as many outstanding obligations as possible.

The department will administer the grants under this chapter contingent upon funding availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the child development grants and the public school grants, the contracts will be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—64.14(256A,279) Responsibility of grantee at termination. Within 45 days of the termination, the grantee will supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the council, the grantee will return moneys for unapproved expenditures.

281—64.15(256A,279) Appeal from terminations. Any agency or public school aggrieved by a termination of a contract for cause pursuant to rule 281—64.13(256A,279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281—Chapter 6 apply to appeals of terminated grantees, except that the rules on consolidation, severance, waiver of proceedings, and manner of hearing do not apply.

In the notice of appeal, the grantee will give a short and plain statement of the reason for the appeal.

The director will issue a decision within a reasonable time, not to exceed 120 days from the date of the hearing.

281—64.16(256A,279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the proper form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—64.17(256A,279) Request for Reconsideration. An applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within ten days of the decision to decline to award a grant. In order to be considered by the director, the Request for Reconsideration is to be based upon one of the following grounds:

1. The decision process was conducted in violation of statute or rule;
2. The decision violates state or federal law, policy, or rule (to be cited in the Request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester will submit all written documentation, evidence, or argument in support of the request. The director will notify the council of the request and provide the council an opportunity to defend its decision with written documentation, evidence, or argument, which is to be submitted within 20 days of receipt of the request. The council will provide copies of all documents to the requester at the time the items are submitted to the director.

The director will issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the council.

281—64.18(256A,279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes the following reasons:

1. The request was untimely;
2. The requester lacks standing to seek reconsideration;
3. The request is not based on any of the available grounds in rule 281—64.17(256A,279), or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—64.19(256A,279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the council will consider the grantee's application in accordance with the director's findings and decision.

DIVISION I

EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF CHILDREN AGED BIRTH THROUGH FIVE YEARS WHO ARE AT RISK (ALSO KNOWN AS SHARED VISIONS PARENT SUPPORT PROGRAMS)

281—64.20(256A,279) Definitions.

"Applicant" means a public school district, an area education agency or an agency which applies for the funds to provide quality educational support programs to parents of children aged birth through five years who are at risk, with an emphasis on parents of children aged birth through three years.

"Children who are at risk" means children aged birth through five years who are at risk because of physical or environmental influence.

"Educational support services" means individual or group opportunities providing information to parents which focuses on parenting skills, child growth and development, building of self-concept, nutrition, positive guidance techniques, family resource management, parent literacy, and how to access the array of supportive services from a network of agencies that are available to families with young children who are at risk.

"Quality educational support services" means educational support services that have a qualified or trained staff to provide a program which meets the needs of parents through the use of a validated curriculum or which is based on a model project which has proven successful in another state or location.

281—64.21(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council will award grants to applicants for the provision of educational support services to parents of children aged birth through five years who are at risk, with priority to applicants that serve parents of children aged birth through three years who are at risk. Funds will be made available on a competitive basis to schools or nonprofit agencies demonstrating an ability to provide quality educational support services to parents of children aged birth through five years who are at risk. Competitive grants will be awarded with a renewal option for up to five years contingent upon the awardee's meeting program requirements. If program requirements are not met, the council will advise the department to discontinue grant funding at the start of the following fiscal year.

281—64.22(256A,279) Eligibility. The available funds shall be directed to serve parents of children aged birth through five years who are at risk in the primary eligibility category as follows:

Parents having one or more children aged birth through five years who meet the current income eligibility guidelines for free and reduced price meals under the child nutrition program.

281—64.23(256A,279) Secondary eligibility. The available funds shall be directed to serve parents of children aged birth through five years who are at risk when children qualify in one or more of the secondary eligibility categories as follows:

1. Children who are abused.
2. Children functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional.

3. Children born with one or more factors that are established as high risk for developmental delay, such as very low birth weight (under 1,500 grams—approximately three pounds) or with conditions such as spina bifida, Down syndrome, or other genetic disorders.
4. Children born to a parent who was under the age of 18.
5. Children residing in a household where one or more of the parents or guardians:
 - Has not completed high school;
 - Has a substance use disorder;
 - Has a chronic mental illness;
 - Is incarcerated;
 - Has low literacy skills;
 - Has a history of child or spouse abuse; or
 - Is an English learner.
6. Children having other special circumstances, such as foster care or being homeless.

281—64.24(256A,279) Grant awards criteria.

64.24(1) *Criteria points.* The following information will be provided and points will be awarded to applicants based on the following criteria as stated in the request for proposal:

- a. Identification of parents of children who are at risk.
- b. Positive family focus.
- c. Educational support programs to provide family services.
- d. Community and interagency coordination.
- e. Overall program evaluation.
- f. Letters of community support.
- g. Program budget (administrative costs not to exceed 10 percent of total award).

64.24(2) *Additional grant components.* The following information will be provided and points will be awarded to applicants based on the following additional components.

- a. Documentation of a need for this project.
- b. Justification of how this project will utilize services from other agencies and how this project will supplement services to the eligible population.
- c. Identification of the curriculum to be used or the model to be replicated.
- d. Demonstration that persons qualified to administer these educational support services to parents will be employed.

281—64.25(256A,279) Award contracts.

64.25(1) Grants for educational support services to parents of children aged birth through five years who are at risk shall not supplant other existing funding sources.

64.25(2) Administrative costs are limited to 10 percent of the total award.

281—64.26(256A,279) Grantee responsibilities. The grantee will maintain records which include:

1. Demographic information on parents and children served.
2. Qualifying criteria for those parents receiving educational support services.
3. Documentation of the number of contact hours in either individual or group sessions with parents.
4. Documentation of the type of educational support service provided to parents.
5. Indication of where the services were provided, i.e., home, school or community facility.
6. Evaluation of how each project goal and objective was met, on what timeline, and with what success rate.
7. Record of expenditures and an annual audit. Grant funding is to support direct services to families and their children to the fullest extent possible.
8. Other information specified by the council necessary to the overall evaluation.

Grantees will complete a year-end report on forms provided by the department documenting the information outlined in this rule.

DIVISION II
CHILD DEVELOPMENT PROGRAMS (ALSO KNOWN AS SHARED VISIONS PRESCHOOL PROGRAMS)

281—64.27(256A,279) Definitions applicable to this division.

“Applicant” means a public or private nonprofit organization, licensed by the department of health and human services or approved by the department of education, which applies for the state child development funds.

“Child development grants” means the funds awarded by the council to assist child development programs.

“Children who are at risk” means a student who meets one or more of the primary and secondary risk factors stated in rules 281—64.29(256A,279) and 281—64.30(256A,279).

“Low-income family” means a family who meets the financial eligibility criteria for free and reduced price meals offered under the child nutrition program.

“Project” means the child development program for which grant funds are requested.

“Public school applicant” means a public school district approved by the department which applies for the state public school child development funds.

“Public school child development grants” means the funds awarded by the council to assist public school child development programs as established in Iowa Code section 279.51.

“Public school grantee” means the applicant designated to receive public school child development grants.

“Public school project” means the public school child development program for which grant funds are requested.

281—64.28(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council will grant awards on a competitive basis to child development programs for three- and four-year-old children who are at risk and public school child development programs for three-, four-, and five-year-old children who are at risk. Competitive grants will be awarded with a renewal option for up to five years when grantees meet program requirements. If program requirements are not met, the council will advise the department to discontinue grant funding at the start of the following fiscal year.

281—64.29(256A,279) Primary eligibility.

64.29(1) *Child development grants.* At least 80 percent of the funded available enrollment slots for three- and four-year-old children who are at risk will be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three or four years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

64.29(2) *Public school child development grants.* At least 80 percent of the funded available enrollment for three-, four-, and five-year-old children who are at risk in public school child development programs will be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three, four, or five years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

64.29(3) *Enrollment criteria.* Applicants are to document the number of children enrolled under primary eligibility and the criteria used for enrollment.

281—64.30(256A,279) Secondary eligibility.

64.30(1) *Criteria.* Up to 20 percent of the available funded child development enrollment slots for at-risk may be filled by children who are three or four years of age on or before September 15 or public school enrollment slots by children who are three, four, or five years of age on or before September 15; are above the income eligibility guidelines provided that they are served on a sliding fee schedule determined at the local level; and are eligible according to one or more of the following criteria if the child:

- a. Is functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;
- b. Was born with one or more factors that are established as high risk for developmental delay, such as very low birth weight (under 1,500 grams—approximately three pounds) or with conditions such as spina bifida, Down syndrome, or other genetic disorders;
- c. Was born to a parent who was under the age of 18;
- d. Resides in a household where one or more of the parents or guardians:
 - (1) Has not completed high school;
 - (2) Has a substance use disorder;
 - (3) Has a chronic mental illness;
 - (4) Has low literacy skills;
 - (5) Is incarcerated; or
 - (6) Has a history of child or spousal abuse; or
- e. Has other special circumstances, such as foster care or being homeless.

The program may include children without risk factors, provided they are at full pay and meet other age requirements.

64.30(2) Enrollment criteria. Applicants are to document the number of children enrolled under secondary eligibility and the criteria used for enrollment.

281—64.31(256A,279) Grant awards criteria.

64.31(1) Criteria points. The following information shall be provided and points awarded to applicants based on the following criteria as stated in the request for proposal:

- a. Provision of a comprehensive child development program.
- b. Limited class size.
- c. Child-teacher ratios of not less than one staff member per eight children.
- d. Provision of parental involvement.
- e. Demonstration of community support.
- f. Utilization of services provided by other community agencies.
- g. Use of qualified teachers.
- h. Existence of a plan for program evaluation including, but not limited to, measurement of student outcomes.
- i. Developmentally appropriate practices.

64.31(2) Additional grant components. The following information shall be provided and points awarded to applicants based on the following additional components.

- a. Program summary.
- b. Research documentation.
- c. Identification and documentation of local populations who are at risk.
- d. Letters of community support.
- e. Program budget (administrative costs not to exceed 10 percent of total award).

281—64.32(256A,279) Grant process.

64.32(1) An applicant will make formal response using forms issued and procedures established by the council.

64.32(2) A rating team composed of persons with expertise in child development programs and fiscal management experience will review and rank the proposals.

64.32(3) The council has the final discretion to award funds.

64.32(4) The council will advise the department to notify successful applicants and to provide to each of them a contract for signature.

281—64.33(256A,279) Grantee responsibilities.

64.33(1) The grantee will maintain records which include but are not limited to:

- a. Information on children and families served.

- b.* Direct services provided to children.
- c.* Record of budget, including expenditures. Grant funding is to support direct services to children to the fullest extent possible. Administrative costs under these programs is limited to 10 percent of the total award.

d. Other appropriate information specified by the council necessary to the overall evaluation.

Monitoring of such records will be conducted through the submission of annual reports by the grantee and may include on-site review as determined necessary by the department.

64.33(2) Programs in year one of award. Each program in year one of a grant shall meet the program standards and accreditation criteria of the National Association for the Education of Young Children, the Iowa quality preschool program standards, or other approved program standards as determined by the department during the program's first year of funding. Programs that do not attain accreditation or that do not receive a waiver will not be funded.

64.33(3) Programs in renewal years.

a. Programs shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children, the Iowa quality preschool program standards and criteria, or other approved program standards as determined by the department. Programs unable to maintain accreditation may apply for a waiver of accreditation within 30 days of the change in accreditation status. Waivers are awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.

b. Continuation of a grantee's participation for a second or subsequent renewal year is subject to the approval of the department based upon the grantee's compliance with program requirements and the department's review of the grantee's implementation of the grant program.

c. Awarded grantees are to maintain the program standards identified in the awarded application throughout the five-year grant cycle, unless unforeseen circumstances occur. Such circumstances will be considered at the discretion of the council.

64.33(4) Grantees will provide annual reports that include information detailing progress toward goals and objectives, expenditures and services provided on forms provided for those reports. Failure to submit reports by the due date will result in suspension of financial payments to the grantee until the time that the report is received. No funds will be made available to programs in renewal years when there are delinquent reports from prior years. No new initial awards will be made to programs when there are delinquent reports from prior grant cycles.

64.33(5) Grantees may use funds in a manner consistent with Iowa Code section 279.51(2) "b."

64.33(6) Any contract under this division may be terminated in whole or in part by June 30 of the current fiscal year in the event that the grantee has not attained accreditation of the program standards identified in the awarded application or has not been awarded a waiver of accreditation by the council.

These rules are intended to implement Iowa Code chapter 256A and section 279.51.

ITEM 2. Rescind and reserve **281—Chapter 67.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 72
“Accreditation of Area Education Agencies”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 273.3 and 273.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 273

Public Hearing

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

January 2, 2024
11 to 11:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking benefits Iowa students in all nine area education agencies (AEAs) (including the 71,723 Iowa infants, toddlers, and children with disabilities who received Early ACCESS and special education services in the most recent reporting year).

The Department proposes removing restrictive terms that do not add value and statutory language that is repeated verbatim.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s nine AEAs will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students and families, as well as the educators who serve them, will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation and federal special education funds.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72 ACCREDITATION OF AREA EDUCATION AGENCIES

281—72.1(273) Scope. Area education agencies are subject to accreditation by the state board of education as specified in Iowa Code sections 273.10 and 273.11. These rules apply to the accreditation of area education agencies. In applying this chapter, the department will give greatest attention to programs and services that have the greatest relationship to improving student achievement.

281—72.2(273) Definitions.

“AEA” is an acronym for area education agency.

“Agencywide goals” means cross-divisional desired targets to be reached over an extended period of time, derived from an agencywide needs assessment and state and local student learning needs, and upon which services are focused.

“Baseline data” means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

“Board” means the Iowa state board of education.

“Department” means the Iowa department of education.

“Director” means the state director of the department of education.

“Equitable” means that services provided by an AEA are accessible to all schools and school districts within the agency’s service region.

“External knowledge base” means what is known, such as research and student achievement data, from the state or the nation about how learners in other settings perform and respond in a content area such as reading, mathematics, or science, as well as what is known about developing a learning environment that will support the desired student performance and response in a content area such as reading, mathematics, or science.

“Indicators of improvement” means internal data the agency uses to determine how well its continuous improvement processes are implemented.

“Indicators of quality” means external data sources which measure the effectiveness of services.

“School” means an accredited nonpublic school.

“School district” means a public school district.

“State indicators” means the school and school district indicators defined in 281—Chapter 12.

281—72.3(273) Standards for services. An AEA shall provide services that meet these standards as evidenced by the descriptors following each standard. These services are to be accessible to all schools and school districts within the agency’s service region. The AEA will:

72.3(1) Deliver services for school-community planning, including assistance in assessing needs of all students, developing collaborative relationships among community agencies, establishing shared direction, implementing actions to meet goals, and reporting progress toward goals.

72.3(2) Deliver professional development services for schools, school districts and AEA instructional, administrative, and support personnel. The AEA anticipates and responds to schools’ and school districts’ current needs; supports research-based educational practices; aligns with school and school district comprehensive long-range and annual improvement goals; uses adult learning theory; supports improved teaching; uses theory, demonstration, practice, feedback, and coaching; and addresses professional development activities as required by the Iowa Code or administrative rules.

72.3(3) Support curriculum, instruction, and assessment services that address the areas of reading, language arts, mathematics, and science but may also be applied to other curriculum areas. These services support the development, implementation, and assessment of rigorous content standards in reading, mathematics, and science. The AEA assists schools and school districts in analyzing student achievement data as well as data about the learning environment, compares those data to the external knowledge base, and uses that information to guide school and school district goal setting and implementation of actions to improve student learning.

72.3(4) Address the diverse learning needs of all children and youth, including services that address gifted and talented students and English learners and meet the unique needs of students with disabilities who are eligible for special education. Services provide support to schools and school districts and include special education compliance with Iowa administrative rules for special education.

72.3(5) Provide services that support age-appropriate, multicultural, gender-fair approaches to the educational program pursuant to Iowa Code section 256.11. These services assist schools and school districts to take actions that ensure all students are free from discriminatory acts and practices; to establish policies and take actions that ensure all students are free from harassment; to incorporate into the educational program instructional strategies and student activities related to responsibilities, rights, and the respect for diversity which are necessary for successful citizenship in a diverse community and

a global economy; and to incorporate on an ongoing basis activities within professional development that prepare and assist all employees to work effectively with diverse learners.

72.3(6) Deliver media services. These services align with school and school district needs, support effective instruction, and provide consultation, research and information services, instructional resources, and materials preparation and dissemination to assist schools and school districts to meet the learning needs of all students and support local district media services. These services support the implementation of content standards in, but not limited to, reading, mathematics, and science. These services also support and integrate emerging technology.

72.3(7) Supplement and support effective instruction for all students through school technology services. These services provide technology planning, technical assistance, and professional development, and support the incorporation of instructional technologies to improve student achievement. These services support the implementation of content standards in, but not limited to, reading, mathematics, and science. These services support and integrate emerging technology.

72.3(8) Deliver services that develop leadership based upon the Iowa standards for school administrators under 281—Chapter 83. Leadership services assist with recruitment, induction, retention, and professional development of educational leaders. AEAs develop and deliver leadership programs based on local and state educational needs and best practices.

72.3(9) Deliver management services if requested. If the AEA provides management services to school districts, the services will conform to the provisions of Iowa Code section 273.7A.

72.3(10) Maintain a program and services evaluation and reporting system, consistent with the provisions of this chapter.

72.3(11) Provide support for school district libraries in accordance with Iowa Code section 273.2(4).

72.3(12) Provide support for early childhood, birth to three, service coordination for families and children to meet health, safety, and learning needs, including service coordination under 281—Chapter 120.

281—72.4(273) Three-year statewide strategic plan. Each AEA will complete a three-year statewide strategic plan as referenced in Iowa Code section 273.2(9).

281—72.5(273) Annual budget and annual progress report. Each AEA will submit to the board an annual budget pursuant to Iowa Code section 273.3 and provide an annual progress report pursuant to Iowa Code section 273.2(9).

An AEA will annually submit a written progress report to its schools and school districts and the department and make the report available to the public. The report will include the following information:

72.5(1) Agencywide goals. Progress, at a minimum, toward the three-year plan as referenced in Iowa Code section 273.2(9).

72.5(2) Indicators of quality. Aggregated agencywide data will include baseline data and trends over time for the following indicators of quality from, at a minimum, the state indicators, the statewide customer service survey, school and school district school improvement plans, and school and school district annual progress reports:

a. Targeted assistance. An AEA assists schools and school districts with specific student, teacher, and school needs evidenced in local school improvement plans by:

- (1) Addressing teacher, school and school district needs.
- (2) Responding to student learning needs.

b. Improved student learning. An AEA assists schools and school districts in:

- (1) Improving student achievement in mathematics.
- (2) Improving student achievement in reading.
- (3) Improving student achievement in science.
- (4) Reducing student achievement gaps in mathematics.
- (5) Reducing student achievement gaps in reading.
- (6) Reducing student achievement gaps in science.
- (7) Reducing dropout rates.

- (8) Preparing students for postsecondary success.
- (9) Planning to ensure that students complete a core program.
- c. Improved teaching. An AEA assists schools and school districts in improving teaching in the following areas:
 - (1) Mathematics.
 - (2) Reading.
 - (3) Science.
- d. Resource management. An AEA assists schools and school districts:
 - (1) By delivering cost-efficient services.
 - (2) By timely delivery of services.
- e. Customer satisfaction with services. An AEA determines customer satisfaction through:
 - (1) High levels of participation.
 - (2) High levels of customer satisfaction with quality of AEA services.
- f. Annual progress report review process. The annual progress report of an AEA toward the three-year plan as referenced in Iowa Code section 273.2(9) will be reviewed by a team appointed by the director. Following the review of an AEA's report, feedback will be provided to the agency and state board.

281—72.6(273) Comprehensive site visit; accreditation process.

72.6(1) *On-site review.* An accreditation team will conduct one or more on-site reviews of the AEA's progress toward agencywide goals and determine if services meet the standards in this chapter. Prior to an on-site review of an AEA, the accreditation team will have access to the AEA's three-year plan as referenced in Iowa Code section 273.2(9), annual progress report, and annual budget as well as any other information collected by the department relating to the AEA.

72.6(2) *Accreditation process.* Accreditation is governed by Iowa Code section 273.11(3) through 272.11(6) and the following paragraphs.

a. *Accreditation status.* After completion of the comprehensive site visit under this rule, the board will grant continuation of accreditation if all standards and other requirements are met. If the board determines that an AEA has not met all standards and other requirements, the board will grant conditional accreditation to the agency.

b. *Conditional accreditation.* If the board grants conditional accreditation, the department will notify the administrator of the AEA and each member of the board of directors of the AEA within 15 days. The notice will contain a description of the accreditation deficiencies.

c. *Remediation plan.* Upon granting of conditional accreditation by the board, the director, in cooperation with the board of directors of the AEA, will establish a remediation plan. The remediation plan is to describe how the AEA will correct deficiencies to meet accreditation standards and establish a timeline and deadline date for correction of the deficiencies. The remediation plan is subject to the approval of the board. The AEA remains conditionally accredited during the implementation of the remediation plan.

d. *Implementation of remediation plan.* At intervals prescribed in the remediation plan or at the request of the director, the accreditation team will revisit the AEA, determine whether the deficiencies in the accreditation standards are being or have been corrected, and make a report and recommendation to the director and the board. The board will review this report and recommendations and determine whether the deficiencies have been corrected.

e. *Failure to correct deficiencies.* If the deficiencies have not been corrected within the time stipulated in the remediation plan, the board shall remove accreditation of the agency. At the hearing before the board, the AEA may be represented by counsel and may present evidence. The board may provide for the hearing to be recorded or reported. If requested by the AEA at least 10 days before the hearing, the board will provide for the hearing to be recorded or reported at the expense of the AEA. Within 30 days after the hearing, the board will render a written decision approving or removing the accreditation. Action by the board at this time is final agency action for the purposes of Iowa Code chapter 17A. The department will notify the administrator of the AEA, each member of the board of

directors of the AEA, and the schools and school districts served by the AEA of the decision of the board.

f. Response to removal of accreditation. After removal of accreditation of the agency, the AEA board of directors will make provisions for the continuation of services to schools and school districts subject to approval by the state board of education.

These rules are intended to implement Iowa Code sections 273.10 and 273.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 81
“Standards for School Business Official Preparation Programs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(5) and 256.7(30)“a”
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.7(30)“a”

Public Hearing

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

January 2, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to benefit Iowa’s schools by preparing high-quality school business officials (SBOs).

The Department proposes to remove unduly restrictive rules language, remove inflexible rule language that does not apply to all potential eligible institutions, and incorporate statutory language by reference when available.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School business official preparation programs will bear the costs of this proposed chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
SBO candidates and the organizations that employ them will benefit from this proposed chapter.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact of the proposed chapter.
 - Qualitative description of impact:
The proposed rules are more readable due to the elimination of unnecessary or obsolete language.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Department will enforce this proposed chapter, absorbing the costs as part of its general appropriation.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The proposed rulemaking relaxes some requirements that would be pertinent only to institutes of higher education.

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

The statute requires rules; however, the Department proposes relaxing its regulatory footprint and providing more flexibility to current or future SBO preparation programs.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81

STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS

281—81.1(256) Definitions.

“Area education agency” or “AEA” means a regional service agency that provides school improvement services for students, families, teachers, administrators, and the community.

“Department” means the department of education.

“Director” means the director of the department of education.

“Institution” means a public or private institution of higher education, an AEA, or a professional organization offering a school business official preparation program(s) and renewal credits.

“Novice” means an individual in a school business official position who has no previous experience in that position or who is newly authorized by the board of educational examiners.

“School business official candidates” means individuals who are enrolled in school business official preparation programs leading to authorization by the board of educational examiners to practice as school business officials.

“School business official preparation programs” means the programs of school business official preparation that lead to authorization to practice as a school business official.

“State board” means the Iowa state board of education.

281—81.2(256) Institutions eligible to provide a school business official preparation program. Institutions of public and private higher education, AEAs, and professional organizations engaged in the preparation of school business officials shall meet the standards contained in this chapter to obtain and maintain state board approval of their programs. Each institution that seeks state board approval of its programs for school business official preparation will file evidence of the extent to which each program meets the standards contained in this chapter. Such evidence will be demonstrated by means of a written self-evaluation report and an evaluation conducted by the department and prepared using a template developed by the department. Only approved programs may recommend candidates for school business official authorization.

281—81.3(256) Approval of programs. Approval by the state board of an institution’s school business official preparation program will be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

81.3(1) Approval, if granted, is for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

81.3(2) If approval is not granted, the applicant institution will be advised of the areas in which improvement or changes appear to be essential for approval. In this case, the institution will be given the opportunity to present information concerning its programs at a regularly scheduled meeting of the state board, no later than three months following the board’s initial decision.

81.3(3) Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program will receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for authorization.

81.3(4) The standards herein apply regardless of delivery mode of instruction.

281—81.4(256) Governance and resources standard. An institution’s governance structure and resources will adequately support the preparation of school business official candidates to meet professional, state, and institutional standards in accordance with the following provisions.

81.4(1) A clearly understood governance structure provides guidance and support for the school business official preparation program.

81.4(2) Procedures for an appeals process for candidates are clearly communicated and provided to all candidates.

81.4(3) The program administers a comprehensive evaluation system designed to enhance the teaching competence and intellectual vitality of the professional educational institution.

81.4(4) Institutional commitment to the program includes financial resources, facilities, appropriate educational materials, and equipment to ensure the fulfillment of the institution’s and program’s missions and the delivery of quality programs.

81.4(5) The institution provides sufficient instructors and administrative, clerical, and technical staff to plan and deliver a quality school business official preparation program.

81.4(6) Resources are available to support professional development opportunities for instructors.

81.4(7) Resources are available to support technological and instructional needs to enhance candidate learning.

281—81.5(256) Instructor standard. Instructor qualifications and performance will facilitate the professional development of school business official candidates in accordance with the following provisions.

81.5(1) Instructors are adequately prepared for assigned responsibilities and have had experiences relative to the curricula the instructors are teaching and in situations similar to those for which the school business official candidates are being prepared. Instructors have experience and adequate preparation in effective methods for any mode of program delivery in which the instructors are assigned responsibilities.

81.5(2) Instructors instruct and model best practices in teaching, including the assessment of the instructors' own effectiveness as it relates to candidate performance and engaging in professional development on adult teaching and learning.

81.5(3) Instructors are engaged in professional development that relates to school business official preparation.

81.5(4) Instructors collaborate regularly and in significant ways with colleagues in the institution and other institutions, schools, the department, and professional associations as well as with community representatives.

281—81.6(256) Assessment system and institution evaluation standard. The institution's assessment system will appropriately monitor individual candidate performance and use the performance data in concert with other information to evaluate and improve the institution and its programs.

81.6(1) Program assessment system.

a. The program utilizes a clearly defined management system for the collection, analysis, and use of assessment data.

b. The institution clearly documents candidates' attainment of the program standards.

c. The institution demonstrates the propriety, utility, accuracy and fairness of both the overall assessment system and the instruments used and provides scoring rubrics or other criteria used in evaluation instruments.

d. The institution documents the quality of programs through the collective presentation of assessment data related to performance of school business official candidates. Documentation will include the following:

- (1) Data collected throughout the program, including data from all delivery models;
- (2) Evidence of evaluative data collected on a biennial basis from school business officials who work with the program's candidates; and
- (3) Evidence of evaluative data collected on a biennial basis by the institution through follow-up studies of graduates and their employers.

e. The institution explains the process for reviewing and revising the assessment system.

f. The institution demonstrates how the information gathered by the institution and from the performance assessment system for candidates is shared with instructors and other stakeholders and used for program improvement.

81.6(2) Performance assessment system for candidates.

a. The performance assessment system for candidates is an integral part of the institution's planning and evaluation system.

b. The performance assessment system for candidates includes a coherent, sequential assessment system for individual school business official candidates. The assessment system is shared with instructors to provide guidance for course and program improvement. The assessment system also provides ongoing feedback to school business official candidates about their achievement of program standards and guidance for reflection and improvement. Data are drawn from multiple formative and summative assessments of institutional evaluation of the candidates' content knowledge and professional knowledge and from application of this knowledge to the necessary skills and attributes appropriate for a novice school business official.

c. School business official candidate performance is assessed at the same standard regardless of the place or way the program is delivered.

81.6(3) *Survey of graduates.* The department periodically conducts a survey of schools, agencies, or facilities that employ licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

281—81.7(256) School business official candidate knowledge and skills standards and criteria. School business officials will demonstrate content knowledge, professional knowledge, and skills in accordance with the following standards and supporting criteria. In addition, each school business official candidate shall meet all requirements established by the board of educational examiners for an authorization for which the candidate is recommended. Programs will submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

81.7(1) *Standard 1.* Each school business official demonstrates an understanding of Uniform Financial Accounting, governmental GAAP accounting, and statutory concepts. The school business official:

a. Is responsible for understanding and adhering to the Uniform Financial Accounting Manual and the current, accepted chart of accounts.

(1) Codes all salaries and benefits to the appropriate function, program, and project (if applicable) on a monthly basis;

(2) Ensures revenues, expenditures, and expenses are appropriately coded to the correct account monthly; and

(3) Ensures balance sheet items are properly coded as directed.

b. Understands and ensures implementation of state and federal law related to employment, personnel, and payroll.

c. Understands all projects and grants for which the district receives funding.

d. Understands the certified budgeting process and the content and purpose of each section of the aid and levy worksheet as well as other certified budget forms.

e. Understands the concept of spending authority.

81.7(2) *Standard 2.* Each school business official demonstrates the ability to implement effective internal controls and accounting processes. The school business official:

a. Provides data monthly in sufficient detail as to be informative and useful for decision makers and stakeholders in providing educational and co- and extracurricular programs.

b. Ensures delivery, monthly, of a statement of receipts, disbursements, and amount on hand for every fund.

c. Ensures reconciliation of bank statements monthly.

d. Consistently follows the procedure by which products and services may be purchased (state bidding, purchase orders, and purchasing processes).

e. Ensures that an annual line-item budget that aligns with the district-certified budget revenues and expenditures is completed in a timely manner for each fund.

f. Maintains an itemized statement no more than five years old of the appraised value of all buildings and other capital assets and a list of historical costs.

g. Invests moneys not needed as authorized under the Iowa Code and district policy.

h. Uses only depositories approved by the local school board.

i. Makes payments only to the person entitled to the payment and only for verified bills.

j. Understands and implements the various mechanisms by which to borrow money as well as the appropriate account coding and repayment processes.

k. Is able to produce budget forecasts and analyses of spending.

l. Is capable of preparing employee collective bargaining costing models and estimates.

81.7(3) *Standard 3.* Each school business official demonstrates an understanding of and compliance with federal, state, and local reporting requirements. The school business official:

a. Produces for the local school board periodic reports reflecting a financial statement in relation to spending authority and published budget control lines.

- b.* Ensures that an accurate and separate account of each fund is maintained.
- c.* Ensures the filing of all quarterly and annual payroll taxes and reports in a timely fashion, including but not limited to IRS Forms 941, 1099, W-2, and W-3 and relevant OMB circulars.
- d.* Files with the department of education, the department of management, and the state auditor all required reports in a timely fashion.
- e.* Understands the local collective bargaining agreement as well as nonemployee contracts.

81.7(4) Standard 4. Each school business official demonstrates compliance with applicable federal, state, and local laws. The school business official:

- a.* Understands the district board's policies and procedures and effectively implements applicable policies and procedures.
- b.* Implements effective records management processes and procedures.
- c.* Has a working knowledge of laws applicable to school districts and area education agencies.
- d.* Understands and implements employment laws.
- e.* Understands and implements bidding and construction laws.
- f.* Understands and implements pension processes, including but not limited to retirement plans, IPERS, and 403B investments.
- g.* Ensures that the school board president's and secretary's signatures are on all checks and that the school board president's signature is on all contracts.
- h.* Ensures that billing for all tuition items is completed on the current prescribed timeline.
- i.* Manages scheduling and preparation for the local audit, including any request for proposals for audit services as applicable.

81.7(5) Standard 5. Each school business official demonstrates competence in technology appropriate to the school business official position. The school business official:

- a.* Effectively manages an integrated accounting system for fund accounting by the district and assesses technology needs for fiscal management issues.
- b.* Maintains all funds in one integrated accounting system.
- c.* Displays a working knowledge of other software programs, if required to be used by the school business official.
- d.* Is able to use Word, database, and spreadsheet documents effectively to meet the needs of the district.
- e.* Displays competence in using the department's secure website for reporting purposes.
- f.* Is able to upload the chart of accounts and understands the relationship of the chart of accounts to the other reports, including but not limited to the special education supplement, the annual report on use of sales tax revenue, and the annual transportation report. This duty includes testing the functionality of accounts used for accuracy. The testing is carried out in a manner that allows for identification of issues prior to the actual submission deadline.

81.7(6) Standard 6. Each school business official demonstrates appropriate personal skills. The school business official:

- a.* Is an effective communicator with all stakeholders, including but not limited to colleagues, policy makers, community members, and parents.
- b.* Works effectively with employees and stakeholders.
- c.* Ensures the timely flow of information.
- d.* Maintains confidentiality with personal, restricted and embargoed information.
- e.* Is able to analyze, evaluate, and solve problems.
- f.* Timely and accurately performs the duties of a school business official.
- g.* Maintains an environment of mutual respect, rapport, and fairness.
- h.* Participates in and contributes to a school culture that focuses on improved student learning.

81.7(7) Standard 7. Each school business official engages in professional growth. The school business official:

- a.* Stays current with accounting technologies and the department's financial reporting system.
- b.* Demonstrates habits and skills of continuous inquiry and learning.
- c.* Works collaboratively to improve professional practice.

d. Applies research, knowledge, and skills acquired from professional development opportunities to improve practice.

e. Engages with administration on an annual review of the effectiveness of district accounting and reporting processes and on an individual performance evaluation consistent with district policy.

f. If the school business official has not earned full authorization as a school business official, participates in the school business official mentoring program to the extent necessary.

81.7(8) Standard 8. Each school business official fulfills professional responsibilities established by the school district. The school business official:

a. Adheres to school board policies, district procedures, and contractual obligations and ensures that applicable district policies are not in conflict with state law.

b. Demonstrates professional and ethical conduct as defined by state law and district policy.

c. Contributes to efforts to achieve district goals.

d. Is able to contribute to cost/benefit analyses.

e. Participates in the board of educational examiners ethics program.

f. Follows the code of professional conduct and ethics and the rights and responsibilities described in 282—Chapters 25 and 26.

81.7(9) Standard 9. If a school business official is also employed as the secretary or treasurer of the school board, the school business official:

a. Takes the oath of office within ten days following appointment.

b. Files a bond and ensures the level of coverage is adequate.

c. Holds office until a successor has been appointed and qualified.

d. Publishes minutes, bills, and salaries on a timely basis.

e. Ensures that the department, the county auditor, and the treasurer are informed in a timely manner of the names and addresses for board officers as well as any changes therein.

f. Files and preserves copies of all required reports and all papers transmitted pertaining to the business of the school corporation, including all certificates, reports, and proofs related to compulsory education.

g. Maintains separate books for minutes and elections and ensures that the records are complete.

h. Delivers all claims to the board for audit and allowance.

281—81.8(256) School business official mentoring program. The one-year mentoring program and its partners will assist candidates in becoming successful school business officials in accordance with the following provisions. The candidate is to be employed as a school business official to be eligible to participate in the mentoring program.

81.8(1) Candidates admitted to a school business official preparation program will participate in the mentoring program. All hours spent in the mentoring program are outside of the nine semester hours required in the program.

81.8(2) Each school business official preparation program will inform all candidates of the following minimum expectations of the candidates as mentees:

a. Participation in weekly conversations with the mentee's mentor, including a review of work assignments.

b. Maintenance of a record of contacts with the mentor and submission of the record to the program. A template will be provided by the program.

c. Completion of surveys to assist with program evaluation.

d. Communication with the program if the relationship with the mentee's mentor is not meeting the needs or expectations of the mentee.

e. Full participation in the mentoring program throughout the one-year period.

81.8(3) Each school business official preparation program will inform all program candidate mentors of the following minimum expectations:

a. Contacting the mentee on a weekly basis.

b. Completing surveys to assist with program evaluation.

c. Informing the program if the relationship with the mentee is not meeting expectations.

- d.* Maintaining confidentiality of the interactions between mentor and mentee.
- e.* Supporting the mentee throughout the one-year period.

81.8(4) The institution will offer one or more workshops annually for all cooperating mentors to define the objectives of the mentoring program, review the responsibilities of the cooperating mentors, and provide the cooperating mentors other information and assistance the institution deems necessary. The workshops will utilize delivery strategies identified as appropriate for staff development and reflect information gathered through feedback from workshop participants.

281—81.9(256) Monitoring.

81.9(1) *Reports to the department.* Upon request by the department, programs will make periodic reports that include basic information necessary to maintain up-to-date records of each school business official preparation program and to carry out research studies relating to school business official preparation.

81.9(2) *Reevaluation of school business official preparation programs.* Every seven years or at any time deemed necessary by the director, an institution will file a written self-evaluation of its school business official preparation program. Any action for continued approval or rescission of approval is to be approved by the state board.

81.9(3) *Approval of program changes.* Upon application by an institution, the director is authorized to approve minor additions to or changes within the curriculum of an institution's approved school business official preparation program. When an institution proposes a revision that exceeds the primary scope of its programs, the revision shall become operative only after approval by the state board.

These rules are intended to implement Iowa Code section 256.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 96
“Statewide Sales and Services Tax for School Infrastructure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 292.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 423E and 423F

Public Hearing

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

January 2, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to benefit Iowans by providing a framework for use of the school infrastructure funds. In the most recent reporting year, schools spent \$881,373,745 in Secure an Advanced Vision for Education (SAVE) funds related to school infrastructure.

The Department proposes removing verbatim statutory text, removing restrictive terms that do not provide any additional protection to the taxpayer, and modernizing filing requirements (such as eliminating the requirement for paper copies).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School officials will bear the cost of compliance.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students, families, and taxpayers will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact of this proposed rulemaking.
 - Qualitative description of impact:
There are qualitative benefits in streamlining and modernizing this proposed chapter.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department and other state agencies (e.g., Department of Management) enforce this chapter, with costs offset by the agencies' general appropriations.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction would retain obsolete and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 96 and adopt the following **new** chapter in lieu thereof:

TITLE XVI
SCHOOL FACILITIES
CHAPTER 96
STATEWIDE SALES AND
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

281—96.1(423E,423F) Definitions.

“*Actual enrollment*” means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section 257.6(1).

“Base year” means the school year ending during the calendar year in which the budget is certified.

“Certificate of need” means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades 9 through 12.

“Combined actual enrollment” means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

“Department” means the state department of education.

“Guaranteed school infrastructure amount” means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

“New construction” means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12117.

“Nonresident student” means a student enrolled in a school district who does not meet the definition of a resident in Iowa Code section 282.1.

“Reconstruction” means rebuilding or restoring as an entity a thing that was lost or destroyed.

“Repair” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

“Resident student” means a student enrolled in a school district who meets the definition of a resident in Iowa Code section 282.1.

“Revenue purpose statement” means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

“Sales tax” means the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

“School budget review committee” or *“SBRC”* means a committee that is established under Iowa Code section 257.30.

“School district” means a public school district in Iowa accredited by the state department of education.

“School infrastructure” means the same as defined in Iowa Code section 423F.3(6).

“Site improvement” means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks that are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

“Statewide tax revenues per student” means the amount per student established by Iowa Code section 423E.4(2) “b”(3).

281—96.2(423E,423F) Reports to the department. Each school district shall, by October 15, annually report the school district’s actual enrollment on October 1 by the student’s county of residency according to the following:

96.2(1) County of residency. The county of residency for each of the students is the county in which the student lives in accordance with Iowa Code section 282.1.

96.2(2) Emancipated minor. The county of residency for an emancipated minor attending the school district is the county in which the emancipated minor is living.

96.2(3) County of residency unknown. If a school district cannot determine an enrolled student’s county of residency or if the county of residency is not a county in which the school district is located, the county of residency is the county in which the school district certifies its budget.

281—96.3(423E,423F) Combined actual enrollment. By March 1, annually, the department will forward to the department of management the actual enrollment and the actual enrollment by the student's county of residency for each school district located in whole or in part in a county where a sales tax has been imposed and the combined actual enrollment for that county.

281—96.4(423E,423F) Application and certificate of need process.

96.4(1) *When application needed; application period.* A school district that does not exceed enrollment thresholds defined in Iowa Code section 423F.3(5) shall not expend the amount of statewide sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not necessary for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; school safety and security infrastructure as provided in Iowa Code section 423F.3(6) other than new construction; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications are due no later than eight weeks prior to a regularly scheduled meeting of the SBRC. The SBRC holds regularly scheduled meetings as stipulated in rule 289—1.4(257).

96.4(2) *Application form.* Each applicant school district is to use the form prepared by the department for this purpose and in the manner prescribed by the department. The application form includes at least the following information:

a. The total capital investment of the project. If the project is in collaboration with other public or private entities, a school district is to include the following information:

- (1) Identification of the collaborating public or private entities;
- (2) Total cost of the collaborative project; and
- (3) Total cost of the school district's portion of the project.

b. The infrastructure needs of a school district specific to the application, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If a school district's needs include fire and health safety needs, the school district is to attach to its application form a copy of the citation from the fire marshal for the safety deficiency or evidence of consultation with the fire marshal or other qualified inspector related to the health safety deficiency. A school district is to include evidence of public involvement in assessing the need for this project.

c. The description of need including a cost-benefit analysis of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. Enrollment trends by grade in a school district showing a five-year history and five years of projected enrollment by grade. The school district is to identify the grades that will be served at the new construction site. If a school district uses enrollment projections other than those prepared by the department, the school district is to submit a description of the basis for those projections. The school district is to demonstrate that there is sufficient economic activity and stability to support and sustain enrollment projections of the affected attendance center.

e. If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district is to attach a copy of a feasibility study pursuant to Iowa Code section 256.9(30) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the benefits and effects of the project and its relationship to improving student learning including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district is to provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12, including five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. Description of transportation barriers, if any, to the current site and to the proposed site and the distance in miles and in travel time from the nearest and furthest boundaries of the school district to the current site and the proposed site.

h. Evidence of a healthy financial condition and long-term financial stability. The school district is to provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis, including five years of history and three years of projected balances. The calculation of budget authority is to show and project the effect of the budget adjustment under Iowa Code section 257.14. Projected allowable growth is that which is known or generally anticipated at the time of the application. If the percent of allowable growth is not known or anticipated, a district may use an annual projected allowable growth of up to 2 percent.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district is to include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district is to list any obligations against those current balances and future revenues or against the statewide sales and services tax for school infrastructure amounts. The school district is to attach a copy of the school district's revenue purpose statement, if any.

j. A comprehensive, districtwide infrastructure plan. The school district is to include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

k. A five-year history of significant infrastructure maintenance and repair.

l. A statement certifying the accuracy of the information contained in the application.

96.4(3) Board minutes. A school district that is applying for a certificate of need is to submit with its application a copy of the published minutes of the board of director's meeting showing that the board has authorized the application and the project and that the public has been informed, with the section of the board minutes containing this information marked in such a way as to make it easily identifiable.

96.4(4) Reapplication. A school district that is not successful in obtaining a certificate of need for the project that is the subject of the application may apply for a certificate of need in succeeding application periods if its circumstances change substantially.

96.4(5) Application timeline. A school district is to apply for a certificate of need either:

a. When the school district has received amounts that it intends to accumulate for new construction or for payment of debt related to new construction; or

b. When the school district board has accumulated amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

96.4(6) Compliance requirement on uses. All projects included in the application must be consistent with the provisions of the Americans With Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

281—96.5(423E,423F) Review process.

96.5(1) Task force. The department will form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department will invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, will establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4(5), which includes consideration of the following:

- a.* Enrollment trends in the grades that will be served at the new construction site.
- b.* The cost-benefit analysis of remodeling, reconstructing, or repairing existing buildings.
- c.* The fire and health safety needs of the school district.
- d.* The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.
- e.* Unavailability of alternative, less costly, or more effective means of serving the needs of the students.
- f.* The financial condition of the school district, including the effect of the budget adjustment and unspent balance.
- g.* Broad and long-term ability of the school district to support the facility and the quality of the academic program.
- h.* Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) *Task force review.* The task force, or a subcommittee of the task force, and its designees, will review each application and make recommendations to the school budget review committee regarding approval of certificates of need based on the evidence provided by the applicant pursuant to subrule 96.4(2) and the criteria listed in subrule 96.5(1). More than one member of the task force or subcommittee of the task force and its designees shall review each application. A reviewer will not review any application in which the reviewer has a conflict of interest.

96.5(3) *Approval process.* Applications will be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria, with each applicable criterion scored on a scale of zero to ten. Applicable scores will be averaged. Nonapplicable criteria will not be used in determining the average score. An application shall have a minimum average score of five to be eligible to be recommended for approval. If an application receives a score of zero on one or more applicable criteria, the application will not be recommended for approval. A recommendation for approval by the task force does not constitute final approval of the application. The following categories on the application will be evaluated and scored:

- a.* Infrastructure needs the project proposes to alleviate. Special consideration shall be given to infrastructure needs that relate to fire or health safety issues.
- b.* Evidence that remodeling, reconstructing, or repairing the existing buildings is not feasible.
- c.* Unavailability of alternative, less costly, or more effective means of serving student needs.
- d.* Improvement of transportation distance, convenience, cost and accessibility with the new construction.
- e.* Sustainable financial condition and long-term financial stability of the school district.
- f.* Evidence that the proposed project will improve educational opportunities for students and enable the school district to meet or exceed educational standards.
- g.* Current comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan.
- h.* Description of collaboration with one or more other public or private entities.

96.5(4) *Ineligibility for approval.* If either of the following two descriptions applies to the school district, the school district is not eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code section 256.9(30) and the AEA plan pursuant to Iowa Code sections 275.1 through 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

- a.* The current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.
- b.* The current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

96.5(5) *School budget review committee.* The SBRC will review the recommendations from the task force for approval of certificates of need and make recommendations on approval to the department for final consideration.

281—96.6(423E,423F) Award process.

96.6(1) *Department determination.* The department will make the final determination on approval of certificates of need.

96.6(2) *Notification.* The department will notify applicants no later than two weeks following the date of receipt of the recommendations from the SBRC.

281—96.7(423E,423F) Applicant responsibilities.

96.7(1) *Change in the project.* If a school district significantly changes the proposed project, the school district shall notify the department within ten working days of the change and submit a new application for a certificate of need for the newly changed project.

96.7(2) *Accounting for the funding.* All revenues and all expenditures from the statewide school infrastructure amounts are to be separately identified and accounted for in a capital projects fund established for the statewide sales and services tax for school infrastructure proceeds.

96.7(3) *Withdrawal of application.* If a school district is granted a certificate of need for a project and the school district elects not to continue with the project, the school district is to notify the department within ten working days following the board action to discontinue the project.

96.7(4) *Forfeiture of certificate.* Failure to comply with any of the rules in this chapter or provide information that is included in the certificate of need application or that is requested by the department may result in the forfeiture of the certificate of need or removal from the application cycle.

281—96.8(423E,423F) Appeal of certificate denial. Any applicant may appeal the denial of a properly submitted application for certificate of need to the director of the department. Appeals are to be (1) in writing, (2) received within ten working days of the date of the notice of the decision to deny, and (3) based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director's decisions apply to any appeal of denial.

These rules are intended to implement Iowa Code chapters 423E and 423F.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 97
“Supplementary Weighting”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(5) and 257.11
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 257

Public Hearing

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

January 2, 2024
11 to 11:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking is designed to protect the taxpayer by ensuring funding under any supplementary weighting plan is properly used.

The Department proposes removing rule language that restates statutory requirements, removing restrictive terms that do not add value, and removing an obsolete rule.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the costs of this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students and taxpayers will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact.
 - Qualitative description of impact:
There is a qualitative benefit to removing unnecessary and obsolete rules.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Department and other state agencies (e.g., Department of Management) enforce this chapter, with costs offset by the agencies' general appropriations.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 97 and adopt the following **new** chapter in lieu thereof:

CHAPTER 97 SUPPLEMENTARY WEIGHTING

281—97.1(257) Definitions. For the purpose of this chapter, the following definitions apply:

“*Actual enrollment*” means the enrollment determined pursuant to Iowa Code section 257.6(1) “a.”

“*Career academy*” means a program of study as defined in 281—Chapter 46. A course offered by a career academy does not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the provisions of Iowa Code section 261E.8.

“*Class*” means a course for academic credit that applies toward a high school or community college diploma.

“Department” means the Iowa department of education.

“Enrolled” means that a student has registered with the school district and is taking part in the educational program.

“Fraction of a school year” means the product of the minutes per day of class multiplied by the number of days per year the class meets divided by the product of the total number of minutes in a school day multiplied by the total number of days in a school year. All minutes available in a normal day will be used in the calculation.

“ICN” means the Iowa Communications Network.

“Political subdivision” means a political subdivision in the state of Iowa and includes a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Iowa State University, University of Iowa, and University of Northern Iowa).

“Project lead the way” means the nonprofit organization with 501(c)(3) tax-exempt status that provides rigorous and innovative science, technology, engineering, and mathematics education curriculum founded in fundamental problem-solving and critical-thinking skills while integrating national academic and technical learning standards.

“Regional academy” means an educational program established by a school district to which multiple school districts send students in grades 7 through 12. The curriculum will include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses do not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2).

“Superintendent” means the same as defined in Iowa Code section 272.1.

“Supplant” means the community college’s offering a course that consists of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school or the community college’s offering a course that is required by the school district or accredited nonpublic school in order to meet the minimum accreditation standards in Iowa Code section 256.11. If a student is unable to earn credit in both courses, then the two courses would be deemed similar enough in content and skills to be defined as supplanting.

“Supplementary weighting plan” means a plan as defined in this chapter to add a weighting for each eligible Iowa resident student who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class is calculated by multiplying the fraction of a school year that class represents by the number of eligible Iowa resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

“Teacher” means the same as defined in Iowa Code section 272.1.

281—97.2(257) Supplementary weighting plan.

97.2(1) Eligibility. Except if listed under subrule 97.2(7), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

- a. Resident student attends class in another school district pursuant to subrule 97.2(2), or
- b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or
- c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or
- d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5), or
- e. Resident student attends class in a community college for college credit pursuant to subrule 97.2(6).

Other than as listed in paragraphs 97.2(1)“a” to “e” above and in rules 281—97.3(257), 281—97.4(257), and 281—97.7(257), no other sharing arrangement is eligible for supplementary weighting.

97.2(2) *Attend class in another school district.* Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)“a” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(3) *Attend class taught by a teacher employed by another school district.* Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)“b” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(4) *Attend class taught by a teacher jointly employed with another school district.* All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)“c.” The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint teacher professional development plan.
- c. One single salary schedule.

Except for joint employment contracts that meet the provisions of paragraphs “a” to “c” above, no two or more school districts will list each other for the same classes and grade levels.

97.2(5) *Attend class in a community college.* To be eligible for supplementary weighting, a course will comply with Iowa Code section 257.11(3).

97.2(6) *Attend a project lead the way class in a community college.* Students attending a science, technology, engineering, or mathematics class that uses an activities-based, project-based, and problem-based learning approach and that is offered collaboratively by the students’ school district and a community college in partnership with a nationally recognized provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are eligible for supplementary weighting under paragraph 97.2(1)“e” if the curriculum provider is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

97.2(7) *Ineligibility.* The following students are ineligible for supplementary weighting:

- a. Nonresident students attending the school district under any arrangement except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12.
- b. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.
- c. Students in whole-grade sharing arrangements except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7).
- d. Students open enrolled out except under sharing pursuant to subrule 97.2(5) or paragraph 97.6(1)“c.”
- e. Students open enrolled in, except under sharing pursuant to subrule 97.2(5) or paragraph 97.6(1)“c,” when the students are under competent private instruction and are dual enrolled in grades 9 through 12.
- f. Students participating in shared services rather than shared classes except under sharing pursuant to rule 281—97.7(257).
- g. Students taking postsecondary enrollment options (PSEO) courses.
- h. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

i. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

j. Students enrolled in an at-risk program or alternative school program when being served by such program.

k. Students enrolled in summer school courses.

97.2(8) Whole-grade sharing. If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

a. In a one-way whole-grade sharing arrangement, the receiving district may count its resident students in the grade levels that are whole-grade shared if the resident students are shared pursuant to subrule 97.2(2), 97.2(3), or 97.2(5).

b. In a one-way whole-grade sharing arrangement, the receiving district may not count its resident students in the grade levels that are whole-grade shared pursuant to subrule 97.2(3) if the teacher is employed by the same district that is sending students under the whole-grade sharing arrangement.

97.2(9) Due date. Supplementary weighting will be included with the certified enrollment that is due October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, on which the enrollment was taken.

281—97.3(257) Supplementary weighting plan for a regional academy.

97.3(1) Eligibility. Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

a. Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under paragraph 97.2(1)“*a*” or “*c*.” In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.3(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

b. The regional academy is located in the district.

c. The grade levels include one or more grades seven through twelve.

d. The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

e. The resident students are not eligible for supplementary weighting under another supplementary weighting plan.

f. No resident or nonresident students are attending the regional academy under a whole-grade sharing arrangement as defined in subrule 97.2(7).

g. Two or more sending districts that are whole-grade sharing partner districts will be treated as one sending district for purposes of paragraph 97.3(1)“*a*.”

h. The school districts participating in a regional academy will enter into an agreement on how the funding generated by the supplementary weighting received will be used and will submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the

boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

97.3(2) *Weighting.* Resident students eligible for supplementary weighting pursuant to subrule 97.3(1) are eligible for a weighting of one-tenth of the fraction of a school year during which the pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to paragraph 97.3(1)“a.”

97.3(3) *Maximum weighting.* The maximum amount of additional weighting for which a school district establishing a regional academy is eligible is an amount corresponding to 30 full-time-equivalent pupils.

97.3(4) *Minimum weighting.* The minimum amount of additional weighting for which a school district establishing a regional academy is eligible is an amount corresponding to 15 full-time-equivalent pupils if the academy provides both advanced-level courses and career-technical courses.

97.3(5) *Additional programs.* If all of the criteria in subrule 97.3(1) are met, the regional academy may also include in its curriculum career-technical courses, Internet-based courses and ICN courses.

97.3(6) *Career academy.* A career academy is not a regional academy for purposes of these rules.

281—97.4(257) Supplementary weighting plan for whole-grade sharing.

97.4(1) *Whole-grade sharing.* A school district that participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and that has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, 2024, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to paragraph 97.2(1)“a,” “b,” or “c.” A school district participating in a whole-grade sharing arrangement is eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year is conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, 2024.

97.4(2) *Contiguous districts.* School districts that adopt a board resolution jointly with all other affected boards to study reorganization must be contiguous school districts. If two or more of the affected districts are not contiguous to each other, all districts separating those districts must be a party to the whole-grade sharing arrangement and the board resolution adopted jointly to study reorganization.

97.4(3) *Consecutive years.* A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.4(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose will not be later than the school year that begins July 1, 2024.

97.4(4) *Change in sharing districts.* A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.4(1) may enter into a whole-grade sharing arrangement with one or more different districts for its second or third year of eligible weighting by adopting and filing a new joint board resolution pursuant to this subrule. Establishing a new whole-grade sharing arrangement does not extend the maximum number of years for which a school district is eligible.

97.4(5) *Filing board resolutions.* Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization will file a copy of the board resolution with the department not later than October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

97.4(6) *Filing progress reports.* Each school district that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in any year following the initial year for which supplementary weighting for whole-grade sharing was approved will file a report of progress toward reorganization with the school budget review committee, on forms developed by the department, no later than August 1 preceding October 1 on which date the district intends to request the second or third year of supplementary weighting for whole-grade sharing.

a. The progress report will include the following information:

- (1) Names of districts with which the district is studying reorganization.
- (2) Descriptive information on the whole-grade sharing arrangement.
- (3) Information on whether a plan for reorganization has been approved by the AEA and an election date has been set.

b. The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2024. The indicators of progress include:

- (1) For the second year of supplementary weighting, establishing a reorganization committee.
- (2) For the third year of supplementary weighting, having an AEA-approved plan for reorganization and a date set for an election on the proposed reorganization.

c. The school budget review committee will consider each progress report at its first regular meeting of the fiscal year and will accept the progress report or reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

d. A school district whose progress report is not accepted will be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee will accept or reject the revised progress report.

e. If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district is not eligible for supplementary weighting for whole-grade sharing but may reapply in a subsequent year.

f. In the event that an election on reorganization fails to pass after the school budget review committee has approved a district's application for whole-grade sharing supplementary weighting and prior to January 1 of the year in which the reorganization was to take effect, a district may rescind the request for whole-grade sharing supplementary weighting by submitting a request to the school budget review committee asking to withdraw the application. The request to withdraw the application must be completed no later than one week prior to the committee's second regular meeting.

281—97.5(257) Supplementary weighting plan for ICN video services.

97.5(1) *Eligibility.* Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary weighting plan, and meets any of the criteria in paragraph 97.5(1) "a," "b," or "c." For purposes of this subrule, the portion of a course offered via ICN video services will be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

a. Resident students who receive a virtual class provided by another school district via ICN video services.

b. Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.

c. Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

97.5(2) *Weighting.* Resident students eligible for supplementary weighting pursuant to subrule 97.5(1) are eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

97.5(3) *Payment to teachers.* A school district that includes students in a virtual class for supplementary weighting will reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

a. The employer of the virtual class teacher will make the payment.

b. The additional pay includes salary and the employer's share of FICA and IPERS.

c. The employer will pay the virtual class teacher during the same school year in which the virtual class is provided.

d. The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

e. The additional pay is calculated as 0.5 multiplied by the supplementary weighting for the virtual class multiplied by the district cost per pupil in the subsequent budget year.

f. If the teacher's contract includes additional pay for teaching the virtual class, the teacher will receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs 97.5(3) "b" and "e." For purposes of this comparison, the employer will compare the salary portions only.

g. The contract between the agencies will provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

281—97.6(257) Supplementary weighting plan for operational services.

97.6(1) Eligibility. Supplementary weighting is available if all of the following criteria are met:

a. The district shares a discrete operational function with one or more other political subdivisions pursuant to a written contract.

b. The district shares an operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

c. Personnel shared as part of an operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

d. If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

e. If the district shares more than one individual in the same operational function, that operational function will be listed only once for the purposes of supplementary weighting.

f. No individual personnel will be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

g. If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department, only the sharing arrangement implemented first will be eligible for supplementary weighting.

h. The operational function areas shared include one or more of the areas listed in subrule 97.6(2).

97.6(2) Operational function area eligibility. "Operational function sharing" means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, facility operation or maintenance management, curriculum director, master social worker, independent social worker, school counselor, special education director, work-based learning coordinator, mental health professional if the mental health professional holds a statement of recognition issued by the board of educational examiners, school resource officer, or college and career transition counselor or coordinator. "Operational function sharing" does not mean sharing of clerical personnel or school principals. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. *Superintendent management.*

(1) Shared personnel perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) Clerical or other support services personnel in the superintendent function area or executive administrator function area will not be considered shared superintendent management under this subrule.

(3) Shared superintendent services or executive administrator services does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

b. Business management.

(1) Shared personnel perform the services of managing the business operations. Managing business operations includes personnel performing the duties of a business manager or school business official, or personnel performing duties including those listed in Iowa Code chapter 291 for a board secretary or board treasurer.

(2) Services of clerical personnel, school administration managers, superintendents, principals, teachers, board officers except those listed in subparagraph 97.6(2) “b”(1), or any other nonbusiness administration personnel are not considered shared business management under this subrule.

(3) Shared business management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

c. Human resources management.

(1) Shared personnel perform the services of managing human resources.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, teachers, or board officers are not considered shared human resources management under this subrule.

(3) Shared human resources management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

d. Student transportation management.

(1) Shared personnel include transportation directors or supervisors. Shared personnel must perform services related to transportation.

(2) Services of school business officials, business managers, school administration managers, clerical or paraprofessional personnel, school bus mechanics, and school bus drivers are not considered shared student transportation management under this subrule.

(3) Shared transportation management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

e. Facility operations and maintenance.

(1) Shared personnel include facility managers and supervisors of buildings or grounds. Shared personnel perform services related to facility operations and maintenance.

(2) Services of school business officials, business managers, school administration managers, clerical personnel or custodians are not considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance management do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

f. Curriculum director.

(1) Shared personnel perform the services of a curriculum director.

(2) Technology directors and clerical, paraprofessional, or other support services personnel in the improvement of instruction function area are not considered a shared curriculum director under this subrule.

(3) Shared curriculum director services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

g. School counselor.

(1) Shared personnel perform the services of a school counselor. An individual performing the function of a school counselor must be properly licensed for that position.

(2) Deans of students, social workers, or clerical, paraprofessional, or other support services personnel in the guidance services function area are not considered a shared school counselor under this subrule.

(3) Shared school counselor services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

h. School social worker.

(1) Shared personnel perform the services of a school social worker. An individual performing the function of a school social worker must be properly licensed for that position.

(2) Social workers providing services required to be provided by an area education agency are not considered a shared school social worker under this subrule.

(3) Shared school social worker services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

i. Special education director.

(1) Shared personnel perform the services of a special education director. An individual performing the function of a special education director must be properly licensed for that position.

(2) Teachers, superintendents, principals, curriculum directors, or other support services personnel in the improvement of instruction services function area are not considered a shared special education director under this subrule.

(3) Shared special education director services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

j. Work-based learning coordinator.

(1) Shared personnel perform the services of a work-based learning coordinator. An individual performing the function of a work-based learning coordinator must be properly trained for that position.

(2) Superintendents, principals, curriculum directors, deans of students, school counselors, or other support services personnel in the guidance services function area are not considered a shared work-based learning coordinator under this subrule.

(3) “Work-based learning coordinator” means the same as defined in Iowa Code section 257.11(5)“a”(2).

(4) Shared work-based learning coordinator services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

k. Mental health professional.

(1) Shared personnel perform the services of a mental health professional. An individual performing the function of a mental health professional must hold a statement of professional recognition issued by the board of educational examiners.

(2) Deans of students, school counselors, or other support services personnel in the guidance services function area are not considered a shared mental health professional under this subrule.

(3) Shared mental health professional services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

l. School resource officer.

(1) Shared personnel perform the function of a school resource officer. An individual performing the function of a school resource officer must meet the definition in subparagraph 97.6(2) “l”(3).

(2) Deans of students, school business managers, school administration managers, school counselors, clerical personnel, paraprofessionals, private security guards, or custodians are not be considered shared school resource officers for supplementary weighting under this subrule.

(3) “School resource officer” means the same as defined in 34 U.S.C. Section 10389.

(4) Shared school resource officer services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

m. College and career transition counselor or coordinator.

(1) Shared personnel perform the services of a college and career transition counselor or coordinator as defined in subparagraph 97.6(2) “m”(3).

(2) Superintendents, principals, curriculum directors, deans of students, school counselors, work-based learning coordinators, or other support services personnel in the guidance services function area are not considered a shared college and career transition counselor or coordinator under this subrule.

(3) “College and career transition counselor or coordinator” means the same as defined in Iowa Code section 257.11(5)“a”(2).

(4) Shared college and career transition counselor or coordinator services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

97.6(3) *Eligibility.* The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2013.

a. Receipt of supplementary weighting is conditioned upon the submission of information provided in the format prescribed by the department as part of the BEDS fall data collection.

b. The documentation on the BEDS fall data collection will be filed no later than the published deadline for that data collection.

97.6(4) *Consecutive years.* A school district that is eligible to add a supplementary weighting for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose will not be later than the school year that begins July 1, 2034.

97.6(5) *Change in sharing partners.* A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners.

97.6(6) *Change in shared personnel.* A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position.

97.6(7) *Multiple shared operational functions.* A school district that implements more than one sharing arrangement within any discrete operational function area is eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

97.6(8) *Multiple shared individuals within an operational function.* A school district that implements more than one sharing arrangement within any discrete operational function area, as both the contract holder and the purchaser of services, are not eligible for supplementary weighting if the sharing arrangements would not have been necessary had the district utilized its own properly licensed and qualified employee(s).

97.6(9) *Weighting.* A school district that shares an eligible operational function listed in subrule 97.6(2) is assigned a supplementary weighting as stipulated in Iowa Code section 257.11(5).

97.6(10) *Maximum weighting.* The maximum amount of additional weighting for which a school district participating in operational function sharing is eligible in a budget year is an amount corresponding to 21 full-time equivalent pupils. The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function. Each eligible discrete operational function sharing arrangement is included in the total of all operational function sharing. If the district's total of all discrete operational function sharing exceeds 21 full-time equivalent pupils, the department will make a reduction in the total rather than separately adjusting the discrete operational function sharing that made up the total.

97.6(11) *Uses of funding.* Additional funds provided through supplementary weighting for operational function sharing will be used for any general fund purpose pursuant to rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

281—97.7(261E) Concurrent enrollment program contracts between accredited nonpublic schools and community colleges. For the purpose of determining funding to the community college, subject to an appropriation to the department for this purpose, a student enrolled in a unit of concurrent enrollment coursework offered through a contract by an accredited nonpublic school with an Iowa community college pursuant to Iowa Code section 261E.8(2) will be counted as if the student were assigned a weighting as described in subrule 97.2(5).

97.7(1) *Eligibility.* To be eligible for supplementary weighting, a course will comply with Iowa Code section 257.11(3).

97.7(2) *Reporting and billing.* An accredited nonpublic school that enters into a contract for concurrent enrollment courses will submit student and course information as determined by and according to the timeline established by the department. The community college and accredited

nonpublic school will verify the submitted information by semesters or the equivalent. Projected supplementary weighting calculations will be available midyear, but payments to community colleges will not be disbursed until final costs are known at the end of the school year. Community colleges will not bill the accredited nonpublic school until all calculations of supplementary weighting for accredited nonpublic schools are completed.

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12 and chapter 261E.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 98
“Financial Management of Categorical Funding”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(5)

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565 and 670 and sections 11.6(1)“a”(1), 256C.4(1)“c,” 256D.4(3) and 284.13

Public Hearing

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

January 2, 2024
9:30 to 10 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

The intended benefit of this proposed rulemaking is to protect taxpayers by ensuring categorical funds are spent appropriately.

The Department proposes to remove restrictive terms that do not add value, remove language where a statutory cross-reference would suffice, and add language to recognize the flexibility created in 2023 Iowa Acts, House File 68.

The Department also proposes to add language to provide greater clarity and flexibility in the management fund and the Public Education and Recreation Levy (PERL or “playground levy”) Fund.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s school districts bear the costs of compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s students, families, and taxpayers will benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact of this proposed rulemaking.
 - Qualitative description of impact:

Removing unnecessary language and providing additional flexibility and clarity is a qualitative benefit of the proposed rulemaking.

3. Costs to the State:

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

The Department and other state agencies (e.g., Department of Management) enforce this chapter, with costs offset by the agencies' general appropriations.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would retain obsolete and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 98 and adopt the following **new** chapter in lieu thereof:

CHAPTER 98 FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
GENERAL PROVISIONS

281—98.1(256,257) Definitions. For the purposes of this chapter, the following definitions apply:

“Budgetary allocation” means the portion of the funding that is specifically earmarked for a particular purpose or designated program and that, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves the modified supplemental amount for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil will be considered transferred to the receiving school district and will be expended for the specific purpose for which it was earmarked.

“Categorical funding” means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

“Community education” means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

“Grants in aid” means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

“Supplement, not supplant” means, when a funding stream contains this provision, that the categorical funding is in addition to general purpose revenues; that categorical funding will not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues will not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available.

“*Technology*” means hardware, noninstructional software and software required to provide functionality to the hardware, wireless presenters, networking and connectivity systems, computing storage, website development services, hardware carrying equipment, licensing, and technical assistance for installation of hardware, software, or software updates. Technology does not include such items as instructional software or textbook substitutes as defined in Iowa Code chapter 301, professional development, staff providing support to teachers or students, general supplies, district personnel or individuals/companies hired or contracted in lieu of district personnel, travel, printing costs or media services not listed in this definition, insurance, most purchased services, or similar district functions. Maintenance contracts do not meet the definition of “technology” unless they are actually a license renewal fee; Internet subscriptions, licenses, or fees; cable or satellite services; or very similar services.

281—98.2(256,257) General finance. The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

98.2(1) *Indirect cost recovery.* Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency will utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

98.2(2) *Mandatory carryforward.* Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency will be carried forward as a reserved fund balance and added to the subsequent year’s budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward will not be used as part of the required local match.

98.2(3) *Discontinued funding.* In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency may do one of, or a combination of, the following:

a. Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes that were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11.

b. Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

98.2(4) *Expenditures.* Expenditures from categorical funding are limited to direct costs of providing the program or service for which the funding was intended. Expenditures will not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those that are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement will not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures do not include reimbursing the school district

or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

98.2(5) *Restriction on duplication.* The school district or area education agency will not charge the same cost to more than one funding source.

98.2(6) *Excess expenditures.* The school district or area education agency will not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

98.2(7) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding will be accounted for separately from other funding. School districts and area education agencies will use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.

281—98.3 to 98.10 Reserved.

DIVISION II APPROPRIATE USE OF BUDGETARY ALLOCATIONS

281—98.11(257) Categorical and noncategorical student counts. The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1)“a”(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), will be expended for purposes of providing the home school assistance program. However, a district may use items and materials purchased for the home school assistance program for other purposes so long as this use does not prevent or interfere with the item's or material's use by parents or students utilizing the program.

98.12(1) *Appropriate uses of categorical funding.* Appropriate uses of the home school assistance program funding include the following:

- a. Instruction for students and assistance for parents with instruction.
- b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.

c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.

d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member's employment supports other programs of the school district, only that portion of the staff member's salary and benefits that is related to providing the home school assistance program can be charged to the program.

e. Staff development for the home school assistance program teacher.

f. Travel for the home school assistance program teacher.

g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.

h. A copier and computer hardware that support the home school assistance program.

i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

98.12(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the home school assistance program funding include indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or the lease or rental of space to supplement existing schoolhouse facilities for the program; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys or resources paid for with this program funding to parents or students utilizing the program. For capital expenditures for lease or rental of classrooms or facilities for this program, the cost will be expended from a capital projects fund. A reimbursement for that cost related to the program will be an interfund transfer to the capital project fund from the program funding.

98.12(3) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

281—98.13(256C,257) *Statewide voluntary four-year-old preschool program.* The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

98.13(1) *Appropriate uses of categorical funding.* Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include the following:

a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.

b. Functions of student support services, including translation services.

c. Functions of staff support services, including professional development for preschool teachers.

d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.

e. Food and beverages used by enrolled students.

f. Safety equipment.

- g. Playground equipment and repair costs.
- h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) “h” may be prorated by the school district.
- i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.
- j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child will not be counted for statewide voluntary preschool program funding purposes.

98.13(2) *Pass-through funding to community-based providers.* The school district will pass through to a community-based provider for each eligible pupil enrolled in the district’s approved local program not less than 95 percent of the per-pupil amount.

a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district’s approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule will be refunded to the district annually on or before July 1.

c. Any portion refunded to the district will be added to the total amount available for the district’s approved local program for the subsequent school year, excluding the portion of such unexpended and unobligated funding that the school district authorizes to be transferred to the district’s flexibility account described in rule 281—98.27(257,298A).

98.13(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the statewide voluntary four-year-old preschool program funding include indirect costs or use charges, capital expenditures other than equipment, facility acquisition not expressly allowed by the Iowa Code, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

98.13(4) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule 281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

281—98.14(257) *Supplementary weighting.* Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and will be fully expended within the fiscal year. Therefore, school districts need not account for the supplementary weighting funding separate from the general purpose revenues.

281—98.15(257) *Operational function sharing supplementary weighting.* Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of

sharing staff identified in Iowa Code section 257.11(5) and will be fully expended within the period of sharing. Therefore, school districts need not account for the operational function sharing supplementary weighting funding separate from general purpose revenues.

281—98.16(257,280) English learner weighting. English learner weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of English learners above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the English learner weighting and the modified supplemental amount for English learner programs are both categorical funding and may have different restrictions than the federal English learner funding.

98.16(1) *Appropriate uses of categorical funding.* Appropriate uses of funding for the English learner program are those that are direct costs of providing instruction that supplement, but do not supplant, the costs of the regular curriculum. These expenditures include salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in English learner programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of English learners and community services specific to English learners.

98.16(2) *Inappropriate uses of categorical funding.* Inappropriate uses of funding for the English learner program include indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the English learner program beyond the scope of the regular classroom.

281—98.17(256B,257) Special education weighting. Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students.

281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting. Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at-risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4)“a.”

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include those identified in subrule 98.21(2).

98.18(2) *Inappropriate uses of categorical funding.* Inappropriate uses of at-risk formula supplementary weighting program funding include those identified in subrule 98.21(3).

281—98.19(257) Reorganization incentive weighting. Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and will be fully expended within the fiscal year. Therefore, school districts need not account for the reorganization incentive weighting funding separate from the general purpose revenues.

281—98.20(257) Gifted and talented program. Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district’s total gifted and talented program budget. The school district must also provide a local match from the school district’s regular program district cost, and

the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants will be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students' needs beyond those provided by the regular school program pursuant to each gifted student's individualized plan. The funding will be used only for expenditures that are directly related to providing the gifted and talented program.

98.20(1) *Appropriate uses of categorical funding.* Appropriate uses of the gifted and talented program funding include:

a. Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then only the portion of time that is related to the gifted and talented program may be charged to the program.

b. Staff development for the gifted and talented teacher.

c. Resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed on the gifted students' individualized plans, and

(4) Will remain with the K through 12 gifted and talented program.

d. Student transportation exclusively for approved gifted and talented program field trips or other educational activities.

98.20(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the gifted and talented program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

98.20(3) *Provisions for teacher salary supplement use.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as gifted and talented funds may be restricted for use limitations described in rule 281—98.24(257,284).

281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount. A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38 through 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants will be accounted for as categorical funding.

98.21(1) *Purpose of categorical funding.* The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4). The funding will be used only for expenditures that are directly related to the district's board-adopted program plan established pursuant to Iowa Code sections 257.38 through 257.41.

a. Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

b. Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including to expressed feelings of not belonging.
- (3) Poor grades, including failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics that reflect achievement at two years or more below grade level.
- (5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the funding for a board-adopted program include:

a. Salary and benefits for staff, including instructional staff, instructional support staff, administrative staff, and guidance counselors; salary and benefits or contract payments for psychologists licensed under Iowa Code chapter 154B, licensed independent social workers or master social workers under Iowa Code chapter 154C, licensed mental health counselors under Iowa Code chapter 154D; and salaries and benefits for school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the adopted program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person works part-time or on a contract basis with students who are participating in the approved program and has another unrelated staff assignment, only the portion of the person's time that is related to the program or with such students may be charged to the program funding. The school district will have the authority to designate in its adopted program plan the portion of the person's time and related salary and benefits or contract payment amount dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program that is offered at a location off school grounds and that is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

b. Professional development for all staff identified in paragraph 98.21(2)“a” working with identified students under an adopted program.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

- (1) Meet the needs of kindergarten through grade 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's adopted at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the kindergarten through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program outside a student's regular attendance center, located in and provided by another Iowa school district, or an extended school year program.

e. The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

f. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

- (1) The child does not require special education.

(2) The child is not placed by the department of health and human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

g. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

h. Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4) "a" or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

i. School security personnel costs.

j. Any purpose determined by the board of directors that directly benefits students participating in the adopted program.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the modified supplemental amount program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, expenses related to the routine duties and activities performed by a staff member under paragraph 98.21(2) "a" with identified students that are also provided to all students, or any other expenditures not directly related to providing the board-adopted program beyond the scope of the regular classroom.

281—98.22(257) Use of the unexpended general fund balance. The unexpended general fund balance refers to the fund balance remaining in the general fund at the end of the fiscal year.

98.22(1) *Authorization required.* The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

98.22(2) *Appropriate uses of categorical funding.* Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund will be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

98.22(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the unexpended general fund balance include expenditures for salaries or recurring costs.

98.22(4) *Mandatory reversion of unused funding.* The portion of the unexpended general fund balance that is authorized to be transferred and expended will increase budget authority. However, any part of the amount not actually spent for the authorized purpose will revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

281—98.23(257) Early intervention supplement.

98.23(1) *Appropriate uses of categorical funding.* Appropriate uses of the early intervention-supplement funding include any general fund-appropriate use described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

98.23(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the early intervention-supplement funding include those that are inappropriate to the general fund as described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

98.23(3) *Deference.* Deference will be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

This rule is intended to implement Iowa Code section 257.9(8).

281—98.24(257,284) Teacher salary supplement. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

98.24(1) *Appropriate use of categorical funding.* Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4). Teacher salary supplement funding is intended to be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency will carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

98.24(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the teacher salary supplement funding include any expenditures other than the appropriate use described in subrule 98.24(1) hereof.

98.24(3) *Deference.* Deference will be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

98.24(4) *Rule of construction.* Flexibility provided in 2023 Iowa Acts, House File 68, will be applied to this categorical fund.

281—98.25(257,284) Teacher leadership supplement. The purpose of the teacher leadership supplement is to improve instruction and elevate the quality of teaching and student learning.

98.25(1) *Appropriate uses of categorical funding.* Appropriate uses of teacher leadership supplement funding may be used to increase the payment for a teacher assigned to a leadership role pursuant to a framework or comparable system approved pursuant to Iowa Code section 284.15; to increase the percentages of teachers assigned to leadership roles; to increase the minimum teacher starting salary to \$33,500; to cover the costs for the time mentor and lead teachers are not providing instruction to students in a classroom; for coverage of a classroom when an initial or career teacher is observing or co-teaching with a teacher assigned to a leadership role; for professional development time to learn best practices associated with the career pathways leadership process; for other costs associated with a framework or comparable system approved by the department of education under Iowa Code section 284.15 with the goals of improving instruction and elevating the quality of teaching and student learning, or as described in subrule 98.25(4). "Payment for a teacher" as used in this rule means additional salary for teachers and the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294. Appropriate uses also include payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4) and payment to another school district receiving an open enrolled student pursuant to Iowa Code section 282.18.

98.25(2) *Inappropriate uses of categorical funding.* Inappropriate uses of teacher leadership supplement funding include any expenditures other than the appropriate uses described in subrule 98.25(1).

98.25(3) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2020, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the teacher leadership program have been met.

98.25(4) *Additional provision.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as teacher leadership supplement funds may be restricted for use limitations described in rule 281—98.24(257,284).

281—98.26(257,284) Educator quality professional development, also known as professional development supplement. The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15.

98.26(1) *Appropriate uses of categorical funding.* Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21)“b”(1) and 256.7(21)“b”(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code section 282.10(4). Reasonable efforts will be made to provide equal access to all teachers.

98.26(2) *Inappropriate uses of categorical funding.* Inappropriate uses of educator quality professional development funding include any expenditures that supplant professional development opportunities the school district otherwise makes available.

98.26(3) *Deference.* Deference will be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10.

98.26(4) *Transfer to flexibility account.* All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

98.26(5) *Additional provision.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as professional development supplement funds may be restricted for use limitations described in rule 281—98.24(257,284).

281—98.27(257,298A) Flexibility account. Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2, a flexibility account will be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unobligated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, the teacher leadership supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

98.27(1) *Requirements for transfer to the flexibility account.* In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met as described in Iowa Code section 298A.2.

98.27(2) *Requirements for use of funds deposited to the flexibility account.* Expenditures from the flexibility account will be approved by a resolution of the board of directors of the school corporation that meets all requirements stipulated in Iowa Code section 298A.2.

98.27(3) *Appropriate uses of categorical funding.* Appropriate uses of funds transferred to the flexibility account are limited to the purposes described in Iowa Code section 298A.2.

98.27(4) *Inappropriate uses of categorical funding.* Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2.

98.27(5) *Deference.* Deference will be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

281—98.28 to 98.39 Reserved.

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

281—98.40(256,257,298A) Grants in aid. The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

281—98.41 Reserved.

281—98.42(257,284) Beginning teacher mentoring and induction program. The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

281—98.43(257,284A) Beginning administrator mentoring and induction program. The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

98.43(1) *Appropriate uses of categorical funding.* Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

98.43(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning administrator mentoring and induction program funding includes any costs that are not listed in subrule 98.43(1) as appropriate uses.

281—98.44(257,301) Nonpublic textbook services. Textbooks adopted and purchased by a school district will, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

98.44(1) *Appropriate uses of categorical funding.* The appropriate use of the nonpublic textbook services funding is for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbooks" means the same as defined in Iowa Code section 301.1(3).

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code will be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the

school district in which the nonpublic school has relocated. Funds distributed to a former school district for purposes of purchasing textbooks and that are unexpended will also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

In the event that a participating accredited nonpublic school ceases operation, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code will be returned to the public school district in which the nonpublic school was located. Funds provided for the purpose of purchasing textbooks for the nonpublic school that are unexpended will be reverted to the department of education.

98.44(2) *Inappropriate uses of categorical funding.* Inappropriate uses of nonpublic textbook services funding include reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware other than laptop computers or other portable personal computing devices that are used for nonreligious instructional use only, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district will not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

281—98.45(279) Early literacy. School districts will provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, based upon an assessment or through teacher observations, and other activities required or authorized by Iowa Code section 279.68.

98.45(1) *Appropriate uses of categorical funding.* Appropriate uses of early literacy program funding include services and activities listed in Iowa Code section 279.68 and 281—Chapter 16.

98.45(2) *Inappropriate uses of categorical funding.* Inappropriate uses of early literacy program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.45(1), or administrative costs.

281—98.46 to 98.59 Reserved.

DIVISION IV APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds. Tax levies or funds that are required by law to be expended only for the specific items listed in statute will be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund may be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds will be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes.

281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund. All moneys received by a school corporation from taxes and other sources will be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency will have only one general fund.

98.61(1) *Sources of revenue in the general fund.* Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks will be accounted for in the general fund. Proceeds for loans

for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as “miscellaneous income” or related to the modified supplemental amount is restricted to the general fund.

98.61(2) *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include the following:

- a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.
- b. Purchasing school buses from unobligated funds on hand.
- c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.
- d. Employing public health nurses.
- e. Funding insurance agreements if the district has not certified a district management levy.
- f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.
- g. Purchasing safety eye-protective devices and safety ear-protective devices.
- h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.
- i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.
- j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.
- k. Engraving and printing school bonds, in the case of a school district.
- l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.
- m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- n. Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation as authorized by the school budget review committee in the case of a school district.
- o. Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.
- p. Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.
- q. Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- r. Start-up costs, other than land purchase, for the first year of a new student construction program.
- s. Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase or, beginning with the budget year beginning July 1, 2018, recondition protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).
- t. Paying any other costs not required to be accounted for in another fund.
- u. Paying for costs of activity programming required pursuant to rule 281—12.6(256) from funds other than those required to be accounted for in the student activity fund pursuant to Iowa Code section 298A.8.

98.61(3) *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

- a. Purchasing land or improvements.
- b. Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- c. Modifying or remodeling school buildings or classrooms even if to make them accessible.
- d. Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.
- e. Funding lease-purchases.
- f. Purchasing portable buildings.
- g. Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.
- h. Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

98.61(4) *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

a. *Instructional support program.* The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in subparagraph 98.61(4) "b"(2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program will not be used as, or in a manner that has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy), and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

b. *Educational improvement program.* The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund.

281—98.62(279,296,298,670) Management fund. The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

98.62(1) *Sources of revenue in the management fund.* Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

98.62(2) *Appropriate uses of the management fund.* Appropriate expenditures in the management fund include the following:

- a. Costs of unemployment benefits as provided in Iowa Code section 96.31.
- b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.
- c. Costs of final court judgments, including judgments for attorney fees and court costs, entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.

d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.

e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees 55 years of age or older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.

f. Costs of a physical inventory or cybersecurity vulnerability study conducted solely for the purpose of insurance.

g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.

h. Transfers to the appropriate fund for the portion of an insurance claim that was eligible under the insurance agreement but was denied because it was within the deductible limit.

i. Payment of costs of mediation and arbitration, including legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under paragraph 98.62(2) “c” above.

98.62(3) *Inappropriate uses of the management fund.* Inappropriate expenditures in the management fund include the following:

- a. Costs for employee health benefit plans.
- b. Costs to conduct physical inventories of property for purposes other than insurance.
- c. Costs to conduct actuarial studies.
- d. Costs for supplies or capital outlay.
- e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.
- f. Any other costs not expressly authorized in the Iowa Code.

281—98.63(298) Library levy fund. The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board will certify annually a tax sufficient to pay the library the agreed-upon consideration.

98.63(1) *Sources of revenue in the library levy fund.* Sources of revenue in the library levy fund include a property tax not to exceed \$0.20 per \$1,000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

98.63(2) *Appropriate uses of the library levy fund.* Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

98.63(3) *Inappropriate uses of the library levy fund.* Inappropriate expenditures in the library levy fund include the following:

- a. Capital expenditures related to land or buildings.
- b. Debt service.
- c. Any other costs not necessary to provide a free public library.

281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund. The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed \$0.33 per \$1,000 of assessed valuation and a voter-approved PPEL not to exceed \$1.34 per \$1,000 of assessed valuation, for a total of \$1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

98.64(1) *Sources of revenue in the PPEL fund.* Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the

condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax will be levied for those purposes.

98.64(2) *Appropriate uses of the PPEL fund.* Appropriate expenditures in the PPEL fund include the following:

a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.

b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks that are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

e. Purchasing, leasing, or lease-purchasing equipment or technology exceeding \$500 in value per purchase, lease, or lease-purchase transaction.

(1) “Equipment” means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2) “*n*” or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2) “*h*.”

(2) “Transaction” means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding \$500 per transaction.

f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

g. Procuring or acquisition of library facilities.

h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. “Repairing” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. “Reconstructing” means rebuilding or restoring as an entity a thing that was lost or destroyed. “Maintenance” means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

i. Energy conservation projects.

j. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.

k. The rental of facilities under Iowa Code chapter 28E.

l. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds \$2,500. “Repairing,” for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds \$2,500. Effective October 2, 2019, “repairing” also means retrofitting transportation equipment when such retrofitting aligns to the school bus construction standards in 281—Chapter 44.

- m.* Purchase of buildings or lease-purchase option agreements for school buildings.
- n.* Purchase of equipment for recreational purposes.
- o.* Payments to a municipality or other entity pursuant to Iowa Code section 403.19(2).
- p.* Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.
- q.* Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.
- r.* Purchase of land as part of start-up costs for a new student construction program or if the sale proceeds of the previous student construction were insufficient to purchase land, but not for materials and supplies for a facility intended to be sold.
- s.* Construction materials and supplies for a student-constructed building or shed intended to be retained by and used by the district.
- t.* Demolition of a district-owned building.
- u.* Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

98.64(3) *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

- a.* Student construction materials and supplies for a facility intended to be sold.
- b.* Salaries and benefits.
- c.* Travel.
- d.* Supplies.
- e.* Facility, vehicle, or equipment maintenance.
- f.* Printing costs or media services.
- g.* Any other purpose not expressly authorized in the Iowa Code.

281—98.65(276,300) Public educational and recreational levy (PERL) fund. Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program will be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. Districts with a PERL fund may maintain their PERL fund. Districts no longer have the authority to authorize a new PERL fund.

98.65(1) *Sources of revenue in the PERL fund.* Sources of revenue in the PERL fund include a property tax levy not to exceed \$0.135 per \$1,000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

98.65(2) *Appropriate uses of the PERL fund.* Appropriate expenditures in the PERL fund include the following:

- a.* Establishing and maintaining recreation places and playgrounds, including necessary accommodations, that are open to the public.
- b.* Providing public educational and recreational activities.
- c.* Establishing and supervising a community education program.
- d.* Providing a community education director if a community education program is established.

98.65(3) *Inappropriate uses of the PERL fund.* Inappropriate expenditures in the PERL fund include the following:

- a.* Programs that are not available to those living in the district boundaries.
- b.* Costs not necessary to provide programs for community education and for recreation places, playgrounds, and programs open to the public.

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency will not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

98.66(1) Sources of revenue in the district support trust fund. Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

98.66(2) Appropriate uses of the district support trust fund. Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.66(3) Inappropriate uses of the district support trust fund. Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure that is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

281—98.67(257,279,298A,565) Permanent funds. Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency will not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

98.67(1) Sources of revenue in the permanent funds. Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

98.67(2) Appropriate uses of the permanent funds. Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.67(3) Inappropriate uses of the permanent funds. Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any expenditure that is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

281—98.68(76,274,296,298,298A) Debt service fund. A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency will have only one debt service fund.

98.68(1) Sources of revenue in the debt service fund. Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments

of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

98.68(2) *Appropriate uses of the debt service fund.* Appropriate expenditures in the debt service fund include the following:

- a.* Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors will consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.
- b.* Payment of costs of registration of public bonds or obligations.
- c.* Payment of additional amounts as the board deems necessary to apply on the principal.
- d.* Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.
- e.* Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code section 278.1(1) "e."

98.68(3) *Inappropriate uses of the debt service fund.* Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).

281—98.69(76,273,298,298A,423E,423F) Capital projects fund. Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

98.69(1) *Sources of revenue in the capital projects fund.* Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds that authorized indebtedness for capital facility projects or that initiated a capital facility project or that received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code section 273.3(7).

98.69(2) *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s). Prior to approving the use of revenues for an athletic facility infrastructure project within the scope of the school district's approved revenue purpose statement, the board of directors shall adopt a resolution setting forth the proposal for the athletic facility infrastructure project and hold an additional public hearing on the issue of construction of the athletic facility as stipulated in Iowa Code section 423F.3(7).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the

district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code section 278.1(1)“e.”

(4) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

(5) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists; otherwise, appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code section 278.1(1)“e.”

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code section 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

(7) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

(8) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

98.69(3) *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state sales and services tax for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued, as described in Iowa Code chapter 423F, by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act.

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board secretary pursuant to Iowa Code section 291.6. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained

within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

98.70(1) *Sources of revenue in the student activity fund.* Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys, and amounts transferred from the general fund under Iowa Code section 298A.2 as described in paragraph 98.61(2) "s."

98.70(2) *Appropriate uses of the student activity fund.* Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

98.70(3) *Inappropriate uses of the student activity fund.* Inappropriate expenditures in the student activity fund include the following:

- a. Maintenance of funds raised by outside organizations.
- b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.
- c. Expenditures that lack public purpose.
- d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.
- e. Transfers to any other fund of any surplus within the fund.
- f. Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.
- g. Use of the student activity fund as a clearing account for any other fund.
- h. Cash payments to student members of activity groups.
- i. The cost of optional equipment or customizing uniforms.
- j. The cost of uniforms when the following two tests are not met:
 - (1) The activity is a part of the school's educational program, and
 - (2) The wearing of the uniform or equipment is necessary in order to participate.
- k. Hospital or medical claims for student injuries or procurement of student medical insurance.
- l. Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.
- m. Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.
- n. Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.

281—98.71(298A) Entrepreneurial education fund. The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

98.71(1) *Sources of revenue in the entrepreneurial education fund.* Sources of revenue in the entrepreneurial education fund consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation will transfer moneys in a student activity fund established under Iowa Code

section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation will not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

98.71(2) *Appropriate uses of the entrepreneurial education fund.* Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes that include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

98.71(3) *Inappropriate uses of the entrepreneurial education fund.* A student organization or club will not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

98.71(4) *Fund closure.* An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund will be deposited in the school district's student activity fund.

281—98.72(256B,257,298A) Special education instruction fund. The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code section 273.9(2). This does not include special education support services as provided by Iowa Code section 274.9(3) that are accounted for in the general fund.

98.72(1) *Sources of revenue in the special education instruction fund.* Sources of revenue in the special education instruction fund include sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

98.72(2) *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

98.72(3) *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code section 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

281—98.73(282,298A) Juvenile home program instruction fund. The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) will not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students will not be included in the claim described in Iowa Code section

282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA will compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

98.73(1) *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

98.73(2) *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes and include:

a. Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

b. Professional development that is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

c. Research-based resources, materials, software, supplies, and equipment, and purchased services that are customarily considered instructional and that meet all of the following criteria:

(1) Meet the needs of school-age students placed in juvenile homes,

(2) Will remain with the AEA juvenile home program, and

(3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

d. Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or pursuant to Iowa Code section 279.68.

e. Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

f. Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then only the portion of time that is exclusively and directly related to the juvenile home instructional programs may be charged to the program. The total administrative cost will not exceed 10 percent of the total of all allowable costs for the juvenile home program.

g. When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2) "*f*" and the total of rent and associated operation and maintenance will not exceed 20 percent of the total of all allowable costs for the juvenile home program.

h. Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

98.73(3) *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

b. Costs that are not ordinary and necessary to provide instruction.

c. Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

d. Costs that were or could have been filed with Medicaid for reimbursement.

- e. Debt service.
- f. Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.
- g. Support services that are AEA responsibilities pursuant to the Iowa Code.
- h. Rental when adequate space is available at the AEA or at the district of location or when the students need treatment provided by the juvenile home or need to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.
- i. Costs of an audit.
- j. Indirect costs.

281—98.74(283A,298A) School nutrition fund. All school districts will operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

98.74(1) Sources of revenue in the school nutrition fund. Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

98.74(2) Appropriate uses of the school nutrition fund. Appropriate expenditures in the school nutrition fund include the following:

- a. Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

- b. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

98.74(3) Inappropriate uses of the school nutrition fund. Inappropriate expenditures in the school nutrition fund include the following:

- a. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

- b. Operating transfers to any other fund other than to claim indirect costs.

- c. Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

- d. Costs estimated or allocated that are expenditures of the district.

98.74(4) Unpaid student meals account. Beginning with the budget year beginning July 1, 2018, in accordance with Iowa Code section 283A.11, a school district may establish an unpaid student meals account in the school nutrition fund and may deposit in the account moneys received from private sources for purposes of paying student meal debt accrued by individual students as well as amounts designated for the account from the school district's flexibility account as described in rule 281—98.27(257,298A). Moneys deposited in the unpaid student meals account will be used by the school district only to pay individual student meal debt. The school district will set fair and equitable procedures for such expenditures.

281—98.75(279,298A) Child care and before- and after-school programs fund. The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

98.75(1) *Sources of revenue in the child care fund.* Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee will be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program is responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

98.75(2) *Appropriate uses of the child care fund.* Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

Effective with the budget year beginning July 1, 2018, if the balance in the before- and after-school program exceeds the amount necessary to operate the before- and after-school program, the excess amount may, following a public hearing, be transferred to the general fund by a resolution of the board of directors of the school corporation that meets all provisions of Iowa Code section 298A.12. A transfer under this subrule does not increase a school district's authorized expenditures as defined in Iowa Code section 257.7.

98.75(3) *Inappropriate uses of the child care fund.* Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

281—98.76(298A) Regular education preschool fund. The board of directors of a school district may establish a preschool for students who are not of school age.

98.76(1) *Sources of revenue in the regular education preschool fund.* Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program is responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C will not be accounted for in the regular education preschool fund.

98.76(2) *Appropriate uses of the regular education preschool fund.* Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

98.76(3) *Inappropriate uses of the regular education preschool fund.* Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

281—98.77(298A) Student construction fund. If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

281—98.78(298A) Other enterprise funds. Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.74(283A,298A) through 281—98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or

adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

281—98.79 to 98.81 Reserved.

281—98.82(298A) Internal service funds. Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in an enterprise fund rather than an internal service fund. Internal service funds include self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.

281—98.83 to 98.91 Reserved.

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district will use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency will not transfer its own resources to a private purpose trust fund.

98.92(1) Sources of revenue in private purpose trust funds. Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

98.92(2) Appropriate uses of private purpose trust funds. Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

98.92(3) Inappropriate uses of private purpose trust funds. Inappropriate expenditures in the private purpose trust fund include any expenditure that is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.

281—98.93(298A) Other trust funds. Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.

281—98.94 to 98.100 Reserved.

281—98.101(298A) Custodial funds. Custodial funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Custodial funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization that has its own federal identification number (FIN). In a custodial fund, the school district or area education agency merely renders a service as a custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Custodial funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

98.101(1) *Sources of receipts in custodial funds.* Sources of receipts in custodial funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

98.101(2) *Appropriate uses of custodial funds.* Appropriate disbursements from a custodial fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

98.101(3) *Inappropriate uses of custodial funds.* Inappropriate disbursements from custodial funds include any disbursement that is not consistent with the terms of the agreement, is not legal to a school district, or exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

281—98.102 to 98.110 Reserved.

281—98.111(24,29C,257,298A) Emergency levy fund. A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code section 29C.2(1).

98.111(1) *Sources of revenue in the emergency levy fund.* Sources of revenue for the emergency levy fund include a tax levy not to exceed \$0.27 per \$1,000 of assessed value of taxable property, and interest on those moneys.

98.111(2) *Appropriate uses of emergency levy fund.* Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

98.111(3) *Inappropriate uses of emergency levy fund.* Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

281—98.112(275) Equalization levy fund. If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district will transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

98.112(1) *Sources of revenue for the equalization levy fund.* Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

98.112(2) *Appropriate uses of the equalization levy fund.* Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

98.112(3) *Inappropriate uses of the equalization levy fund.* Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565, and 670 and sections 11.6(1) “a”(1), 256C.4(1) “c,” 256D.4(3) and 284.13.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 102
“Procedures for Charging and Investigating Incidents
of Abuse of Students by School Employees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 280.17
State or federal law(s) implemented by the rulemaking: Iowa Code section 280.17

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to prevent and respond to abuse of students by school employees.

The Department proposes rescinding an obsolete rule and removing restrictive terms that do not add value. The Department added language to emphasize the proper role of Level-Two investigators and that an investigation may continue even if an employee resigns.

The Department is particularly interested in how this chapter could be made more understandable or usable.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Schools and area education agencies (AEAs) bear the responsibility of complying with this proposed rulemaking.

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

Students will benefit from this proposed chapter by being protected from abuse by school employees.

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

- Quantitative description of impact:

There is no known quantitative impact attributable to the proposed rulemaking.

- Qualitative description of impact:

The proposed rulemaking is more readable due to the elimination of unnecessary or obsolete language.

3. Costs to the State:

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

The Department bears the enforcement costs of this rulemaking.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The current chapter's readability could be improved. Inaction would retain unnecessary rule text.

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

The statute requires rules.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 102 and adopt the following **new** chapter in lieu thereof:

CHAPTER 102 PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

281—102.1(280) Definitions.

"Abuse" may fall into either of the following categories:

1. “*Physical abuse*” means nonaccidental physical injury to the student as a result of the actions of a school employee.

2. “*Sexual abuse*” means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

“*Board of educational examiners*” means the board created in Iowa Code chapter 256, subchapter VII, part 3.

“*Designated investigator*” means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a nonpublic school, at level one, to investigate allegations or reports of abuse of students by school employees and also refers to the appointed alternate.

“*Incident*” means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

“*Injury*” occurs when evidence of it is still apparent at least 24 hours after the occurrence.

“*Nonpublic school*” means any school in which education is provided to a student, other than in a public school or in the home of the student.

“*Preponderance of evidence*” means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

“*Public school*” means any school directly supported in whole or in part by taxation.

“*Reasonable force*” means that force, and no more, that a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

“*School employee*” means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: licensed and unlicensed. A licensed employee holds an Iowa teacher’s certificate issued by the board of educational examiners.

“*Sexual harassment*” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an objectively intimidating, hostile, or offensive education environment.

“*Student*” means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

281—102.2(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report is to include basic information showing that the student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator will dismiss the complaint as lacking jurisdiction and notify the person filing the report of abuse of the options remaining as listed in paragraph 102.10(1) “i.” The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action.

281—102.3 Reserved.

281—102.4(280) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain:

- (1) To quell a disturbance or prevent an act that threatens physical harm to any person.
- (2) To obtain possession of a weapon or other dangerous object within a pupil’s control.
- (3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
- (4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
- (5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
- (6) To prevent a student from the self-infliction of harm.
- (7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

102.4(2) In determining the reasonableness of the contact or force used, the following factors will be considered:

- a.* The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
- b.* The size and physical condition of the student.
- c.* The instrumentality used in making the physical contact.
- d.* The motivation of the school employee in initiating the physical contact.
- e.* The extent of injury to the student resulting from the physical contact.

102.4(3) The provisions of this rule apply only at the level-two stage of any investigation and will not be considered by a level-one investigator.

281—102.5(280) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney’s office, personnel of the local office of the department of health and human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator is not to be a school employee and is considered an independent contractor if remunerated for services rendered. The second-level investigator is to be made aware of any request under this rule and be offered an opportunity to decline the request, with reasons given.

The adopted procedures are to conform to these rules and include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions will include the options of:

- a.* Temporary removal of the student from contact with the school employee.
- b.* Temporary removal of the school employee from service.
- c.* Any other appropriate action permissible under Iowa law to ensure the student’s safety.

The adopted written procedures will include a statement that the investigators appointed and retained under this chapter have access to any educational records of the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

- a. In the student handbook,
- b. In a local newspaper of general circulation, and
- c. Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

102.5(5) Place on administrative leave a school employee who is the subject of an investigation under this chapter of an alleged incident of physical or sexual abuse, once the level-one investigator has determined that the written complaint is investigable under rule 281—102.3(280).

102.5(6) Report to the board of educational examiners the results of an investigation that finds that the school employee's conduct constitutes a crime.

281—102.6(280) Filing of a report.

102.6(1) *Who may file.* Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) *Content of report.* The report is to be in writing, signed, and, if signed by a minor, witnessed by a person of majority age and contain the following information:

- a. The full name, address, and telephone number of the person filing.
- b. The full name, age, address, telephone number, and attendance center of the student.
- c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.
- d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. A list of possible witnesses by name, if known.
- f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) *Incomplete reports.* The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report will not be rejected unless a reasonable person would conclude that the missing information that is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

281—102.7(280) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and not reveal the existence or content of the report to any other person.

281—102.8(280) Duties of designated investigator—physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report is to receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control.

102.8(2) Within five school days of receipt of a report of physical abuse, the designated investigator will conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator will exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 281—102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and 102.11(2) "c" when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, will consider the applicability of the exceptions listed in rule 281—102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator will complete a written investigative report, unless investigation was temporarily deferred.

281—102.9(280) Duties of designated investigator—sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made, the allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child in prekindergarten through grade six of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been

withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and 102.11(2) "c" when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator will provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator will complete a written investigation report unless the investigation was temporarily deferred.

281—102.10(280) Content of investigative report.

102.10(1) The written investigative report is to include:

- a. The name, age, address, and attendance center of the student named in the report.
- b. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
- c. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
- d. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
- e. A general review of the investigation.
- f. Any actions taken for the protection and safety of the student.
- g. A statement that, in the investigator's opinion, the allegations in the report are either:
 - (1) Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - (2) Founded. (It is likely that an incident took place.)
- h. The disposition or current status of the investigation.
- i. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include:
 - (1) Contacting law enforcement.
 - (2) Contacting private counsel for the purpose of filing a civil suit or complaint.
 - (3) Filing a complaint with the board of educational examiners if the school employee is certificated.

102.10(2) The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

281—102.11(280) Founded reports—designated investigator’s duties.

102.11(1) The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee’s supervisor and document all action taken.

102.11(2) Upon receipt of the level-two investigator’s report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator will:

a. Forward copies of the level-two investigator’s report to the student’s parent or guardian, the school employee named in the complaint, and the school employee’s supervisor; notify the person filing the report, if different from the student’s parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent’s signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee’s certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student’s parent or guardian.

281—102.12(280) Level-two investigator’s duties.

102.12(1) Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator’s report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator’s report shall state:

a. Conclusions as to the occurrence of the alleged incident; and
b. Conclusions as to the applicability of the exceptions to physical abuse listed in rule 281—102.4(280); or

c. Conclusions as to the nature of the sexual abuse, if any; and
d. Recommendations regarding the need for further investigation.

102.12(2) The written report shall be delivered to the designated investigator as soon as practicable.

102.12(3) The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

281—102.13(280) Retention of records.

102.13(1) Any record created by an investigation will be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation will be retained by the public or nonpublic school for a minimum of two years.

102.13(2) Unfounded reports shall not be placed in an employee's personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

281—102.14(280) Substantial compliance. Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

These rules are intended to implement Iowa Code section 280.17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 103
“Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact With Students”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 280.21
State or federal law(s) implemented by the rulemaking: Iowa Code section 280.21

Public Hearing

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

January 2, 2024
10 to 10:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed chapter is intended to protect Iowa’s students from unnecessary and inappropriate seclusion and restraint.

The Department has removed unduly restrictive rule language. This proposed chapter was recently revised in a consensus process. The Department has determined that the remaining rules are critical to maintain student and staff safety.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Schools and area education agencies (AEAs) bear the responsibility of complying with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students will benefit from this proposed chapter by being protected from inappropriate seclusion and restraint by school employees.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact attributable to the proposed rulemaking.
 - Qualitative description of impact:
The proposed chapter is more readable due to the elimination of unnecessary or obsolete language.

3. Costs to the State:

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

The Department bears the enforcement costs of this rulemaking.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The current chapter's readability could be improved. Inaction would retain unnecessary rule text.

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

The statute requires rules.

6. Alternative methods considered by the agency:

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

None.

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

The statute requires rules.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103

CORPORAL PUNISHMENT, PHYSICAL RESTRAINT, SECLUSION, AND OTHER PHYSICAL CONTACT WITH STUDENTS

281—103.1(256B,280) Purpose and objectives. The purpose of this chapter is to provide uniform definitions and policies for public school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited; explain the parameters and protocols for the use of physical restraint and seclusion; and describe other limits on physical contact with students. The applicability of this chapter to physical restraint, seclusion, or

behavior management interventions does not depend on the terminology employed by the organization to describe the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or behavioral management technique is prohibited or may be used.

281—103.2(256B,280) Definitions. For the purposes of this chapter:

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Corporal punishment” means the intentional physical punishment of a student. “Corporal punishment” includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

“Debriefings” means meetings to collaboratively examine and determine what caused an incident or incidents resulting in the use of physical restraints or seclusion, how the incident or the use of physical restraints or seclusion or both could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.

“Mechanical restraint” means the use of a device as a means of restricting a student’s freedom of movement. “Mechanical restraint” does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300), and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means a personal restriction that immobilizes or reduces the ability of a child to move the child’s arms, legs, body, or head freely. “Physical restraint” does not mean a technique used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a technique was designed and, if applicable, prescribed. “Physical restraint” does not include instructional strategies, such as physically guiding a student during an educational task, hand-shaking, hugging, or other nondisciplinary physical contact.

“Prone restraint” means any restraint in which the child is held face down on the floor.

“Reasonable and necessary force” means that force, and no more, that a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School” includes public school districts, accredited nonpublic schools, and area education agencies.

“Seclusion” means the involuntary confinement of a child in a seclusion room or area from which the child is prevented or prohibited from leaving; however, preventing a child from leaving a classroom or school building is not considered seclusion. “Seclusion” does not include instances when a school employee is present within the room and providing services to the child, such as crisis intervention or instruction.

“Seclusion room” means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281—103.3(256B,280) Ban on corporal punishment and prone and mechanical restraints. An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student or use prone restraints or mechanical restraints upon a student.

281—103.4(256B,280) Activities that are not considered corporal punishment. Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized education program (IEP) developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281—Chapter 41; a behavior intervention plan (BIP); an individual health plan (IHP); or a safety plan. However, under no circumstance may an IEP, BIP, IHP, or safety plan violate the provisions of this chapter;
4. Reasonable periods of detention, not in excess of school hours, or brief periods of detention before or after school, in a seat, classroom, or other part of a school facility;
5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of a school employing or utilizing the services of the employee.

281—103.5(256B,280) Use of reasonable and necessary force.

103.5(1) Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from:

- a. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the purposes listed in Iowa Code section 280.21(2).
- b. Using incidental, minor, or reasonable physical contact to maintain order and control.

103.5(2) An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281—103.6(256B,280) Reasonable force.

103.6(1) In determining the reasonableness of the physical force used by a school employee, the following factors will be applied:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student's behavior or misconduct resulting in the use of physical force;
- c. The instrumentality used in applying the physical force;
- d. The extent and nature of resulting injury to the student, if any, including mental and psychological injury;
- e. The motivation of the school employee using the physical force.

103.6(2) Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281—103.7(256B,280) Reasonable and necessary force—use of physical restraint or seclusion.

103.7(1) Physical restraint or seclusion is reasonable and necessary only:

- a. To prevent or terminate an imminent threat of bodily injury to the student or others; or
- b. To prevent serious damage to property of significant monetary value or significant nonmonetary value or importance; or
- c. When the student's actions seriously disrupt the learning environment or when physical restraint or seclusion is necessary to ensure the safety of the student and others; and
- d. When less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and
- e. When the physical restraint or seclusion complies with all the rules of this chapter.

103.7(2) If seclusion or physical restraint is utilized, the following provisions apply:

a. The seclusion or physical restraint must be imposed by an employee who:

(1) Is trained in accordance with rule 281—103.8(256B,280); or

(2) Is otherwise available and a trained employee is not immediately available due to the unforeseeable nature of the occurrence.

b. A school will attempt to notify the student's parent using the school's emergency contact system as soon as practicable after the situation is under control, but no later than one hour or the end of the school day, whichever occurs first.

c. The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student's behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended, or when a medical condition occurs that puts the student at risk of harm.

Unless otherwise provided for in the student's written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

(1) The student shall be provided with any necessary breaks to attend to personal and bodily needs, unless doing so would endanger the child or others.

(2) An employee shall obtain approval from an administrator or administrator's designee to continue the seclusion or physical restraint beyond 15 minutes. After the initial approval, an employee must obtain additional approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval will be documented in accordance with rule 281—103.8(256B,280).

(3) The student's parent and the school may agree to more frequent notifications than is provided by this subrule.

(4) Schools and employees will document and explain in writing, as provided by subrule 103.8(2), the reasons why it was not possible for them to obtain approval, notify parents, or take action under paragraphs 103.7(2) "*b*" and "*c*" within the prescribed time limits.

(5) Schools and employees who initiate and then end the use of nonapproved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This subparagraph is not intended to excuse or condone the use of nonapproved restraints.

d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 281—103.9(256B,280), unless the nature of the occurrence makes the use of the designated seclusion room impossible, clearly impractical, or clearly contrary to the safety of the student, others, or both; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.

e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint.

f. An employee shall not use any physical restraint that obstructs the airway of the student.

g. If an employee restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of physical restraint, unless doing so is not feasible in view of the threat posed.

h. Seclusion or physical restraint shall not be used:

(1) As punishment or discipline;

(2) To force compliance or to retaliate;

(3) As a substitute for appropriate educational or behavioral support;

(4) To prevent property damage except as described in paragraph 103.7(1) "*b*";

(5) As a routine school safety measure; or

(6) As a convenience to staff.

103.7(3) An employee must document the use of the seclusion or physical restraint in accordance with rule 281—103.8(256B,280).

103.7(4) Nothing in this rule will be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21, rule 281—103.11(256B,280), or any other provision of law.

103.7(5) An agency covered by this chapter will investigate any complaint or allegation that one or more of its employees violated one or more provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency will take appropriate corrective action. If any allegation involves a specific student, the agency will transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any ordered corrective action.

103.7(6) If a child's IEP, BIP, IHP, or safety plan includes either or both physical restraint or seclusion measures, those measures will be individualized to the child; described with specificity in the child's IEP, BIP, IHP, or safety plan; and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.

103.7(7) These rules are binding whether or not a parent consents to the use of physical restraint or seclusion for the child.

103.7(8) If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 are applicable.

103.7(9) Schools must provide a copy of this chapter and any school-adopted or school-used related policies, procedures and training materials to any individual who is not an employee but whose duties could require the individual to participate in or be present when physical restraints are or seclusion is being used. Schools must invite these individuals to participate in training offered to employees pursuant to this chapter.

103.7(10) The provisions of Iowa Code section 280.21(3) and 280.21(4) apply to proceedings under this chapter.

281—103.8(256B,280) Training, documentation, debriefing, and reporting requirements.

103.8(1) *Training.* An employee must receive training prior to using any form of physical restraint or seclusion. Training will cover the following topics:

- a. The rules of this chapter;
- b. The school's specific policies and procedures regarding the rules of this chapter;
- c. Student and staff debriefing requirements;
- d. Positive behavior interventions and supports, and evidence-based approaches to student discipline and classroom management;
- e. Research-based alternatives to physical restraint and seclusion;
- f. Crisis prevention, crisis intervention, and crisis de-escalation techniques;
- g. Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and
- h. Safe and effective use of physical restraint and seclusion.

103.8(2) *Documentation and reporting.* Schools must maintain documentation for each occurrence of physical restraint and seclusion. Documentation will contain at least the following information:

- a. The name of the student;
- b. The names and job titles of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to subparagraph 103.7(2) "c"(2);
- c. The date of the occurrence;
- d. The beginning and ending times of the occurrence;
- e. The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training necessary under subrule 103.8(1);
- f. A description of the actions of the student before, during, and after the seclusion or physical restraint;
- g. A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint, including the use of a nonapproved restraint (subparagraph 103.7(2) "c"(5)) or the use of other than a designated seclusion room (paragraph 103.7(2) "d");

- h.* Documentation of approvals for continuation of the seclusion or physical restraint period generated in accordance with subrule 103.7(2), including why it was not possible to obtain approval;
- i.* A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;
- j.* A description of any injuries, whether to the student or others, and any property damage;
- k.* A description of future approaches to address the student's behavior, including any consequences or disciplinary actions that may be imposed on the student; and
- l.* The time and manner by which the school notified the student's parent of the use of physical restraint or seclusion, including why it was not possible to attempt to give notice within the time specified by paragraph 103.7(2) "b."

Schools must provide the student's parent with a written copy of the report by the end of the third school day following the occurrence. The report will be accompanied by a letter inviting the parent to participate in a debriefing meeting, if necessary under subrule 103.8(3), to be held within five school days of the day the report and letter are mailed to or provided to the parent. The letter will include the date, time and place of the meeting and the names and titles of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the third school day after the occurrence.

103.8(3) *Debriefing.*

a. Schools must hold a debriefing meeting as soon as practicable whenever provided by paragraph 103.8(3) "f," but within five school days of the day the report and letter are mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent's consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher), and, if indicated by the student's behavior in the instances prompting the debriefing, an expert in behavioral health, mental health, or another appropriate discipline. The meeting, and the debriefing report that is to be provided to the parent after the meeting, will include the following information and subjects:

- (1) The date and location of the meeting, and the names and titles of the participants;
- (2) The documentation and report completed in compliance with subrule 103.8(2);
- (3) A review of the student's BIP, IHP, safety plan, and IEP as applicable;
- (4) Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
- (5) Determination of possible alternative responses to the incident/less restrictive means, if any;
- (6) Identification of additional resources that could facilitate those alternative responses in the future;
- (7) Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

b. Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three school days after the debriefing meeting.

c. If the debriefing session results in a recommendation that a child might be eligible for a BIP, IHP, safety plan, or IEP, the public agencies will promptly determine the child's eligibility in accordance

with the procedures for determining eligibility, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

d. Any recommended change to a student’s BIP, IHP, safety plan, or IEP, or a student’s educational placement, will be made in accordance with the procedures for amending said plan or changing said placement, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

e. Nothing in this subrule will be construed to require employers to include information about employees that would be legally protected personnel information, including employee disciplinary information under Iowa Code chapters 279 and 284, or to allow discussion of that personnel information, in debriefing meetings.

f. For purposes of this subrule, a debriefing session is necessary:

- (1) Upon the first instance of seclusion or physical restraint during a school year;
- (2) Whenever any personal injury occurs as a part of the use of seclusion or physical restraint;
- (3) Whenever a reasonable educator would determine a debriefing session is necessary;
- (4) Whenever suggested by a student’s IEP team (if any);
- (5) Whenever agreed by the parent and the school officials.

However, in any case a debriefing session will occur after seven instances of seclusion or physical restraint. Nothing in this paragraph will be construed to prevent a school from offering more debriefing meetings.

103.8(4) Confidentiality. Schools are governed by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); Iowa Code chapter 22, “Examination of Public Records (Open Records)”; and other applicable federal and state laws, when taking action pursuant to this rule.

103.8(5) Reporting to department. Schools will report to the Iowa department of education, in a manner prescribed by the department, an annual count of all instances of seclusion or restraint, an annual count of the number of students who were subjected to seclusion or restraint, and any other data required for the department to implement the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, Public Law 114-95.

281—103.9(256B,280) Seclusion room requirements. Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

103.9(1) The room meets and complies with all applicable building, fire, safety, and health codes and standards and with the other provisions of this rule.

103.9(2) The dimensions of the room are of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room is to be no less than 56 square feet, and the distance between opposing walls is to be no less than 7 feet across.

103.9(3) The room is not isolated from school employees or the facility.

103.9(4) Any wall that is part of the room is part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).

103.9(5) The room provides a means of continuous visual and auditory monitoring of the student.

103.9(6) The room is adequately lighted with switches to control lighting located outside the room.

103.9(7) The room is adequately ventilated with switches to control fans or other ventilation devices located outside the room.

103.9(8) The room maintains a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.

103.9(9) The room is clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects, exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or to climb up a wall.

103.9(10) The room contains no free-standing furniture.

103.9(11) The room is constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room will comply with the state and local building and fire codes and standards.

103.9(12) Doors will open outward. The door will not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, do not reduce the required corridor width by more than seven inches. Doors in any position do not reduce the required width by more than one-half.

103.9(13) The room is able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.

103.9(14) Windows, if any, are transparent and made of unbreakable or shatterproof glass or plastic.

103.9(15) By July 1, 2021, schools will consult with appropriate state and local building, fire, safety, and health officials to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry and exit, fire suppression, etc.), and maintain documentation of such consultation and compliance and approval.

103.9(16) Assuming approval pursuant to subrule 103.9(15), a school may continue to use a room that otherwise complies with this rule but for subrule 103.9(2) for a period of five years from January 20, 2021, or whenever the portion of the school containing the room is renovated or remodeled, whichever occurs first.

281—103.10(256B,280) Department responsibilities. The department will develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury to a student or another person and for the reasonable, necessary, and appropriate physical restraint of a student, consistent with these rules.

The director of the department will consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

These rules are intended to implement Iowa Code section 280.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 120
“Early ACCESS Integrated System of Early Intervention Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256B.3(16)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 256B and 34 CFR Part 303

Public Hearing

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

January 2, 2024
11 to 11:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
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Purpose and Summary

Chapter 120 is intended to provide a framework for providing early intervention services to Iowa’s infants and toddlers with disabilities. This program serves infants and toddlers with disabilities, from birth to the third birthday, and is known in Iowa as Early ACCESS. The proposed rulemaking eliminates unnecessary and unmeasurable language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s AEAs bear the cost of compliance with this chapter, which is offset by state and federal funds.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s infants and toddlers with disabilities, as well as their families, benefit from the proposed chapter.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact of this proposed chapter.
 - Qualitative description of impact:
There is a qualitative impact by removing unnecessary rule text.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department, as lead agency, bears the costs of enforcement. Those costs are offset by federal funds.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

The statute requires rules, so there is no cost-benefit analysis necessary.

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

The statute requires rules.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The statute requires rules.

Small Business Impact

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

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

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

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

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 120 and adopt the following **new** chapter in lieu thereof:

TITLE XVIII EARLY CHILDHOOD

CHAPTER 120 EARLY ACCESS INTEGRATED SYSTEM OF EARLY INTERVENTION SERVICES

DIVISION I PURPOSE AND APPLICABILITY

281—120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services.

120.1(1) *Establishment of Early ACCESS Integrated System of Early Intervention Services.* This chapter establishes Iowa’s Early ACCESS Integrated System of Early Intervention Services, which is Iowa’s implementation of Part C of the Individuals with Disabilities Education Act.

120.1(2) *Purposes.* The purposes of this chapter are as follows:

- a.* Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
- b.* Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);
- c.* Enhance Iowa’s capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and
- d.* Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

120.1(3) *Overall outcomes.* The overall intended outcome of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

- a.* Enhancing the development of eligible children;
- b.* Reducing educational costs to society by minimizing the need for special education and related services after such children reach school age;
- c.* Preparing eligible children for school entry; and
- d.* Enhancing the capacity of families to meet the unique needs of their eligible children.

281—120.2(34CFR303) Applicability of this chapter. The provisions of this chapter apply to the Iowa department of education, as the state lead agency, the signatory agencies identified in subrule 120.39(15), and any early intervention service (EIS) provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act. The chapter applies to all children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in rules 281—120.6(34CFR303) and 281—120.21(34CFR303), and their families. The provisions of this chapter do not apply to any child with a disability receiving a “free appropriate public education” or “FAPE” under 34 CFR Part 300.

281—120.3(34CFR303) Applicable federal regulations.

120.3(1) *General.* The following regulations apply to this chapter:

- a.* The regulations at 34 CFR Part 303.
- b.* The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

120.3(2) *References in EDGAR.* In applying EDGAR regulations cited in subrule 120.3(1), any reference to:

- a.* “State educational agency” means the Iowa department of education, the lead agency under this chapter; and
- b.* “Education records” or “records” means early intervention records.

DIVISION II
DEFINITIONS

281—120.4(34CFR303) Act. “Act” means the Individuals with Disabilities Education Act. Part B of the Act, 34 CFR Part 300, establishes special education for children with disabilities who are age three to the maximum age in Iowa Code section 256B.8. Part B of the Act includes early childhood special education under Section 619 of the Act. Part C of the Act, 34 CFR Part 303, establishes the infants and toddlers program for eligible individuals from birth to age three.

281—120.5(34CFR303) At-risk infant or toddler. “At-risk infant or toddler” means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

281—120.6(34CFR303) Child. “Child” means an individual under the age of six and may include an “infant or toddler with a disability,” as that term is defined in rule 281—120.21(34CFR303).

281—120.7(34CFR303) Consent.

120.7(1) Obtaining consent. “Consent” is obtained when all of the following conditions are satisfied:

- a.* The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in rule 281—120.25(34CFR303);
- b.* The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- c.* The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

120.7(2) Revoking consent. If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

281—120.8(34CFR303) Council. “Council” means the Iowa council for Early ACCESS, which is the state interagency coordinating council that satisfies Division VIII of this chapter.

281—120.9(34CFR303) Day. “Day” means calendar day, unless otherwise indicated.

281—120.10(34CFR303) Developmental delay. “Developmental delay,” when used with respect to a child residing in a state, has the meaning given that term by the state under rule 281—120.111(34CFR303).

281—120.11(34CFR303) Early intervention service program. “Early intervention service program” or “EIS program” means an entity designated by the lead agency for reporting under rules 281—120.700(34CFR303) through 281—120.702(34CFR303).

281—120.12(34CFR303) Early intervention service provider.

120.12(1) General. “Early intervention service provider” or “EIS provider” means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the state under Part C of the Act.

120.12(2) Responsibilities. An EIS provider is responsible for:

- a.* Participating in the multidisciplinary individualized family service plan (IFSP) team’s ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;
- b.* Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
- c.* Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

120.12(3) Rule of construction. “Early ACCESS service provider” is a synonym for “early intervention service provider.”

281—120.13(34CFR303) Early intervention services.

120.13(1) General. “Early intervention services” means developmental services that:

- a.* Are provided under public supervision;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

c. "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

d. "Health services" has the meaning given the term in rule 281—120.16(34CFR303).

e. "Medical services" means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

f. "Nursing services" includes:

(1) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(2) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(3) The administration of medications, treatments, and regimens prescribed by a licensed physician.

g. "Nutrition services" includes:

(1) Conducting individual assessments in:

1. Nutritional history and dietary intake;

2. Anthropometric, biochemical, and clinical variables;

3. Feeding skills and feeding problems; and

4. Food habits and food preferences;

(2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph 120.13(2) "g"(1); and

(3) Making referrals to appropriate community resources to carry out nutrition goals.

h. "Occupational therapy" includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

(1) Identification, assessment, and intervention;

(2) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

i. "Physical therapy" includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:

(1) Screening, evaluation, and assessment of children to identify movement dysfunction;

(2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

j. "Psychological services" includes:

(1) Administering psychological and developmental tests and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

k. “Service coordination services” has the meaning given the term in rule 281—120.34(34CFR303).

l. “Sign language and cued language services” includes teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

m. “Social work services” includes:

(1) Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;

(2) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

(3) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;

(4) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child’s maximum utilization of early intervention services; and

(5) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

n. “Special instruction” includes:

(1) The design of learning environments and activities that promote the infant’s or toddler’s acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(4) Working with the infant or toddler with a disability to enhance the child’s development.

o. “Speech-language pathology services” includes:

(1) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

p. “Transportation and related costs” includes the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child’s family to receive early intervention services.

q. “Vision services” means:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

120.13(3) *Qualified personnel.* The following are the types of qualified personnel who provide early intervention services under this chapter:

a. Audiologists.

b. Family therapists.

c. Nurses.

- d. Occupational therapists.
- e. Orientation and mobility specialists.
- f. Pediatricians and other physicians for diagnostic and evaluation purposes.
- g. Physical therapists.
- h. Psychologists.
- i. Registered dietitians.
- j. Social workers.
- k. Special educators, including teachers of children who are deaf or hard of hearing and teachers of children with visual impairments (including blindness).
- l. Speech and language pathologists.
- m. Vision specialists, including ophthalmologists and optometrists.

120.13(4) Other services. The services and personnel identified and defined in subrules 120.13(2) and 120.13(3) do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in rule 281—120.13(34CFR303) prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in subrule 120.13(1) or of another type of personnel that may provide early intervention services in accordance with this chapter, provided such personnel satisfy rule 281—120.31(34CFR303).

120.13(5) Rule of construction. “Early ACCESS services” is a synonym for the services described in this rule.

281—120.14(34CFR303) Elementary school. “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—120.15(34CFR303) Free appropriate public education. “Free appropriate public education” or “FAPE,” as used in rule 281—120.521(34CFR303), means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency (SEA), including the requirements of Part B of the Act; that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an individualized education program (IEP) that satisfies 34 CFR 300.320 through 300.324.

281—120.16(34CFR303) Health services.

120.16(1) General. “Health services” means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this chapter during the time that the child is eligible to receive early intervention services.

120.16(2) Examples of health services. “Health services” includes:

- a. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
- b. Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

120.16(3) Services excluded. “Health services” does not include:

- a. Services that are:
 - (1) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);
 - (2) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or
 - (3) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

1. Nothing in this chapter limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

2. Nothing in this chapter prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

b. Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

c. Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

281—120.17(34CFR303) Homeless children. "Homeless children" means children who meet the definition given the term "homeless children and youths" in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.

281—120.18(34CFR303) Include; including. "Include" or "including" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—120.19(34CFR303) Indian; Indian tribe. "Indian" means an individual who is a member of an Indian tribe. "Indian tribe" means any federal or state Indian tribe, band, rancheria, pueblo, colony, community, or settlement, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a state Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

281—120.20(34CFR303) Individualized family service plan. "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability under this chapter and the infant's or toddler's family that is based on the evaluation and assessment described in rule 281—120.321(34CFR303); that includes the content specified in rule 281—120.344(34CFR303); that is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with rule 281—120.420(34CFR303)); and that is developed in accordance with the IFSP procedures in rules 281—120.342(34CFR303), 281—120.343(34CFR303), and 281—120.345(34CFR303).

281—120.21(34CFR303) Infant or toddler with a disability. "Infant or toddler with a disability" means an individual under three years of age who needs early intervention services because the individual:

120.21(1) Is experiencing a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- a.* Cognitive development;
- b.* Physical development, including vision and hearing;
- c.* Communication development;
- d.* Social or emotional development;
- e.* Adaptive development; or

120.21(2) Has a diagnosed physical or mental condition that:

- a.* Has a high probability of resulting in developmental delay; and
- b.* Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

281—120.22(34CFR303) Lead agency. “Lead agency” is the Iowa department of education to receive funds under Section 643 of the Act and to administer the state’s responsibilities under Part C of the Act.

281—120.23(34CFR303) Local educational agency.

120.23(1) General. “Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary schools or secondary schools.

120.23(2) Educational service agencies and other public institutions or agencies. “Educational service agencies and other public institutions or agencies” includes the following:

- a.* “Educational service agency,” defined as a regional public multiservice agency:
 - (1) Authorized by state law to develop, manage, and provide services or programs to LEAs; and
 - (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.
- b.* Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under state law.
- c.* Entities that meet the definition of “intermediate educational unit” or “IEU” in Section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition, an “intermediate educational unit” or “IEU” means any public authority other than an LEA that:

- (1) Is under the general supervision of the state educational agency;
- (2) Is established by state law for the purpose of providing FAPE on a regional basis; and
- (3) Provides special education and related services to children with disabilities within the state.

120.23(3) BIE-funded schools. “BIE-funded schools” includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—120.24(34CFR303) Multidisciplinary. “Multidisciplinary” means the involvement of two or more separate disciplines or professions and, with respect to:

1. Evaluation of the child in rule 281—120.113(34CFR303) and subrule 120.321(1) and assessments of the child and family in subrule 120.321(1), may include one individual who is qualified in more than one discipline or profession; and
2. The IFSP team in rule 281—120.340(34CFR303) must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with subrule 120.343(1)).

281—120.25(34CFR303) Native language.

120.25(1) Limited English proficiency. “Native language,” when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act and in rule 281—41.27(256B,34CFR300)), means:

- a.* The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph 120.25(1) “*b*”; and
- b.* For evaluations and assessments conducted pursuant to subrule 120.321(1), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

120.25(2) Deaf or hard of hearing; blind or visually impaired; no written language. “Native language,” when used with respect to an individual who is deaf or hard of hearing, blind or visually

impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

281—120.26(34CFR303) Natural environments. “Natural environments” means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of rule 281—120.126(34CFR303).

281—120.27(34CFR303) Parent.

120.27(1) General. “Parent” means:

- a.* A biological or adoptive parent of a child;
- b.* A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- c.* A guardian generally authorized to act as the child’s parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the state if the child is a ward of the state);
- d.* An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- e.* A surrogate parent who has been appointed in accordance with rule 281—120.422(34CFR303) or Section 639(a)(5) of the Act.

120.27(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a “parent.”

a. Except as provided in paragraph 120.27(2)“*b*,” the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under subrule 120.27(1) to act as a parent, must be presumed to be the parent for purposes of rule 281—120.27(34CFR303) unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs 120.27(1)“*a*” through “*d*” to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

281—120.28(34CFR303) Parent training and information center. “Parent training and information center” means a center assisted under Section 671 or 672 of the Act.

281—120.29(34CFR303) Personally identifiable information. “Personally identifiable information” means personally identifiable information as defined in 34 CFR 99.3, except that the term “student” in the definition of “personally identifiable information” in 34 CFR 99.3 means “child” as used in this chapter and any reference to “school” means “EIS provider” as used in this chapter.

281—120.30(34CFR303) Public agency. As used in this chapter, “public agency” means the lead agency and any other agency or political subdivision of the state. The particular public agency serving each infant or toddler and that infant or toddler’s family shall be determined by the particular Early ACCESS needs of each infant and toddler and pursuant to the interagency agreements established under this chapter. Disputes about which agency will serve a particular infant or toddler shall be resolved by the mechanisms that those agreements contain.

281—120.31(34CFR303) Qualified personnel. “Qualified personnel” means personnel who have met state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

281—120.32(34CFR303) Scientifically based research. “Scientifically based research” has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965 (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to “education activities and programs” refers to “early intervention services.”

281—120.33(34CFR303) Secretary. “Secretary” means the Secretary of the United States Department of Education.

281—120.34(34CFR303) Service coordination services (case management).

120.34(1) General.

a. As used in this chapter, “service coordination services” means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this chapter.

b. Each infant or toddler with a disability and the child’s family must be provided with one service coordinator who is responsible for:

- (1) Coordinating all services required under this chapter across agency lines; and
- (2) Serving as the single point of contact for carrying out the activities described in this subrule and subrule 120.34(2).

c. Service coordination is an active, ongoing process that involves:

- (1) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter;
- (2) Using family-centered practices in all contacts with families; and
- (3) Coordinating the other services identified in the IFSP under subrule 120.34(5) that are needed by, or are being provided to, the infant or toddler with a disability and that child’s family.

120.34(2) Specific service coordination services. Service coordination services include:

- a.* Explaining the system of services and resources called Early ACCESS;
- b.* Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;
- c.* Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;
- d.* Coordinating evaluations and assessments;
- e.* Facilitating and participating in the development, review, and evaluation of IFSPs;
- f.* Conducting referral and other activities to assist families in identifying available EIS providers;
- g.* Coordinating, facilitating, and monitoring the delivery of services required under this chapter to ensure that the services are provided in a timely manner;
- h.* Conducting follow-up activities to determine that appropriate Part C services are being provided;
- i.* Informing families of their rights and procedural safeguards, as set forth in Division VI of this chapter and related resources;
- j.* Coordinating the funding sources for services required under this chapter; and
- k.* Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

120.34(3) Use of the term “service coordination” or “service coordination services.” The lead agency’s or an EIS provider’s use of the term “service coordination” or “service coordination services” does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with rules 281—120.501(34CFR303) through 281—120.521(34CFR303) (payor of last resort provisions).

120.34(4) Appointment of service coordinator. A service coordinator shall be appointed to families as soon as possible after a referral is received. Continuity of services for the child and the child’s family

shall be a consideration in the determination of whether a change is made in the service coordinator at any time following initial appointment.

120.34(5) Required service coordinator qualifications. In addition to satisfying subrule 120.119(1), a service coordinator must be a person who has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program, approved by the department, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope of practice includes service coordination. The department or its designee shall determine whether service coordinators have successfully completed the training.

281—120.35(34CFR303) State. “State” means each of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

281—120.36(34CFR303) State educational agency. “State educational agency” or “SEA” means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. “State educational agency” includes the agency that receives funds under Sections 611 and 619 of the Act to administer the state’s responsibilities under Part B of the Act. In Iowa, the SEA is the Iowa department of education.

281—120.37(34CFR303) Ward of the state.

120.37(1) General. Subject to subrules 120.37(2) and 120.37(3), “ward of the state” means a child who, as determined by the state where the child resides, is:

- a. A foster child;
- b. A ward of the state; or
- c. In the custody of a public child welfare agency.

120.37(2) Exception. “Ward of the state” does not include a foster child who has a foster parent who meets the definition of “parent” in rule 281—120.27(34CFR303).

120.37(3) Interpretive note. “Ward of the state” is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—120.38(34CFR303) Other definitions used in this chapter. The following terms apply to this chapter:

120.38(1) Area education agency. “Area education agency” or “AEA” is a political subdivision of the state organized pursuant to Iowa Code chapter 273.

120.38(2) Board. “Board” means the Iowa state board of education.

120.38(3) Community partners. “Community partners” means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS, as described in rule 281—120.803(34CFR303).

120.38(4) Department. “Department” means the Iowa department of education.

120.38(5) Director of education. “Director of education” means the director of the Iowa department of education.

120.38(6) Early childhood Iowa area. “Early childhood Iowa area” means a partnership in a local community with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families and other citizens residing in the local community’s geographic area. An early childhood Iowa area mobilizes individuals and their

communities to achieve desired results in order to improve the well-being and quality of life for families with young children from birth through the age of five years.

120.38(7) *Early childhood special education.* “Early childhood special education” or “ECSE” means special education and related services under Part B of the Act for those individuals with disabilities younger than the age of six.

120.38(8) *Eligible child.* “Eligible child” is a synonym for “infant or toddler with a disability,” as defined in rule 281—120.21(34CFR303).

120.38(9) *Family.* “Family” means the persons who are primarily responsible for the care and nurturing in a child’s daily life, including biological or adoptive parents, grandparents, guardians, persons acting as parents, siblings, stepparents, or unmarried partners of parents.

120.38(10) *GEPA.* “GEPA” is an acronym for the General Education Provisions Act.

120.38(11) *Grantee.* “Grantee” means a recipient of funds under Part C of the Act or state funds designated for Early ACCESS that has the fiscal and legal obligation to ensure that the Early ACCESS system is implemented regionally. The term “grantee” shall not be construed in a manner that conflicts with the Act.

120.38(12) *Individualized family service plan team.* “Individualized family service plan team” or “IFSP team” includes the members described in subrule 120.343(1).

120.38(13) *Informed clinical opinion.* “Informed clinical opinion” means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and skills of qualified personnel.

120.38(14) *School year.* “School year” means the period during which students who are 3 years of age through 21 years of age attend school.

120.38(15) *Signatory agency.* “Signatory agency” means the departments of education, public health, and human services and the child health specialty clinics.

120.38(16) *Signature.* “Signature” has the meaning given the term in Iowa Code section 4.1(39).

281—120.39 to 120.99 Reserved.

DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

281—120.100 Reserved.

281—120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act. In order to be eligible for a grant under Part C of the Act for any fiscal year, the state must meet the following conditions:

120.101(1) *Assurances regarding early intervention services and a statewide system.* The state must provide the following assurances to the Secretary that:

a. The state has adopted a policy that appropriate early intervention services, as defined in rule 281—120.13(34CFR303), are available to all infants and toddlers with disabilities in the state and their families, including:

(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state;

(2) Infants and toddlers with disabilities who are homeless children and their families; and

(3) Infants and toddlers with disabilities who are wards of the state; and

b. The state has in effect a statewide system of early intervention services that satisfies Section 635 of the Act, including policies and procedures that address, at a minimum, the components required in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

120.101(2) *State application and assurances.* The state must provide information and assurances to the Secretary, in accordance with 34 CFR §303.200 through 34 CFR §303.236, including:

a. Information that shows that the state meets the application requirements in rules 281—120.200(34CFR303) through 281—120.212(34CFR303); and

b. Assurances that the state also satisfies rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

120.101(3) Approval before implementation. The state must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the state's application in 34 CFR §303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

281—120.102(34CFR303) State conformity with Part C of the Act. Each state that receives funds under Part C of the Act must ensure that any state rules, regulations, and policies relating to this chapter conform to the purposes and requirements of 34 CFR Part 303.

281—120.103 and 120.104 Reserved.

281—120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under Part C of the Act.

281—120.106 to 120.109 Reserved.

281—120.110(34CFR303) Minimum components of a statewide system. Each statewide system (system) must include, at a minimum, the components described in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

281—120.111(34CFR303) State definition of developmental delay. The system must include the state's rigorous definition of developmental delay, consistent with rule 281—120.10(34CFR303) and subrule 120.203(3), that will be used by the state in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must:

120.111(1) Describe, for each of the areas listed in subrule 120.21(1), the evaluation and assessment procedures, consistent with rule 281—120.321(34CFR303), that will be used to measure a child's development; and

120.111(2) Specify that 25 percent is the applicable level of developmental delay in functioning or other comparable criteria to constitute a developmental delay in one or more of the developmental areas identified in subrule 120.21(1).

281—120.112(34CFR303) Availability of early intervention services. Each system must include a state policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including:

120.112(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and

120.112(2) Infants and toddlers with disabilities who are homeless children and their families.

281—120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures.

120.113(1) General. Subject to subrule 120.113(2), each system must ensure the performance of the following:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state; and

b. A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

120.113(2) Rule of construction. The evaluation and family-directed identification required in subrule 120.113(1) must satisfy rule 281—120.321(34CFR303).

281—120.114(34CFR303) Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and the infant's or toddler's family in the state, that an IFSP, as defined in rule 281—120.20(34CFR303), is developed and implemented that satisfies rules 281—120.340(34CFR303) through 281—120.345(34CFR303), and that includes service coordination services, as defined in rule 281—120.34(34CFR303).

281—120.115(34CFR303) Comprehensive child find system. Each system must include a comprehensive child find system that satisfies rules 281—120.302(34CFR303) and 281—120.303(34CFR303).

281—120.116(34CFR303) Public awareness program. Each system must include a public awareness program that focuses on the early identification of infants and toddlers with disabilities; and provides information to parents of infants and toddlers through primary referral sources in accordance with rule 281—120.301(34CFR303).

281—120.117(34CFR303) Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the department's website and other appropriate means) and includes accurate, up-to-date information about:

120.117(1) Public and private early intervention services, resources, and experts available in the state;

120.117(2) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and

120.117(3) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities.

281—120.118(34CFR303) Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development (CSPD), including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

120.118(1) Required elements. A CSPD must include:

a. Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;

b. Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this chapter; and

c. Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under Section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

120.118(2) Optional elements. A CSPD may include:

a. Training personnel to work in rural and inner-city areas;

b. Training personnel in the emotional and social development of young children;

c. Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and

d. Training personnel who provide services under this chapter using standards that are consistent with early learning personnel development standards funded under the state advisory council on early childhood education and care established under the Head Start Act, if applicable.

281—120.119(34CFR303) Personnel standards.

120.119(1) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained.

120.119(2) *Qualification standards.* The policies and procedures required in subrule 120.119(1) must provide for the establishment and maintenance of qualification standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

120.119(3) *Use of paraprofessionals and assistants.* Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

281—120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. Iowa's system includes the designation of the Iowa department of education as lead agency, with a single line of responsibility for the following items:

120.120(1) *General supervision.* The department is responsible for the following:

a. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.

b. The monitoring of programs and activities used by the state to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act) to ensure that the state complies with Part C of the Act, including:

(1) Monitoring agencies, institutions, organizations, and EIS providers used by the state to carry out Part C of the Act;

(2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these rules;

(3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(4) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and

(5) Conducting the activities in subparagraphs 120.120(1) "a"(1) through (4), consistent with rules 281—120.700(34CFR303) through 281—120.707(34CFR303), and any other activities required by the state under those rules.

120.120(2) *Identification and coordination of resources.* The identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, consistent with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(3) *Assignment of financial responsibility.* The assignment of financial responsibility in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(4) *Procedures concerning timely provision of services.* The development of procedures in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303) to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

120.120(5) *Agency-level dispute resolution.* The resolution of intra-agency and interagency disputes in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(6) *Methods of establishing financial responsibility.* The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with rule 281—120.511(34CFR303), that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.121(34CFR303) Policy for contracting or otherwise arranging for services. Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the state, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must:

1. Include a requirement that all early intervention services must meet state standards and be consistent with the provisions of this chapter; and
2. Be consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

281—120.122(34CFR303) Reimbursement procedures. Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.123(34CFR303) Procedural safeguards. Each system must include procedural safeguards that satisfy rules 281—120.400(34CFR303) through 281—120.449(34CFR303).

281—120.124(34CFR303) Data collection.

120.124(1) General. Each statewide system must include a system for compiling and reporting timely and accurate data that satisfies subrule 120.124(2) and rules 281—120.700(34CFR303) through 281—120.702(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

120.124(2) Required description. The data system required in subrule 120.124(1) must include a description of the process that the state uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this chapter, including a description of the state's sampling methods, if sampling is used, for reporting the data required by the Secretary under Sections 616 and 618 of the Act and rules 281—120.700(34CFR303) through 281—120.707(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

281—120.125(34CFR303) State interagency coordinating council. Each system must include a state interagency coordinating council satisfying rules 281—120.600(34CFR303) through 281—120.605(34CFR303).

281—120.126(34CFR303) Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with rule 281—120.13(34CFR303) (early intervention services), rule 281—120.26(34CFR303) (natural environments), and subrule 120.344(4) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided:

1. To the maximum extent appropriate, in natural environments; and
2. In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

281—120.127 to 120.199 Reserved.

DIVISION IV
STATE APPLICATION AND ASSURANCES

281—120.200 Reserved.

281—120.201(34CFR303) Designation of lead agency. Each application must include the designation of the department as the lead agency that will be responsible for the administration of funds provided under Part C of the Act.

281—120.202(34CFR303) Certification regarding financial responsibility. Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under rule 281—120.511(34CFR303) and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both satisfy rules 281—120.500(34CFR303) through 281—120.521(34CFR303) and are current as of the date of submission of the certification.

281—120.203(34CFR303) Statewide system and description of services. Each application must include the following items:

120.203(1) *Description of services.* A description of services to be provided under this chapter to infants and toddlers with disabilities and their families through the state's system;

120.203(2) *Identification and coordination of resources.* The state's policies and procedures regarding the identification and coordination of all available resources within the state from federal, state, local, and private sources as required under Division VII of this chapter and including:

a. Policies or procedures adopted by the state as its system of payments that satisfy rules 281—120.510(34CFR303), 281—120.520(34CFR303), and 281—120.521(34CFR303); and

b. Methods used by the state to implement subrule 120.511(2); and

120.203(3) *Rigorous definition of developmental delay.* The state's rigorous definition of developmental delay, under rule 281—120.111(34CFR303).

281—120.204 Reserved.

281—120.205(34CFR303) Description of use of funds.

120.205(1) *General.* Each application must include a description of the uses for funds under this chapter for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the council and include the information required in subrules 120.205(2) through 120.205(5).

120.205(2) Reserved.

120.205(3) *Maintenance and implementation activities.* Each application must include a description of the nature and scope of each major activity to be carried out under Part C of the Act, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds to be spent for each activity.

120.205(4) *Direct services.* Each application must include a description of any direct services that the state expects to provide to infants and toddlers with disabilities and their families with funds under this chapter, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds under this chapter to be used for the provision of each direct service.

120.205(5) *Activities by other public agencies.* If other public agencies are to receive funds under Part C of the Act, the application must include the name of each agency expected to receive funds, the approximate amount of funds each agency will receive, and a summary of the purposes for which the funds will be used.

281—120.206(34CFR303) Referral policies for specific children. Each application must include the state's policies and procedures that require the referral for early intervention services under this chapter of specific children under the age of three, as described in subrule 120.303(2).

281—120.207(34CFR303) Availability of resources. Each application must include a description of the procedure used by the state to ensure that resources are made available under this chapter for all geographic areas within the state.

281—120.208(34CFR303) Public participation policies and procedures.

120.208(1) *Application.* At least 60 days prior to being submitted to the department, each application for funds (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will

ensure circulation throughout the state for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

120.208(2) State policies and procedures. Each application must include a description of the policies and procedures used by the state to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules, the lead agency:

- a.* Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
- b.* Provides notice of the hearings held in accordance with paragraph 120.208(2) “*a*” at least 30 days before the hearings are conducted to enable public participation; and
- c.* Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules.

281—120.209(34CFR303) Transition to preschool and other programs.

120.209(1) Application requirements. The department must include the following in its application:

a. A description of the policies and procedures the state will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this chapter to:

- (1) Preschool or other appropriate services (for toddlers with disabilities); or
- (2) Exiting the program for infants and toddlers with disabilities.

b. A description of how the state will satisfy subrules 120.209(2) through 120.209(6).

c. An intra-agency agreement between the department’s program that administers Part C of the Act and the department’s program that administers Section 619 of Part B of the Act (early childhood special education). To ensure a seamless transition between services under Parts C and B of the Act, the intra-agency agreement must address how the department will satisfy subrules 120.209(2) through 120.209(6) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e)), subrule 120.344(8), rule 281—41.124(256B,34CFR300), and 281—subrules 41.101(2) and 41.321(6).

d. Any policy the department has adopted under 34 CFR §303.401(d) and (e).

120.209(2) Notification to the department and appropriate AEA.

a. The department must ensure that:

(1) Subject to paragraph 120.209(2) “*b*,” not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler notifies the department and the AEA for the area in which the toddler resides that the toddler on the toddler’s third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law;

(2) Subject to paragraph 120.209(2) “*b*,” if the toddler is determined to be eligible for Early ACCESS services more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler, as soon as possible after determining the child’s eligibility, notifies the department and the AEA for the area in which the toddler with a disability resides that the toddler on the toddler’s third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law; or

(3) Subject to paragraph 120.209(2) “*b*,” if a toddler is referred to Early ACCESS under rules 281—120.302(34CFR303) and 281—120.303(34CFR303) fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under Part B of the Act, the public agency that would be responsible for determining the child’s eligibility under this chapter, with parental consent required under rule 281—120.414(34CFR303), refers the toddler to the department and the AEA for the area in which the toddler resides; however, no agency is required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

b. The department must ensure that the notification required under subparagraphs 120.209(2)“a”(1) and (2) is consistent with any policy that the state has adopted, under 34 CFR §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

120.209(3) *Conference to discuss services.* The department must ensure that:

a. If a toddler with a disability may be eligible for preschool services under Part B of the Act, the public agency responsible for Early ACCESS services, with the approval of the family of the toddler, convenes a conference, among that agency, the family, and the AEA of the toddler’s residence not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler’s third birthday to discuss any services the toddler may receive under Part B of the Act; and

b. If the public agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the public agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among that agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

120.209(4) *Transition plan.* The department must ensure that for all toddlers with disabilities:

a. The appropriate public agency reviews the program options for the toddler with a disability for the period from the toddler’s third birthday through the remainder of the school year and each family of a toddler with a disability who is served under this chapter is included in the development of the transition plan required under this rule and subrule 120.344(8);

b. The appropriate public agency establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler’s third birthday; and

c. The transition plan in the IFSP includes, consistent with subrule 120.344(8), as appropriate:

(1) Steps for the toddler with a disability and the toddler’s family to exit from the Part C program; and

(2) Any transition services that the IFSP team identifies as needed by that toddler and the toddler’s family.

120.209(5) *Transition conference and meeting to develop transition plan.* Any conference conducted under subrule 120.209(3) or meeting to develop the transition plan under subrule 120.209(4) (which conference and meeting may be combined into one meeting) must satisfy subrules 120.342(4), 120.342(5), and 120.343(1).

120.209(6) *Applicability of transition requirements.* The transition requirements in subparagraphs 120.209(2)“a”(1) and (2), paragraph 120.209(3)“a,” and subrule 120.209(4) apply to all toddlers with disabilities receiving services under this chapter before those toddlers turn age three.

281—120.210(34CFR303) *Coordination with Head Start and Early Head Start, early education, and child care programs.* Each application must contain a description of state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), early education and child care programs, and services under this chapter. The department must participate, consistent with Section 642B(b)(1)(C)(viii) of the Head Start Act, on the state advisory council on early childhood education and care established under the Head Start Act.

281—120.211 Reserved.

281—120.212(34CFR303) *Additional information and assurances.* The department’s application shall describe the steps the state is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by Section 427(b) of GEPA and shall supply other information and assurances as the Secretary may reasonably require.

281—120.213 to 120.219 Reserved.

281—120.220(34CFR303) *Assurances satisfactory to the Secretary.* The department’s application must contain assurances satisfactory to the Secretary that the state has satisfied rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.221(34CFR303) Expenditure of funds. The department must ensure that federal funds made available to the state under Section 643 of the Act will be expended in accordance with the provisions of this chapter, including rules 281—120.500(34CFR303) and 281—120.501(34CFR303).

281—120.222(34CFR303) Payor of last resort. The department must ensure that it will comply with rules 281—120.510(34CFR303) and 281—120.511(34CFR303).

281—120.223(34CFR303) Control of funds and property. The department must ensure that the control of funds provided under Part C of the Act, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this chapter and that a public agency will administer the funds and property.

281—120.224(34CFR303) Reports and records. The department must ensure that it will make reports in the form and containing the information that the Secretary may require and will keep records and afford access to those records as the Secretary may find necessary to ensure compliance with this chapter, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.

281—120.225(34CFR303) Prohibition against supplanting; indirect costs.

120.225(1) General. The department must provide satisfactory assurance that the federal funds made available under Section 643 of the Act to the state:

- a.* Will not be commingled with state funds; and
- b.* Will be used so as to supplement the level of state and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.

120.225(2) Additional information. To meet the requirement in subrule 120.225(1), the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this chapter and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

- a.* A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this chapter; and
- b.* Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment.

120.225(3) Requirement regarding indirect costs.

a. Except as provided in paragraph 120.225(3) “*b*,” the department may not charge indirect costs to its Part C grant.

b. If approved by the department’s cognizant federal agency or by the Secretary, the department must charge indirect costs through either:

- (1) A restricted indirect cost rate that satisfies 34 CFR 76.560 through 76.569; or
- (2) A cost allocation plan that meets the non-supplanting requirements in subrule 120.225(2) and 34 CFR Part 76 of EDGAR.

c. In charging indirect costs under paragraph 120.225(3) “*b*,” the department may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

281—120.226(34CFR303) Fiscal control. The department must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of the Act.

281—120.227(34CFR303) Traditionally underserved groups. The department must ensure that policies and practices have been adopted to ensure that traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of

the state, are meaningfully involved in the planning and implementation of this chapter and that these families have access to culturally competent services within their local geographical areas.

281—120.228(34CFR303) Subsequent state application and modifications of application.

120.228(1) *Subsequent state application.* If the state has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the state meets an application requirement in this chapter, including any policy, procedure, method, or assurance filed under this chapter (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the state to have met that requirement for purposes of receiving a grant under Part C of the Act.

120.228(2) *Modification of application.* An application submitted by the state that satisfies this chapter remains in effect until the state submits to the Secretary such modifications as the state determines necessary. This rule applies to a modification of an application to the same extent and in the same manner as this subrule applies to the original application.

120.228(3) *Modifications required by the Secretary.* The Secretary may require the state to modify its application under Part C of the Act to the extent necessary to ensure the state's compliance with Part C of the Act if:

- a.* An amendment is made to the Act or to a federal regulation issued under the Act;
- b.* A new interpretation of the Act is made by a federal court or the state's highest court; or
- c.* An official finding of noncompliance with federal law or regulations is made with respect to the state.

281—120.229 to 120.299 Reserved.

DIVISION V

CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

281—120.300(34CFR303) General. The statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families must include the following components:

120.300(1) *Pre-referral activities.* The system must contain pre-referral policies and procedures that include:

- a.* A public awareness program as described in rule 281—120.301(34CFR303); and
- b.* A comprehensive child find system as described in rule 281—120.302(34CFR303).

120.300(2) *Referral activities.* The system must contain referral policies and procedures as described in rule 281—120.303(34CFR303).

120.300(3) *Post-referral activities.* The system must contain post-referral policies and procedures that ensure compliance with the timeline requirements in rule 281—120.310(34CFR303) and include:

- a.* Screening, if applicable, as described in rule 281—120.320(34CFR303);
- b.* Evaluations and assessments as described in rules 281—120.321(34CFR303) and 281—120.322(34CFR303); and
- c.* Development, review, and implementation of IFSPs as described in rules 281—120.340(34CFR303) through 281—120.346(34CFR303).

281—120.301(34CFR303) Public awareness program—information for parents.

120.301(1) *Preparation and dissemination.* In accordance with rule 281—120.116(34CFR303), the system must include a public awareness program that requires the department to:

- a.* Prepare information on the availability of early intervention services under this chapter, and other services, as described in subrule 120.301(2) and disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and

b. Adopt procedures for assisting the primary referral sources described in subrule 120.303(3) in disseminating the information described in subrule 120.301(2) to parents of infants and toddlers with disabilities.

120.301(2) *Information to be provided.* The information required to be prepared and disseminated under subrule 120.301(1) must include:

- a.* A description of the availability of Early ACCESS services under this chapter;
- b.* A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and
- c.* A central directory, as described in rule 281—120.117(34CFR303).

120.301(3) *Information specific to toddlers with disabilities.* The public awareness program also must include a requirement that the department provide for informing parents of toddlers with disabilities of the availability of services under Section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

281—120.302(34CFR303) Comprehensive child find system.

120.302(1) *General.* The Early ACCESS system must include a comprehensive child find system that:

- a.* Is consistent with Part B of the Act (see 34 CFR 300.111);
- b.* Includes a system for making referrals to applicable public agencies or EIS providers under this chapter that:
 - (1) Includes timelines; and
 - (2) Provides for participation by the primary referral sources described in subrule 120.303(3);
- c.* Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this chapter that will reduce the need for future services; and
- d.* Satisfies subrules 120.302(2) and 120.302(3) and rules 281—120.303(34CFR303), 281—120.310(34CFR303), 281—120.320(34CFR303), and 281—120.321(34CFR303).

120.302(2) *Scope of child find.* The department, as part of the child find system, must ensure that:

- a.* All infants and toddlers with disabilities in the state who are eligible for early intervention services under this chapter are identified, located, and evaluated, including:
 - (1) Indian infants and toddlers with disabilities residing on a reservation or settlement geographically located in the state (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the state based, in part, on the information provided by them to the department under 34 CFR §303.731(e)(1)); and
 - (2) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the state; and
 - (3) Infants and toddlers with disabilities that are referenced in subrule 120.303(2); and
- b.* An effective method is developed and implemented to identify children who are in need of early intervention services.

120.302(3) *Coordination.*

a. The department, with the assistance of the council, must ensure that the child find system under this chapter:

- (1) Is coordinated with all other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to this chapter, including Indian tribes that receive payments under this chapter, and other Indian tribes, as appropriate; and
- (2) Is coordinated with the efforts of the:
 - 1. Program authorized under Part B of the Act;
 - 2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act (MCHB or Title V) (42 U.S.C. 701(a));
 - 3. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
 5. Head Start Act (including Early Head Start programs under Section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);
 6. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
 7. Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));
 8. Child care programs in the state;
 9. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);
 10. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and
 11. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).
- b.* The department, with the advice and assistance of the council, must take steps to ensure that:
 - (1) There will not be unnecessary duplication of effort by the programs identified in paragraph 120.302(3) "a"; and
 - (2) The state will make use of the resources available through each public agency and EIS provider in the state to implement the child find system in an effective manner.

281—120.303(34CFR303) Referral procedures.

120.303(1) General. The child find system described in rule 281—120.302(34CFR303) must include the state's procedures for use by primary referral sources for referring a child under the age of three to the Part C program. The procedures required in this subrule must:

- a.* Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and
- b.* Meet the requirements in subrules 120.303(2) and 120.303(3).

120.303(2) Referral of specific at-risk infants and toddlers. The procedures required in subrule 120.303(1) must provide for requiring the referral of a child under the age of three who:

- a.* Is the subject of a substantiated case of child abuse or neglect; or
- b.* Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

120.303(3) Primary referral sources. As used in this division, primary referral sources include:

- a.* Hospitals, including prenatal and postnatal care facilities;
- b.* Physicians;
- c.* Parents, including parents of infants and toddlers;
- d.* Child care programs and early learning programs;
- e.* AEAs, LEAs and schools;
- f.* Public health facilities;
- g.* Other public health or social service agencies;
- h.* Other clinics and health care providers;
- i.* Public agencies and staff in the child welfare system, including child protective service and foster care;
- j.* Homeless family shelters; and
- k.* Domestic violence shelters and agencies.

281—120.304 to 120.309 Reserved.

281—120.310(34CFR303) Post-referral timeline (45 calendar days).

120.310(1) General. Except as provided in subrule 120.310(2), any screening under rule 281—120.320(34CFR303); the initial evaluation and the initial assessments of the child and family under rule 281—120.321(34CFR303); and the initial IFSP meeting under rule 281—120.342(34CFR303) must be completed within 45 calendar days from the date the public agency or EIS provider receives the referral of the child.

120.310(2) Limited exceptions. Subject to subrule 120.310(3), the 45-day timeline described in subrule 120.310(1) does not apply for any period when:

a. The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

b. The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the public agency or EIS provider to obtain parental consent.

120.310(3) Duties when limited exceptions occur. The department must develop procedures to ensure that in the event the circumstances described in subrule 120.310(2) exist, the public agency or EIS provider must:

a. Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the public agency or EIS provider to obtain parental consent;

b. Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph 120.310(2) "a" no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and

c. Develop and implement an interim IFSP, to the extent appropriate and consistent with rule 281—120.345(34CFR303).

120.310(4) Initial family assessment. The initial family assessment must be conducted within the 45-day timeline in subrule 120.310(1) if the parent concurs and even if other family members are unavailable.

281—120.311 to 120.319 Reserved.

281—120.320(34CFR303) Screening procedures.

120.320(1) General.

a. The department may adopt procedures, consistent with this rule, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this chapter. If a public agency or EIS provider proposes to screen a child, the agency or EIS provider must:

(1) Provide the parent notice under rule 281—120.421(34CFR303) of the public agency's or EIS provider's intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under rule 281—120.321(34CFR303) at any time during the screening process; and

(2) Obtain parental consent as required in subrule 120.420(1) before conducting the screening procedures.

b. If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided under rule 281—120.421(34CFR303) and once parental consent is obtained as required in rule 281—120.420(34CFR303), an evaluation and assessment of the child must be conducted under rule 281—120.321(34CFR303); or

(2) Not suspected of having a disability, the public agency or EIS provider must ensure that notice of that determination is provided to the parent under rule 281—120.421(34CFR303), and that the notice describes the parent's right to request an evaluation.

c. If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under rule 281—120.321(34CFR303), even if the

public agency or EIS provider has determined under subparagraph 120.320(1)“b”(2) that the child is not suspected of having a disability.

120.320(2) *Definition of screening procedures.* As used in this rule, “screening procedures”:

a. Means activities under subrule 120.320(1) that are carried out by, or under the supervision of, a public agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and

b. Includes the administration of appropriate instruments by personnel trained to administer those instruments.

120.320(3) *Condition for evaluation or early intervention services.* For every child under the age of three who is referred to the Part C program or screened in accordance with subrule 120.320(1), the applicable agency is not required to:

a. Provide an evaluation of the child under rule 281—120.321(34CFR303) unless the child is suspected of having a disability or the parent requests an evaluation under paragraph 120.320(1)“c”; or

b. Make Early ACCESS services available under this chapter to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under rule 281—120.21(34CFR303).

120.320(4) *Rules of construction.*

a. This rule does not apply to activities undertaken by entities not regulated by this chapter, activities that are undertaken by grantees, signatory agencies, Early ACCESS providers prior to referral, activities undertaken after consent for an evaluation and assessment under rule 281—120.321(34CFR303) is received, or to activities taken pursuant to an IFSP.

b. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child’s performance might be explained because the child is an eligible individual under this chapter.

281—120.321(34CFR303) Evaluation of the child and assessment of the child and family.

120.321(1) *General.* The department must ensure that, subject to obtaining parental consent in accordance with subrule 120.420(1), each child under the age of three who is referred for evaluation or early intervention services under this chapter and suspected of having a disability receives:

a. A timely, comprehensive, multidisciplinary evaluation of the child in accordance with subrule 120.321(4) unless eligibility is established in paragraph 120.321(3)“a”; and

b. If the child is determined eligible as an infant or toddler with a disability as defined in rule 281—120.21(34CFR303):

(1) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(2) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in subrule 120.321(5), and these assessments may occur simultaneously with the evaluation, provided that the requirements of subrule 120.321(4) are met.

120.321(2) *Definitions.* As used in this chapter:

a. “Evaluation” means the procedures used by qualified personnel to determine a child’s initial and continuing eligibility under this chapter, consistent with the definition of infant or toddler with a disability in rule 281—120.21(34CFR303);

b. “Initial evaluation” means the child’s evaluation to determine the child’s initial eligibility under this chapter;

c. “Assessment” means the ongoing procedures used by qualified personnel to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child’s eligibility under this chapter and includes the assessment of the child, consistent with paragraph 120.321(5)“a” and the assessment of the child’s family, consistent with paragraph 120.321(5)“b”; and

d. “Initial assessment” means the assessment of the child and the family assessment conducted prior to the child’s first IFSP meeting.

120.321(3) General procedures.

a. A child’s medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this chapter if those records indicate that the child’s level of functioning in one or more of the developmental areas identified in subrule 120.21(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under rule 281—120.21(34CFR303). If the child’s Part C eligibility is established under this paragraph, the public agency or EIS provider must conduct assessments of the child and family in accordance with subrule 120.321(5).

b. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department must ensure that informed clinical opinion may be used as an independent basis to establish a child’s eligibility under this chapter even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under subrule 120.321(4).

c. All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

d. Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

e. Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

120.321(4) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child’s eligibility under this chapter. Procedures must include:

a. Administering an evaluation instrument;

b. Taking the child’s history (including interviewing the parent);

c. Identifying the child’s level of functioning in each of the developmental areas in subrule 120.21(1);

d. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child’s unique strengths and needs; and

e. Reviewing medical, educational, or other records.

120.321(5) Procedures for assessment of the child and family.

a. An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

- (1) A review of the results of the evaluation conducted under subrule 120.321(4);
- (2) Personal observations of the child; and
- (3) The identification of the child’s needs in each of the developmental areas in subrule 120.21(1).

b. A family-directed assessment must be conducted by qualified personnel in order to identify the family’s resources, priorities, and concerns and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the family’s infant or toddler with a disability. The family-directed assessment must:

- (1) Be voluntary on the part of each family member participating in the assessment;
- (2) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
- (3) Include the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.

281—120.322(34CFR303) Determination that a child is not eligible. If, based on the evaluation conducted under rule 281—120.321(34CFR303), the applicable agency determines that a child is not

eligible under this chapter, the agency must provide the parent with prior written notice required in rule 281—120.421(34CFR303), and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under rule 281—120.430(34CFR303), such as requesting a due process hearing or mediation or filing a state complaint.

281—120.323 to 120.339 Reserved.

281—120.340(34CFR303) Individualized family service plan—general. For each infant or toddler with a disability, the department must ensure the development, review, and implementation of an individualized family service plan developed by a multidisciplinary team, which includes the parent, that is consistent with the definition of individualized family service plan in rule 281—120.20(34CFR303) and satisfies rules 281—120.342(34CFR303) through 281—120.346(34CFR303).

281—120.341 Reserved.

281—120.342(34CFR303) Procedures for IFSP development, review, and evaluation.

120.342(1) *Meeting to develop initial IFSP—timelines.* For a child referred to the Early ACCESS system and determined to be eligible under this chapter as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in rule 281—120.310(34CFR303).

120.342(2) *Periodic review.*

a. A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(2) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

b. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

120.342(3) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under rule 281—120.321(34CFR303) must be used in determining the early intervention services that are needed and will be provided.

120.342(4) *Accessibility and convenience of meetings.*

a. IFSP meetings must be conducted:

(1) In settings and at times that are convenient for the family; and

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

120.342(5) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent, as described in rule 281—120.7(34CFR303), must be obtained, as required in subrule 120.420(1), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in subrule 120.344(6).

281—120.343(34CFR303) IFSP team meeting and periodic review.

120.343(1) *Initial and annual IFSP team meeting.*

a. Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(1) The parent or parents of the child.

- (2) Other family members, as requested by the parent, if feasible to do so.
- (3) An advocate or person outside of the family, if the parent requests that the person participate.
- (4) The service coordinator designated by the public agency to be responsible for implementing the IFSP.
- (5) A person or persons directly involved in conducting the evaluations and assessments in rule 281—120.321(34CFR303).
- (6) As appropriate, persons who will be providing early intervention services under this chapter to the child or family.
 - b.* If a person listed in subparagraph 120.343(1) “a”(5) is unable to attend a meeting, arrangements must be made for the person’s involvement through other means, including one of the following:
 - (1) Participating in a telephone conference call.
 - (2) Having a knowledgeable authorized representative attend the meeting.
 - (3) Making pertinent records available at the meeting.

120.343(2) Periodic review. Each periodic review under subrule 120.342(2) must provide for the participation of persons in subparagraphs 120.343(1) “a”(1) through (4). If conditions warrant, provisions must be made for the participation of other representatives identified in subrule 120.343(1).

281—120.344(34CFR303) Content of an IFSP.

120.344(1) Information about the child’s status. The IFSP must include a statement of the infant or toddler with a disability’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child’s evaluation and assessments conducted under rule 281—120.321(34CFR303).

120.344(2) Family information. With the concurrence of the family, the IFSP must include a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under paragraph 120.321(5) “b.”

120.344(3) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including preliteracy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine:

- a.* The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
- b.* Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

120.344(4) Early intervention services.

a. The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in subrule 120.344(3), including:

- (1) The length, duration, frequency, intensity, and method of delivering the early intervention services;
- (2) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with paragraph 120.13(1) “h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303), or, subject to subparagraph 120.344(4) “a”(3), a justification as to why an early intervention service will not be provided in the natural environment;

(3) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

1. Made by the IFSP team (which includes the parent and other team members);
2. Consistent with the provisions in paragraph 120.13(1) “h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303); and

3. Based on the child's outcomes identified by the IFSP team in subrule 120.344(3);
 - (4) The location of the early intervention services; and
 - (5) The payment arrangements, if any.
- b.* As used in this subrule:
- (1) "Frequency and intensity" means the number of days or sessions that a service will be provided and whether the service is provided on an individual or group basis.
 - (2) "Method" means how a service is provided.
 - (3) "Length" means the length of time the service is provided during each session of that service (such as an hour or other specified time period).
 - (4) "Duration" means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in the child's IFSP).
 - (5) "Location" means the actual place or places where a service will be provided.
- 120.344(5) Other services.** To the extent appropriate, the IFSP also must:
- a.* Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this chapter; and
 - b.* If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.
- 120.344(6) Dates and duration of services.** The IFSP must include:
- a.* The projected date for the initiation of each early intervention service in subrule 120.344(4), which date must be as soon as possible after the parent consents to the service, as required in subrules 120.342(5) and 120.420(1); and
 - b.* The anticipated duration of each service.
- 120.344(7) Service coordinator.** The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons. In satisfying this subrule, the term "profession" includes "service coordination."
- 120.344(8) Transition from Part C services.**
- a.* The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with rule 281—120.209(34CFR303), from Part C services to:
 - (1) Preschool services under Part B of the Act, to the extent that those services are appropriate; or
 - (2) Other appropriate services.
 - b.* The steps required in paragraph 120.344(8) "a" must include:
 - (1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - (2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
 - (3) Confirmation that child find information about the child has been transmitted to the AEA or other relevant agency, in accordance with subrule 120.209(2) and, with parental consent if required under rule 281—120.414(34CFR303), transmission of additional information needed by the AEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with rules 281—120.340(34CFR30) through 281—120.345(34CFR303); and
 - (4) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

281—120.345(34CFR303) Interim IFSPs—provision of services before evaluations and assessments are completed. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in rule 281—120.321(34CFR303), if the following conditions are met:

- 120.345(1)** Parental consent is obtained.

120.345(2) An interim IFSP is developed that includes the name of the service coordinator who will be responsible, consistent with subrule 120.344(7), for implementing the interim IFSP and coordinating with other agencies and persons and includes the early intervention services that have been determined to be needed immediately by the child and the child's family.

120.345(3) Evaluations and assessments are completed within the 45-day timeline in rule 281—120.310(34CFR303).

281—120.346(34CFR303) Responsibility and accountability. Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good-faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP, so long as the child's IFSP was reasonably calculated to confer benefit and was implemented.

281—120.347(256B,34CFR303) Family support mentoring program. Rule 281—41.329(256B,34CFR300) is incorporated herein by this reference.

This rule is intended to implement Iowa Code section 256B.10.

281—120.348 to 120.399 Reserved.

DIVISION VI
PROCEDURAL SAFEGUARDS

281—120.400(34CFR303) General responsibility of lead agency for procedural safeguards. Subject to subrule 120.400(3), the department must:

120.400(1) Establish or adopt the procedural safeguards that satisfy this division, including the provisions on confidentiality in rules 281—120.401(34CFR303) through 281—120.417(34CFR303), parental consent and notice in rules 281—120.420(34CFR303) and 281—120.421(34CFR303), surrogate parents in rule 281—120.422(34CFR303), and dispute resolution procedures in rule 281—120.430(34CFR303);

120.400(2) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this chapter; and

120.400(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

281—120.401(34CFR303) Confidentiality and opportunity to examine records.

120.401(1) General. The state must ensure that the parents of a child referred under this chapter are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with federal and state laws.

120.401(2) Confidentiality procedures. As required under Sections 617(c) and 642 of the Act, rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including the department and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. The state must have procedures in effect to ensure that:

a. Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

b. The parents of infants or toddlers who are referred to or receive services under this chapter are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this chapter, including records related to

evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this chapter.

120.401(3) *Applicability and time frame of procedures.* The confidentiality procedures described in subrule 120.401(2) apply to the personally identifiable information of a child and the child's family that:

a. Is contained in early intervention records collected, used, or maintained under this chapter by the department or an EIS provider; and

b. Applies from the point in time when the child is referred for early intervention services under this chapter until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

120.401(4) *Disclosure of information: transition from Part C to Part B.*

a. The department shall disclose to the AEA where the child resides, in accordance with subrule 120.209(2), the following personally identifiable information under the Act:

(1) A child's name.

(2) A child's date of birth.

(3) Parent contact information (including parents' names, addresses, and telephone numbers).

b. The information described in this subrule is needed to enable the department, as well as LEAs and AEAs under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.

281—120.402(34CFR303) Confidentiality. The Secretary takes appropriate action, in accordance with Section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by all lead agencies and EIS providers pursuant to Part C of the Act and consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303). Rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including state lead agencies and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR Part 99.

281—120.403(34CFR303) Definitions. The following definitions apply to rules 281—120.402(34CFR303) through 281—120.417(34CFR303) in addition to the definition of "personally identifiable information" in rule 281—120.29(34CFR303) and the definition of "disclosure" in 34 CFR 99.3:

120.403(1) "Destruction" means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under rule 281—120.29(34CFR303).

120.403(2) "Early intervention records" means all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the rules in this chapter.

120.403(3) "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement Part C of the Act and the rules in this chapter with respect to a particular child. A participating agency includes the department and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments), but does not include primary referral sources, or public agencies (such as the state Medicaid program or CHIP) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

281—120.404(34CFR303) Notice to parents. The relevant agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about rule 281—120.402(34CFR303), including:

120.404(1) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

120.404(2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

120.404(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

120.404(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

281—120.405(34CFR303) Access rights.

120.405(1) General. Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to subrule 120.430(4) and rules 281—120.435(34CFR303) through 281—120.439(34CFR303), and in no case more than ten days after the request is made.

120.405(2) Inspect and review. The right to inspect and review early intervention records under this rule includes:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

b. The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the early intervention records.

120.405(3) Rule of construction. An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

281—120.406(34CFR303) Record of access. Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

281—120.407(34CFR303) Records on more than one child. If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—120.408(34CFR303) List of types and locations of information. Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

281—120.409(34CFR303) Fees for records.

120.409(1) General. Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in subrule 120.409(3).

120.409(2) No fees to search or retrieve. A participating agency may not charge a fee to search for or to retrieve information under this chapter.

120.409(3) *Copies of certain documents at no cost.* A participating agency must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

281—120.410(34CFR303) Amendment of records at a parent's request.

120.410(1) *Parent permitted to request amendment.* A parent who believes that information in the early intervention records collected, maintained, or used under this chapter is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

120.410(2) *Agency to act on parent's request.* The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

120.410(3) *Agency to inform parent of hearing rights.* If the participating agency refuses to amend the information in accordance with the request, the participating agency must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—120.411(34CFR303).

281—120.411(34CFR303) Opportunity for a hearing. The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in subrule 120.430(4), provided that such hearing procedures satisfy the hearing procedures in rule 281—120.413(34CFR303), or may request a hearing directly under rule 281—120.413(34CFR303).

281—120.412(34CFR303) Result of hearing.

120.412(1) *Information to be amended.* If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, the participating agency must amend the information accordingly and so inform the parent in writing.

120.412(2) *Information not to be amended.* If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency must inform the parent of the right to place in the early intervention records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

120.412(3) *Explanation placed in records.* Any explanation placed in the early intervention records of the child under this rule must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency. If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—120.413(34CFR303) Hearing procedures. A hearing held under rule 281—120.411(34CFR303) will be conducted according to the procedures under 34 CFR 99.22.

281—120.414(34CFR303) Consent prior to disclosure or use.

120.414(1) *General.* Except as provided in subrule 120.414(2), prior parental consent must be obtained before personally identifiable information is:

a. Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this chapter, subject to subrule 120.414(2); or

b. Used for any purpose other than meeting a requirement of this chapter.

120.414(2) *Exceptions.* The department or other participating agency may not disclose personally identifiable information, as defined in rule 281—120.29(34CFR303), to any party except participating

agencies (including the department and EIS providers) that are part of the state's Part C system without parental consent unless authorized to do so under:

- a. Subrules 120.401(1) and 120.209(2); or
 - b. One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this chapter, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39. In applying these provisions in 34 CFR Part 99 to Part C, the reference to:
 - (1) 34 CFR 99.30 means subrule 120.414(1);
 - (2) "Education records" means early intervention records under subrule 120.403(2);
 - (3) "Educational" means early intervention under this chapter;
 - (4) "Educational agency or institution" means the participating agency under subrule 120.403(3);
 - (5) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this chapter;
 - (6) "State and local educational authorities" means the department and EIS providers and grantees; and
 - (7) "Student" means child under this chapter.

120.414(3) Policies and procedures regarding refusal to provide consent. The department must provide policies and procedures to be used when a parent refuses to provide consent under this rule (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this chapter), provided that those procedures do not override a parent's right to refuse consent under rule 281—120.420(34CFR303).

281—120.415(34CFR303) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under rules 281—120.401(34CFR303) through 281—120.417(34CFR303) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—120.416(34CFR303) Destruction of information.

120.416(1) Notification to parent. The participating agency must inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR Parts 76 and 80.

120.416(2) Mandatory and permissive destruction of personally identifiable information. Subject to subrule 120.416(1), the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and telephone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit and any programs entered into upon exiting) may be maintained without time limitation.

120.416(3) Rule of construction—"no longer needed to provide services." For purposes of this rule, "no longer needed to provide services" means that a record is no longer relevant to the provision of Early ACCESS services and is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes will be retained for five years after completion of the activity for which funds were used.

281—120.417(34CFR303) Enforcement. The department must have in effect the policies and procedures, including sanctions and the right to file a complaint under rules 281—120.432(34CFR303) through 281—120.434(34CFR303), that the department uses to ensure that its policies and procedures,

consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303), are followed and that the Act and the rules in this chapter are met.

281—120.418 and 120.419 Reserved.

281—120.420(34CFR303) Parental consent and ability to decline services.

120.420(1) General. The relevant agency must ensure parental consent is obtained before:

- a. Administering screening procedures under rule 281—120.320(34CFR303) that are used to determine whether a child is suspected of having a disability;
- b. All evaluations and assessments of a child are conducted under rule 281—120.321(34CFR303);
- c. Early intervention services are provided to a child under this chapter;
- d. Public benefits or insurance or private insurance is used if such consent is required under rule 281—120.520(34CFR303); and
- e. Disclosure of personally identifiable information consistent with rule 281—120.414(34CFR303).

120.420(2) Parent refusal to consent. If a parent does not give consent under paragraph 120.420(1) “a,” “b,” or “c,” the agency must make reasonable efforts to ensure that the parent:

- a. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that may be available; and
- b. Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

120.420(3) Due process procedures unavailable. The agency may not use the due process hearing procedures under this chapter to challenge a parent’s refusal to provide any consent that is required under subrule 120.420(1).

120.420(4) Parent rights. The parents of an infant or toddler with a disability:

- a. Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any Early ACCESS service under this chapter at any time, in accordance with state law; and
- b. May decline a service after first accepting it, without jeopardizing other early intervention services under this chapter.

281—120.421(34CFR303) Prior written notice and procedural safeguards notice.

120.421(1) General. Prior written notice must be provided to parents a reasonable time before an agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the parents’ infant or toddler or the provision of early intervention services to the infant or toddler with a disability and that infant’s or toddler’s family.

120.421(2) Content of notice. The notice must be in sufficient detail to inform parents about:

- a. The action that is being proposed or refused;
- b. The reasons for taking the action; and
- c. All procedural safeguards that are available under this chapter, including a description of mediation in rule 281—120.431(34CFR303), how to file a state complaint in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) and a due process complaint in the provisions adopted under subrule 120.430(4), and any timelines under those procedures.

120.421(3) Native language.

- a. The notice must be:
 - (1) Written in language understandable to the general public; and
 - (2) Provided in the native language, as defined in rule 281—120.25(34CFR303), of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- b. If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that:
 - (1) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication;

- (2) The parent understands the notice; and
- (3) There is written evidence that this subrule has been satisfied.

281—120.422(34CFR303) Surrogate parents.

120.422(1) General. The department or other public agency must ensure that the rights of a child are protected when:

- a. No parent (as defined in rule 281—120.27(34CFR303)) can be identified;
- b. The department or AEA, after reasonable efforts, cannot locate a parent; or
- c. The child is a ward of the state under the laws of the state.

120.422(2) Duty of other public agencies.

a. The duty of the AEA under subrule 120.422(1) includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for:

- (1) Determining whether a child needs a surrogate parent; and
- (2) Assigning a surrogate parent to the child.

b. In implementing the provisions under this rule for children who are wards of the state or placed in foster care, the AEA must consult with the public agency that has been assigned care of the child.

120.422(3) Wards of the state. In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the AEA under subrule 120.422(2), may be appointed by the judge presiding over the infant's or toddler's case provided that the surrogate parent satisfies subrules 120.422(4) and 120.422(5).

120.422(4) Criteria for selection of surrogate parents.

a. The AEA may select a surrogate parent in any way permitted under state law.

b. The AEA must ensure that a person selected as a surrogate parent:

- (1) Is not an employee of the department or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
- (2) Has no personal or professional interest that conflicts with the interest of the child the person represents; and
- (3) Has knowledge and skills that ensure adequate representation of the child.

120.422(5) Nonemployee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under subrule 120.422(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

120.422(6) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this chapter.

120.422(7) Department responsibility. The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—120.423 to 120.429 Reserved.

281—120.430(34CFR303) State dispute resolution options.

120.430(1) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described in subrules 120.430(2) through 120.430(6).

120.430(2) Mediation. The department must make available to parties to disputes involving any matter under this chapter the opportunity for mediation that satisfies rule 281—120.431(34CFR303).

120.430(3) State complaint procedures. The department must adopt written state complaint procedures that satisfy rule 281—120.432(34CFR303) to resolve any state complaints filed by any party regarding any violation of this chapter.

120.430(4) Due process hearing procedures. The department must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter

identified in subrule 120.421(1). The department adopts the Part C due process hearing procedures under Section 639 of the Act.

120.430(5) *Status of a child during the pendency of a due process complaint.* During the pendency of any proceeding involving a due process complaint under subrule 120.430(4), unless the agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under subrule 120.430(4) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

120.430(6) *Status of a child during the pendency of mediation.* During the pendency of any request for mediation under subrule 120.430(2) and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference will continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents. If the mediation involves an application for initial services under Part C of the Act, the child will receive those services that are not in dispute.

281—120.431(34CFR303) Mediation.

120.431(1) *General.* The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(2) *Requirements.* The procedures must meet the following provisions:

- a.* The procedures must ensure that the mediation process:
 - (1) Is voluntary on the part of the parties;
 - (2) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
 - (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- b.* The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other impartial basis.
- c.* The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).
- d.* Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- e.* If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:
 - (1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (2) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
- f.* A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- g.* Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under Part C of the Act.

120.431(3) *Impartiality of mediator.*

- a.* An individual who serves as a mediator under this chapter:
 - (1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
 - (2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) Meeting to encourage mediation. The department may establish procedures to offer to parents and EIS providers that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

a. Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

b. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

281—120.432(34CFR303) Adoption of state complaint procedures. The state complaint procedures in rules 281—41.151(256B,34CFR300) through 281—41.153(256B,34CFR300), inclusive, are made applicable to this chapter by reference.

281—120.433 and 120.434 Reserved.

281—120.435(34CFR303) Appointment of an administrative law judge.

120.435(1) Qualifications and duties. Whenever a due process complaint is received under subrule 120.430(4), the department will appoint an impartial administrative law judge (ALJ) to implement the complaint resolution process in this chapter. The person must:

a. Have knowledge about the provisions of Part C of the Act and of this chapter and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

b. Perform the following duties:

- (1) Listen to the presentation of relevant viewpoints about the due process complaint;
- (2) Examine all information relevant to the issues;
- (3) Seek to reach a timely resolution of the due process complaint; and
- (4) Provide a record of the proceedings, including a written decision.

120.435(2) Definition of “impartial.”

a. “Impartial” means that the administrative law judge appointed to implement the due process hearing under this chapter:

(1) Is not an employee of the department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with the ALJ’s objectivity in implementing the process.

b. A person who otherwise qualifies under this subrule is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this chapter.

281—120.436(34CFR303) Parental rights in due process hearing proceedings.

120.436(1) General. The department must ensure that the parents of a child referred to or receiving Part C services are afforded the rights in subrule 120.436(2) in the due process hearing carried out under subrule 120.430(4).

120.436(2) Rights of parents. Any parent involved in a due process hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;

b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;

d. Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

e. Receive a written copy of the findings of fact and decisions at no cost to the parent.

120.436(3) *Other party rights.* Any public agency or EIS provider that is a party to a due process hearing under subrule 120.430(4) has each of the rights listed in subrule 120.436(2).

281—120.437(34CFR303) Convenience of hearings and timelines.

120.437(1) *Time and place.* Any due process hearing conducted under this chapter must be carried out at a time and place that is reasonably convenient to the parents.

120.437(2) *Timeline for ALJ decision.* The department must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this chapter is completed and a written decision mailed to each of the parties.

120.437(3) *Extension of ALJ timeline.* An ALJ may grant specific extensions of time beyond the period set out in subrule 120.437(2) at the request of either party.

281—120.438(34CFR303) Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.

281—120.439(34CFR303) Limitation of actions.

120.439(1) *Limitation: due process complaints.* A parent, agency, or EIS provider must request an impartial hearing on the due process complaint within two years of the date the parent, agency, or provider knew or should have known about the alleged action that forms the basis of the due process complaint.

120.439(2) *Exceptions to timeline.* The timeline described in subrule 120.439(1) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by an agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

b. The agency's or EIS provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

120.439(3) *Limitation: civil action.* The party bringing the civil action under rule 281—120.438(34CFR303) shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

281—120.440(34CFR303) Rule of construction. Nothing in this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 639 of the Act, the procedures under this chapter must be exhausted to the same extent as would be required had the action been brought under Section 639 of the Act.

281—120.441(34CFR303) Attorney fees. Reasonable attorney fees are available to a prevailing party (parent or, in certain circumstances, public agency or EIS provider) in a due process hearing or a mediation conference to the extent those fees are available under the Act. No fees are available under the state complaint procedure in subrule 120.430(3).

281—120.442 to 120.448 Reserved.

281—120.449(34CFR303) State enforcement mechanisms. Notwithstanding subrule 120.431(2), which provides for judicial enforcement of a written agreement reached as a result of a mediation, there is nothing in this chapter that would prevent the state from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—120.450 to 120.499 Reserved.

DIVISION VII
USE OF FUNDS; PAYOR OF LAST RESORT

281—120.500(34CFR303) Use of funds, payor of last resort, and system of payments.

120.500(1) *Statewide system.* The statewide system must include written policies and procedures that satisfy the following:

- a.* Use of funds provisions in rule 281—120.501(34CFR303); and
- b.* Payor of last resort provisions in rules 281—120.510(34CFR303) through 281—120.521(34CFR303) (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the state).

120.500(2) *System of payments.* The state may establish, consistent with subrules 120.13(1) and 120.203(2), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as copayments, premiums, or deductibles) required to be paid under federal, state, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that satisfies rules 281—120.520(34CFR303) and 281—120.521(34CFR303).

281—120.501(34CFR303) Permissive use of funds by the department. Consistent with rules 281—120.120(34CFR303) through 281—120.122(34CFR303) and 281—120.220(34CFR303) through 281—120.226(34CFR303), the department may use funds under this chapter for activities or expenses that are reasonable and necessary for implementing Early ACCESS, including funds:

120.501(1) For direct early intervention services for infants and toddlers with disabilities and their families under this chapter that are not otherwise funded through other public or private sources (subject to rules 281—120.510(34CFR303) through 281—120.521(34CFR303));

120.501(2) To expand and improve services for infants and toddlers with disabilities and their families under this chapter that are otherwise available; and

120.501(3) In any state that does not provide services under 34 CFR 303.204 for at-risk infants and toddlers, as defined in rule 281—120.5(34CFR303), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:

- a.* Identifying and evaluating at-risk infants and toddlers;
- b.* Making referrals for the infants and toddlers identified and evaluated under paragraph 120.501(3) "a"; and
- c.* Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this chapter.

281—120.502 to 120.509 Reserved.

281—120.510(34CFR303) Payor of last resort.

120.510(1) *Nonsubstitution of funds.* Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281—120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281—120.115(34CFR303) through 281—120.117(34CFR303) and rules 281—120.301(34CFR303) through 281—120.320(34CFR303);

and evaluations and assessments in rule 281—120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) *Nonreduction of benefits.* Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

281—120.511(34CFR303) Methods to ensure the provision of, and financial responsibility for, Early ACCESS services.

120.511(1) *General.* The state must ensure that it has in place methods for interagency coordination. Under these methods, the governor must ensure that the interagency agreement or other method for interagency coordination is in effect between the department and each signatory agency in order to ensure:

a. The provision of, and establishing financial responsibility for, early intervention services provided under this chapter; and

b. Such services are consistent with the requirement in Section 635 of the Act and the state's application under Section 637 of the Act, including the provision of such services during the pendency of any dispute between state agencies.

120.511(2) *Methods.* The methods in subrule 120.511(1) must satisfy this rule and be set forth in one of the following:

a. State law or rule;

b. Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

c. Other appropriate written methods determined by the governor, or the governor's designee, and approved by the Secretary through the review and approval of the state's application.

120.511(3) *Procedures for resolving disputes.*

a. Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service or disputes about other matters related to Early ACCESS. Those procedures must include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or the department to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

b. The method must:

(1) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(2) Include the process that the department will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

c. If, during the department's resolution of the dispute, the governor, governor's designee, or department determines that the assignment of financial responsibility under this rule was inappropriately made:

(1) The governor, governor's designee, or department must reassign the financial responsibility to the appropriate agency; and

(2) The department must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

120.511(4) *Delivery of services in a timely manner.* The methods adopted by the state under this rule must:

a. Include a mechanism to ensure that no services that a child is entitled to receive under this chapter are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

b. Be consistent with the written funding policies adopted by the state under this division and include any provisions the state has adopted under rule 281—120.520(34CFR303) regarding the use of insurance to pay for Part C services.

120.511(5) Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the department's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in Early ACCESS.

281—120.512 to 120.519 Reserved.

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) Use of public benefits or public insurance to pay for Early ACCESS services.

a. The state may not use the public benefits or insurance of a child or parent to pay for Part C services unless the state provides written notification, consistent with paragraph 120.521(1) “*c*,” to the child's parents, and the state meets the no-cost protections identified in paragraph 120.520(1) “*b*.”

b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home- and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1) “*b*,” the state must still make available those Part C services on the IFSP to which the parent has provided consent.

c. Prior to the state's using a child's or parent's public benefits or insurance to pay for Part C services, the state must provide written notification to the child's parents. The notification must include:

(1) A statement that parental consent must be obtained under rule 281—120.414(34CFR303), if that rule applies, before the department or EIS provider discloses, for billing purposes, a child's personally identifiable information to the department of health and human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid);

(2) A statement of the no-cost protection provisions in subrule 120.520(1) and that if the parent does not provide the consent under that subrule, the agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right under rule 281—120.414(34CFR303), if that rule applies, to withdraw their consent to disclosure of personally identifiable information to the department of health and human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as copayments or deductibles, or the required use of private insurance as the primary insurance).

d. If a state requires a parent to pay any costs that the parent would incur as a result of the state's using a child's or parent's public benefits or insurance to pay for Part C services (such as copayments

or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303) and included in the notification provided to the parent under paragraph 120.520(1) "c"; otherwise, the state cannot charge those costs to the parent.

120.520(2) *Use of private insurance to pay for Part C services.*

a. The state may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use private insurance to pay for Part C services for the parent's child or the state meets one of the exceptions in paragraph 120.520(2) "d." This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

(1) When an agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(2) Each time consent for services is required under subrule 120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

b. If a state requires a parent to pay any costs that the parent would incur as a result of the state's use of private insurance to pay for early intervention services (such as copayments, premiums, or deductibles), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303); otherwise, the state may not charge those costs to the parent.

c. When obtaining parental consent required under paragraph 120.520(2) "a" or initially using benefits under a child's or parent's private insurance policy to pay for an early intervention service under paragraph 120.520(2) "d," the state must provide to the parent a copy of the state's system of payments policies that identifies the potential costs that the parent may incur when the parent's private insurance is used to pay for early intervention services under this chapter (such as copayments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

d. The parental consent requirements in paragraphs 120.520(2) "a" through "c" do not apply if the state has enacted a state statute regarding private health insurance coverage for early intervention services under Part C of the Act that expressly provides that:

(1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(2) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(3) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

e. If the state has enacted a state statute that satisfies paragraph 120.520(2) "d," regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under subrule 120.225(2) in the next federal fiscal year following the effective date of the statute.

120.520(3) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the state's definition of inability to pay under subrule 120.521(1) and does not provide consent under paragraphs 120.520(2) "a" and "b," the lack of consent may not be used to delay or deny any services under this chapter to that child or family.

120.520(4) *Proceeds or funds from public insurance or benefits or from private insurance.*

a. Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

b. If the state receives reimbursements from federal funds (e.g., Medicaid reimbursements attributable directly to federal funds) for services under Part C of the Act, those funds are considered neither state nor local funds under subrule 120.225(2).

c. If the state spends funds from private insurance for services under this chapter, those funds are considered neither state nor local funds under rule 281—120.225(34CFR303).

120.520(5) *Funds received from a parent or family member under the state's system of payments.* Funds received by the state from a parent or family member under the state's system of payments established under rule 281—120.521(34CFR303) are considered program income under 34 CFR 80.25. These funds:

a. Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

b. Must be used for the state's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

c. Are considered neither state nor local funds under subrule 120.225(2).

281—120.521(34CFR303) System of payments and fees.

120.521(1) *General.* If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include:

a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;

b. The basis and amount of payments or fees;

c. The state's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the state makes its determination of the ability or inability to pay;

d. An assurance that:

(1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this subrule and subrules 120.521(2) and 120.521(3));

(2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter to the child or the child's family such that, if the parent or family meets the state's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;

(3) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(4) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

e. Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

f. Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).

b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).

c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).

d. Administrative and coordinative activities related to:

(1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and

(2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) *FAPE mandates or use of funds under Part B of the Act to serve children under age three.* If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the provisions of both Parts B and C of the Act.

120.521(4) *Family fees.*

a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) *Procedural safeguards.*

a. The state's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do one of the following:

- (1) Participate in mediation in accordance with rule 281—120.431(34CFR303).
- (2) Request a due process hearing under rule 281—120.436(34CFR303).
- (3) File a state complaint under rule 281—120.434(34CFR303).
- (4) Use any other procedure established by the state for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

- (1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or
- (2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).

281—120.522 to 120.599 Reserved.

DIVISION VIII STATE INTERAGENCY COORDINATING COUNCIL

281—120.600(34CFR303) Establishment of council.

120.600(1) *General.* The state establishes a state interagency coordinating council, as defined in rule 281—120.8(34CFR303).

120.600(2) *Appointment.* The council must be appointed by the governor. The governor must ensure that the membership of the council reasonably represents the population of the state.

120.600(3) *Chairperson.* The governor must designate a member of the council to serve as the chairperson of the council or delegate that responsibility to the members of the council. Any member of the council who is a representative of the lead agency designated under rule 281—120.201(34CFR303) may not serve as the chairperson of the council.

120.600(4) *Name of council.* The council established by this division shall be known as the Iowa council for Early ACCESS (council).

281—120.601(34CFR303) Composition.

120.601(1) *General.* The council must be composed as follows:

a. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged 6 years or younger.

b. At least 20 percent of the members must be public or private providers of early intervention services.

c. At least one member must be from the state legislature.

d. At least one member must be involved in personnel preparation.

e. At least one member must:

(1) Be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

f. At least one member must:

(1) Be from the unit of the department responsible for preschool services to children with disabilities; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of the department.

g. At least one member must be from the agency responsible for the state Medicaid program and CHIP.

h. At least one member must be from a Head Start or Early Head Start agency or program in the state.

i. At least one member must be from a state agency responsible for child care.

j. At least one member must be from the agency responsible for the state regulation of private health insurance.

k. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.

l. At least one member must be a representative from the state child welfare agency responsible for foster care.

m. At least one member must be from the state agency responsible for children's mental health.

120.601(2) *Members serving more than one role.* The governor may appoint one member to represent more than one program or agency listed in paragraphs 120.601(1) "g" through "m."

120.601(3) *Additional members permitted.* The council may include other members selected by the governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the state, from the Indian Health Service or the tribe or tribal council.

120.601(4) *Limitation on voting: conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

120.601(5) *Executive committee; other committees.* The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The department's Early ACCESS program coordinator shall be an ex officio member of the executive committee. The executive committee is responsible for initially reviewing and discussing information and issues that will be addressed by the full council; establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and facilitating the implementation of the interagency agreement among the signatory agencies. The council may establish or dissolve other standing or ad hoc committees from time to time and in the furtherance of its work.

281—120.602(34CFR303) Meetings.

120.602(1) *Minimum number of meetings.* The council will meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

120.602(2) Requirements for meetings. The meetings must:

- a. Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- b. To the extent appropriate, be open and accessible to the general public; and
- c. As needed, provide for interpreters for persons who are deaf or hard of hearing and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.

281—120.603(34CFR303) Use of funds by the council.

120.603(1) General. Subject to the approval by the governor, the council may use funds under this chapter to:

- a. Conduct hearings and forums;
- b. Reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives);
- c. Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;
- d. Hire staff; and
- e. Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.

120.603(2) No compensation for members. Except as provided in subrule 120.603(1), council members must serve without compensation from funds available under Part C of the Act.

281—120.604(34CFR303) Functions of the council; required duties.

120.604(1) Advising and assisting the department. The council must advise and assist the department in the performance of the department's responsibilities in Section 635(a)(10) of the Act, including:

- a. Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
- b. Assignment of financial responsibility to the appropriate agency;
- c. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under rules 281—120.115(34CFR303) and 281—120.302(34CFR303), monitoring and enforcement under rules 281—120.120(34CFR303) and 281—120.700(34CFR303) through 281—120.708(34CFR303), financial responsibility and provision of early intervention services under rules 281—120.202(34CFR303) and 281—120.511(34CFR303), and transition under rule 281—120.209(34CFR303); and
- d. Preparation of applications under this chapter and amendments to those applications.

120.604(2) Advising and assisting on transition. The council must advise and assist the department regarding the transition of toddlers with disabilities to preschool and other appropriate services.

120.604(3) Annual report to the governor and to the Secretary.

- a. The council must:
 - (1) Prepare and submit an annual report to the governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the state; and
 - (2) Submit the report to the Secretary by a date that the Secretary establishes.
- b. Each annual report must contain the information required by the Secretary for the year for which the report is made.

281—120.605(34CFR303) Authorized activities by the council. The council may carry out the following activities:

120.605(1) Advise and assist the department regarding the provision of appropriate services for children with disabilities from birth through age five.

120.605(2) Advise appropriate agencies in the state with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

120.605(3) Coordinate and collaborate with the state advisory council on early childhood education and care for children, as described in Section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other state interagency early learning initiatives, as appropriate.

281—120.606 to 120.699 Reserved.

DIVISION IX
FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

281—120.700(34CFR303) State monitoring and enforcement.

120.700(1) General. The department must:

- a.* Monitor the implementation of this chapter;
- b.* Make determinations annually about the performance of each EIS program, using the categories identified in subrule 120.703(2);
- c.* Enforce this chapter consistent with rule 281—120.704(34CFR303), using appropriate enforcement mechanisms listed therein; and
- d.* Report annually on the performance of the state and of each EIS program under this chapter as provided in rule 281—120.702(34CFR303).

120.700(2) Primary focus of monitoring activity. The primary focus of the state's monitoring activities must be on:

- a.* Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
- b.* Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

120.700(3) Indicators of performance and compliance. As a part of its responsibilities under subrule 120.700(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 120.700(4), and the indicators established by the Secretary for the state performance plans.

120.700(4) Monitoring; priority areas. The department must monitor each EIS program located in the state, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

- a.* Early intervention services in natural environments.
- b.* State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in Section 637(a)(9) of the Act.

120.700(5) Correction of noncompliance. In exercising its monitoring responsibilities under subrule 120.700(4), the state must ensure that when it identifies noncompliance with this chapter by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the state's identification of the noncompliance.

281—120.701(34CFR303) State performance plans and data collection.

120.701(1) General. The state must have in place a performance plan that satisfies Section 616 of the Act; is approved by the Secretary; and includes an evaluation of the state's efforts to implement the requirements and purposes of Part C of the Act, a description of how the state will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 303.700(d).

120.701(2) Review of state performance plan. The state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

120.701(3) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects data for a particular indicator through state monitoring or sampling, the state must collect and report data on those indicators for each EIS program at least once during the six-year period of a state performance plan.

c. Nothing in Part C of the Act or this chapter may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

281—120.702(34CFR303) State use of targets and reporting.

120.702(1) General. The state must use the targets established in the state's performance plan under rule 281—120.701(34CFR303) and the priority areas described in subrule 120.700(4) to analyze the performance of each EIS program in implementing Part C of the Act.

120.702(2) Public reporting and privacy.

a. Public report. The state must:

(1) Report annually to the public on the performance of each EIS program located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the Secretary under paragraph 120.702(2) "b"; and

(2) Make the state's performance plan under subrule 120.701(1), annual performance reports under this subrule, and the state's annual reports on the performance of each EIS program under this subrule available through public means, including by posting on the department's website, distribution to the media, and distribution to EIS programs.

(3) If the state, in satisfying this subrule, collects data through state monitoring or sampling, the state must include in its public report on EIS programs under this subrule the most recently available performance data on each EIS program and the date the data were collected.

b. State performance report. The state must report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) Review. The department shall annually review the performance of each EIS provider, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

120.703(2) Determination. Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

a. Meets the requirements and purposes of Part C of the Act;

b. Needs assistance in implementing the requirements of Part C of the Act;

c. Needs intervention in implementing the requirements of Part C of the Act; or

d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) Notice and opportunity for a hearing. For determinations made under paragraphs 120.703(2) "c" and "d," the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) Criteria for determinations. The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) *Adjustment or variance of determination.* In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

281—120.704(34CFR303) Enforcement.

120.704(1) *Needs assistance.* If the department determines, for two consecutive years, that an EIS provider needs assistance under paragraph 120.703(2) “b” in implementing the requirements of Part C of the Act, the department shall take one or more of the following actions:

a. Advise the EIS provider of available sources of technical assistance that may help the EIS provider address the areas in which the provider needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the U.S. Department of Education, other federal agencies, technical assistance providers approved by the Secretary or the department, and other federally funded nonprofit agencies, and requires the EIS provider to work with appropriate entities. This technical assistance may include:

(1) The provision of advice by experts to address the areas in which the EIS provider needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(3) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the EIS provider as a high-risk grantee and impose special conditions on the provider’s grant under this chapter.

120.704(2) *Needs intervention.* If the department determines, for three or more consecutive years, that an EIS provider needs intervention under paragraph 120.703(2) “c” in implementing the requirements of Part C of the Act, the following apply:

a. The department may take any of the actions described in subrule 120.704(1).

b. The department shall take one or both of the following actions:

(1) Require the EIS provider to prepare a corrective action plan or improvement plan if the department determines that the EIS provider should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act.

120.704(3) *Needs substantial intervention.* Notwithstanding subrules 120.704(1) and 120.704(2), at any time that the department determines that an EIS provider needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by an EIS program, the department shall withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act. In addition, the department may refer the matter to appropriate authorities, which include but are not limited to the Iowa department of justice or the auditor of state.

120.704(4) *Rule of construction.* The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the department’s disposal in its enforcement of this rule or any other rule in this chapter.

281—120.705(34CFR303) Withholding funds.

120.705(1) *General.* As a consequence of a determination made under rule 281—120.703(34CFR303) or enforcement of any provision of Part C of the Act and this chapter, the department may withhold some or all of the funds from an EIS provider or a program or service of an EIS provider.

120.705(2) *Hearing.* If the department intends to withhold funds, it shall provide notice and an opportunity for a hearing to an EIS provider. If a hearing is requested, the department may suspend payments to the EIS provider, suspend the authority of the EIS provider to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part C of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 120.705(1).

120.705(3) *Reinstatement.* If the EIS provider substantially rectifies the condition that prompted the initial withholding under subrule 120.705(1), then the department may reinstate payments. If an EIS provider disagrees with the department's decision that the provider has not substantially rectified the condition that prompted the initial withholding under subrule 120.705(1), the provider may request a hearing under subrule 120.705(2).

281—120.706(34CFR303) *Public attention.* Whenever the state receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704, the state must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to Section 616(e) of the Act and 34 CFR §303.704 to the attention of the public within the state, including by posting the notice on the department's website and distributing the notice to the media and to EIS programs.

281—120.707 Reserved.

281—120.708(34CFR303) *State enforcement.* Nothing in this division may be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the Act.

281—120.709(34CFR303) *State consideration of other state or federal laws.* In making the determinations required by subrule 120.703(2), in taking actions pursuant to rule 281—120.704(34CFR303), and in taking any other action under this chapter, the department may consider whether any agency or provider has complied with any other applicable state or federal law, including education law or disability law, or with any corrective action ordered by any competent authority for violation of such a law.

281—120.710 to 120.719 Reserved.

281—120.720(34CFR303) *Data requirements—general.*

120.720(1) *General.* The department must annually report to the Secretary and to the public on the information required by Section 618 of the Act at the times specified by the Secretary.

120.720(2) *Manner of reporting.* The department must submit the report to the Secretary in the manner prescribed by the Secretary.

281—120.721(34CFR303) *Annual report of children served—report requirement.*

120.721(1) *Date of count.* For the purposes of the annual report required by Section 618 of the Act and rule 281—120.720(34CFR303), the department must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year.

120.721(2) *Information in report.* The report must include:

a. The number and percentage of infants and toddlers with disabilities in the state, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to the department by tribes, tribal organizations, and consortia under 34 CFR 303.731(e)(1));

b. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

c. The number and percentage of at-risk infants and toddlers (as defined in Section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

120.721(3) Reserved.

120.721(4) *Dispute prevention and resolution data.* The report shall include the number of due process complaints filed under Section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

281—120.722(34CFR303) Data reporting.

120.722(1) *Protection of identifiable data.* The data described in Section 618(a) of the Act and in rule 281—120.721(34CFR303) must be publicly reported by the state in a manner that does not result in disclosure of data identifiable to individual children.

120.722(2) *Sampling.* If permitted by the Secretary, the state may obtain data in Section 618(a) of the Act through sampling.

281—120.723(34CFR303) Annual report of children served—certification. The department must include in its report a certification signed by an authorized official of the department that the information provided under rule 281—120.721(34CFR303) is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

281—120.724(34CFR303) Annual report of children served—other responsibilities of the department. In addition to meeting the requirements of rules 281—120.721(34CFR303) through 281—120.723(34CFR303), the department must conduct its own child count or use EIS providers to complete its child count. If the department uses EIS providers to complete its child count, then the department must establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services; establish dates by which those EIS providers must report to the department to ensure that the state complies with subrule 120.721(1); obtain certification from each EIS provider that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each EIS provider and prepare the report required under rules 281—120.721(34CFR303) through 281—120.723(34CFR303); and ensure that documentation is maintained to enable the department and the Secretary to audit the accuracy of the count.

281—120.725 to 120.800 Reserved.

DIVISION X
OTHER PROVISIONS

281—120.801(34CFR303) Early ACCESS system—state level.

120.801(1) *Lead agency.* The Iowa department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

a. Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;

b. Monitoring the agencies, institutions and organizations that provide early intervention services and supports;

c. Enforcing any obligations imposed under Part C of the Act on the agencies listed in paragraph 120.801(1)“b”;

d. Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph 120.801(1)“b”;

e. Correcting deficiencies that are identified through monitoring;

f. Adopting and carrying out complaint procedures;

g. Mediating any interagency disputes regarding early intervention services;

- h.* Establishing policies related to how early intervention services to eligible children and their families shall be paid for;
- i.* Establishing procedures to ensure the timely provision of services;
- j.* Ensuring that the following functions and services are provided at public expense:
 - (1) Child find requirements;
 - (2) Evaluation and assessment functions;
 - (3) Service coordination;
 - (4) Development and review of IFSPs;
 - (5) Implementation of procedural safeguards; and
 - (6) Other components of the statewide system of Early ACCESS;
- k.* Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and
- l.* Monitoring use of funds.

120.801(2) *Signatory agencies.* The departments of education, public health, and human services and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of health and human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive. The Iowa department of public health administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature.

120.801(3) *Interagency agreement.* In addition to the requirements set forth elsewhere in this chapter, the agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

- a.* Reflect the interagency vision and guiding principles of Early ACCESS;
- b.* Define the population to be served;
- c.* Identify roles, responsibilities and expectations of the signatory agencies;
- d.* Outline financial responsibilities of the signatory agencies;
- e.* Describe parameters for policy development and management decisions;
- f.* Describe procedures for resolving disputes;
- g.* Identify transition activities from Part C services;
- h.* Describe child find efforts; and
- i.* Describe the roles and responsibilities of the signatory agencies and assigned staff.

281—120.802(34CFR303) *Interagency service planning.* An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.

281—120.803(34CFR303) *System-level disputes.* System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes.

281—120.804(34CFR303) *Early ACCESS system—regional and community levels.*

120.804(1) *Early ACCESS grantees.* Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS

grantees shall be designated by the department and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the department.

a. Policies. Each grantee shall establish in accordance with this chapter the policies pertinent to a regional Early ACCESS system and shall make such policies available to the department upon request. At a minimum, such policies shall include the following:

(1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state;

(2) Policy to ensure that all infants and toddlers in the state who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(3) Policy regarding the development and implementation of individualized family service plans;

(4) Policy for the establishment and maintenance of standards to ensure that personnel necessary to carry out the requirements of this chapter are appropriately and adequately prepared and trained;

(5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination;

(6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under this chapter; and

(7) Any other policy required to carry out the purposes of this chapter.

b. Procedures. Each grantee shall develop, in accordance with this chapter, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include the following:

(1) Procedures to ensure that all infants and toddlers who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services;

(3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators;

(4) Procedures to ensure documentation and the development and implementation of an interim IFSP, when circumstances warrant under this chapter;

(5) Procedures for conducting nondiscriminatory evaluation and assessment;

(6) Procedures for the development and implementation of individualized family service plans;

(7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained;

(8) Procedures for ensuring procedural safeguards that meet the requirements of this chapter;

(9) Procedures for ensuring maintenance and confidentiality of records;

(10) Procedures to allow parties to disputes to resolve the disputes through a mediation process;

(11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child;

(12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C of the Act;

(13) Procedures related to how services to eligible children and their families will be paid for under the state's Early ACCESS program;

(14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities;

(15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state's Early ACCESS program in accordance with any applicable interagency agreement and with this chapter;

(16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;

(17) Procedures for securing the timely reimbursement of funds; and

(18) Any other procedures required to carry out the purposes of this chapter.

c. *Collaboration.* Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the department.

120.804(2) Community partners. Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system.

281—120.805(34CFR303) Provision of year-round services. Each Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of eligible children and their families.

281—120.806(34CFR303) Evaluation and improvement. Each grantee, in conjunction with signatory agencies or the department, or both, will implement activities designed to evaluate and improve the Early ACCESS system. These activities are to document the performance of eligible children who receive early intervention services.

281—120.807(34CFR303) Research. Each grantee will cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the department, or a signatory agency when approved by the department, to assess and ensure the effectiveness of efforts to serve eligible children.

281—120.808(34CFR303) Records and reports. Each signatory agency or grantee will maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

1. State-approved or state-recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
2. All IFSP meetings and annual or periodic reviews for each eligible child.
3. Data required for federal and state reporting.

281—120.809(34CFR303) Information for department. Each signatory agency or grantee will provide the department with information necessary to enable the department to carry out its duties under Part C of the Act and this chapter. This information, including such quantitative and qualitative data as the department may require, will be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—120.703(34CFR303) or in taking any other action to enforce Part C of the Act or this chapter.

281—120.810(34CFR303) Public information. Each agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part C of the Act.

281—120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges. Unless otherwise provided by this chapter, any mediation conference or due process

hearing under Division VI of this chapter shall be conducted according to the rules contained in 281—41.1000(256B,34CFR300) through 281—41.1016(256B,34CFR300).

281—120.812(34CFR303) References to federal law. All references in this chapter to provisions of the United States Code or the Code of Federal Regulations are to those provisions in effect on September 28, 2011.

281—120.813(34CFR303) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

281—120.814(34CFR303) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, will be construed in a manner consistent with federal law and will not be construed to confer any different or greater right or responsibility under this chapter.

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 2
“Petitions for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.7.

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.7 and 2023 Iowa Acts, Senate File 514.

Public Hearing

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

January 3, 2024
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

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

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking repromulgates 481—Chapter 2, “Petitions for Rulemaking,” and implements Iowa Code section 17A.7 and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 17A.7 requires agencies to “prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.” The rules are intended to provide standard procedures for the public to petition the Department, including any division, board, or commission within the Department that has its own rulemaking authority, to initiate a rulemaking. The rules also provide direction for inquiries on previously filed petitions for rulemaking and the Department’s obligation to respond to petitions on rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Individuals interested in petitioning the Department to initiate a rulemaking and the Department will bear the costs.

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

Individuals interested in petitioning the Department to initiate a rulemaking and the Department will benefit.

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

- Quantitative description of impact:

There are minimal costs to an individual who petitions the Department to initiate a rulemaking. Such costs include preparing a written communication to the Department concerning the request and providing any follow-up information requested by the Department. Petitions for rulemaking are relatively rare. From FY 2016 through FY 2023, the Department received only one petition for rulemaking.

- Qualitative description of impact:

These proposed rules provide clarity as to the form and process for petitions for rulemaking and its consideration and disposition by the Department.

3. Costs to the State:

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

There are no specific enforcement costs borne by the agency emanating from these proposed rules. Any costs associated with this chapter are attributable to the Department's statutory duty to respond to petitions for rulemaking pursuant to Iowa Code section 17A.7.

- Anticipated effect on state revenues:

None.

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

There are no specific costs associated with the proposed rulemaking. The benefits include clear and consistent implementation of Iowa Code section 17A.7.

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

In adopting by reference the Uniform Rules on Agency Procedure, the Department has already taken a minimally restrictive path in implementing its statutory duty under Iowa Code section 17A.7. Furthermore, the Department is updating this chapter in accordance with the government realignment implemented by 2023 Iowa Acts, Senate File 514, and has thus proposed rules that would allow any division, board, or commission under the administrative authority of the Department to rely on this chapter rather than promulgating its own administrative chapter to implement Iowa Code section 17A.7. This rulemaking could reduce the overburdening text of the Iowa Administrative Code.

6. Alternative methods considered by the agency:

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

See response to section 5 above.

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

See response to section 5 above.

Small Business Impact

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

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

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

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

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

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

This proposed rulemaking is not believed to have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PETITIONS FOR RULEMAKING

The department adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure related to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the Iowa general assembly's website. References to “the agency” within any uniform rule include the department and any division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A, unless a division, board, or commission has separate rulemaking authority and has adopted rules governing petitions for rulemaking.

481—2.1(17A) Petition for rulemaking. In lieu of the words “the agency (designate office)”, insert “the department or specific division, board, or commission within the department where the petition is directed, as applicable”. In lieu of the words “(AGENCY NAME)”, insert the department or specific division, board, or commission within the department where the petition is directed.

481—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rulemaking may be made to the department or applicable division, board, or commission as provided on the department's website.

These rules are intended to implement Iowa Code section 17A.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 3
“Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9 and 2023 Iowa Acts, Senate File 514.

Public Hearing

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

January 3, 2024
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

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

Ashleigh Hackel
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking repromulgates 481—Chapter 3, “Declaratory Orders,” and implements Iowa Code section 17A.9 and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 17A.9 requires agencies to “adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.”

The rules provide standard procedures governing the filing of and the Department’s response to petitions for declaratory orders and are intended to be applicable to any division, board, or commission within the Department that has its own rulemaking authority and had not adopted its own rules governing declaratory orders.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Individuals interested in petitioning the Department for a declaratory order and the Department will bear the costs. There is no direct cost to the general public.
 - Classes of persons that will benefit from the proposed rulemaking:
Individuals interested in petitioning the Department for a declaratory order and the Department will benefit.

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

- Quantitative description of impact:

There are minimal costs to an individual who petitions the Department for a declaratory order. Such costs include preparing a written communication to the Department concerning the request and providing any follow-up information requested by the Department. From FY 2016 through FY 2023, the Department received and responded to ten requests for declaratory orders.

- Qualitative description of impact:

The public may utilize the procedures in this proposed rulemaking to bring forth questions on the applicability of a rule, statute or order within the primary jurisdiction of the agency. The public benefits from this rulemaking because it gives clear procedural guidance for submitting a request for declaratory order and consideration and disposition of the declaratory order by the Department.

With the government realignment, many boards, commissions, and programs joined what is now the Department of Inspections, Appeals, and Licensing. Many of the incoming boards, commissions, and programs already had a separate Iowa Administrative Code chapter adopted governing declaratory orders. Many of those chapters relied upon the Uniform Rules on Agency Procedure, as does the Department. The Department has thus proposed revisions to its declaratory orders chapter that would allow any division, board, or commission under the administrative authority of the Department to rely on this chapter rather than promulgating its own administrative chapter to implement Iowa Code section 17A.9. This rulemaking could reduce the overburdening text of the Administrative Code, increase efficiencies, and standardize Department processes.

3. Costs to the State:

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

There are no specific enforcement costs borne by the agency emanating from these proposed rules. Any costs associated with this chapter are attributable to the Department's statutory duty to respond to petitions for declaratory order pursuant to Iowa Code section 17A.9. Costs include staff time to review and respond to the petitions for declaratory order, to obtain additional information from petitioners, if necessary, and to answer inquiries related to the requests. These staff functions are within the ordinary role of staff and do not incur any additional expenses for the Department to implement.

- Anticipated effect on state revenues:

There is no anticipated impact of this proposed rulemaking on state revenues.

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

There are no specific financial costs to implement or enforce this proposed rulemaking outside of any costs associated with the Department's statutory duties pursuant to Iowa Code chapter 17A. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions.

The benefits include clear and consistent implementation of Iowa Code section 17A.9. The Department is using this opportunity to broaden the language of its chapter to implement 2023 Iowa Acts, Senate File 514, and Executive Order 10.

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

In adopting by reference the Uniform Rules on Agency Procedure, the Department has already taken a minimally restrictive path in implementing its statutory duty under Iowa Code section 17A.9. Furthermore, the Department is updating this chapter in accordance with the government realignment implemented by 2023 Iowa Acts, Senate File 514, and has thus proposed rules that would allow any division, board, or commission under the administrative authority of the Department to rely on this chapter rather than promulgating its own administrative chapter to implement Iowa Code section

17A.9. This could reduce the overburdening text of the Administrative Code, increase efficiencies, and standardize Department processes.

6. Alternative methods considered by the agency:

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

See response to section 5 above.

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

See response to section 5 above.

Small Business Impact

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

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

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

This proposed rulemaking applies equally to all businesses and the public and is not believed to have any impact on small business. If a business identifies a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the business, it may utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3 DECLARATORY ORDERS

The department of inspections, appeals, and licensing adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure related to declaratory orders, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the Iowa general assembly's website. These rules are applicable to any division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A, unless a division, board, or commission has separate rulemaking authority and has adopted rules governing declaratory orders. In lieu of the words “(designate agency)” within any uniform rule, insert the name of the department or specific board or division within the department where the petition for declaratory order is directed, as applicable. In lieu of the words “(designate office)”, insert the current location of the department, board, or division within the department, as applicable.

481—3.1(17A) Petition for declaratory order. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS, APPEALS, AND LICENSING

[or the specific board or division within the department where the petition is directed]

481—3.2(17A) Notice of petition. In lieu of the words “___ days (15 or less)”, insert “15 days”.

481—3.3(17A) Intervention.

3.3(1) In lieu of the words “within ___ days”, insert “within 15 days”. Strike the words “(after time for notice under X.2(17A))”. In lieu of the number “X.8(17A)”, insert “3.8(17A)”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF INSPECTIONS, APPEALS, AND LICENSING

[or the specific board or division within the department where the petition is directed]

481—3.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “to the department or applicable division, board, or commission as provided on the department’s website”.

481—3.6(17A) Service and filing of petitions and other papers.

3.6(2) In lieu of the words “(specify office and address)”, insert the current address of the department, board, or division within the department, as applicable.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 481—10.12(17A), except that the filing will be delivered to the department, board, or division at its current location”.

481—3.8(17A) Action on petition. Replace all uniform rule text with “Action on the petition will be taken in accordance with Iowa Code section 17A.9(5).”

These rules are intended to implement Iowa Code chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 4
“Agency Procedure for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3 and 2023 Iowa Acts, Senate File 514.

Public Hearing

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

January 3, 2024
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

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

Ashleigh Hackel
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking repromulgates 481—Chapter 4, “Agency Procedure for Rulemaking,” and implements Iowa Code section 17A.3 and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Through this rulemaking, the Department adopts the Uniform Rules on Agency Procedure for agency rulemaking, addressing public comment prior to filing a Notice of Intended Action, addressing contents of the Notice of Intended Action and Regulatory Analysis, the timeline for the adoption of rules, and identifying rulemaking records required to be kept by the agency. This chapter is intended to be applicable to any division, board, or commission within the Department that has its own rulemaking authority and has not adopted its own rules governing procedures for rulemaking. This rulemaking will allow the Department to increase efficiencies and standardize Department processes.

Analysis of Impact

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

Department and board staff review may assist in the rulemaking process of the agency by maintaining the required anticipated rulemaking and pending rulemaking dockets and assisting with publication of Notices. These staff functions are within the ordinary role of staff and do not incur any additional expenses for the Department to implement. Individuals interested in participating in the rulemaking process may bear some de minimis costs to participate.

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

The agency and public benefit from this rulemaking because the rulemaking gives the agency a uniform process to create rules and also provides for public participation in the rulemaking process. It is beneficial for the agency to have a mechanism to create rules necessary to carry out its functions, but it also is beneficial for the public to have a mechanism to provide feedback on the agency's proposals prior to a rule being adopted.

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

- Quantitative description of impact:

This proposed rulemaking does not have any direct costs to the general public or the agency. The agency staff assist in the rulemaking process, but these staff functions are within the ordinary role of staff and do not incur any additional expenses for the Department to implement. There are minimal costs to an individual who petitions the Department to initiate a rulemaking. Such costs include preparing a written communication to the Department concerning the request and providing any follow-up information requested by the Department.

- Qualitative description of impact:

With the government realignment, new divisions, boards, and commissions with independent rulemaking authority joined what is now the Department of Inspections, Appeals, and Licensing (DIAL), and those divisions, boards, and commissions with independent rulemaking authority would have had their own Iowa Administrative Code chapter related to this topic. The Department is using this opportunity to create one chapter that can be applicable to all divisions, boards, and commissions under the administrative authority of the Department to increase efficiencies and standardize processes.

3. Costs to the State:

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

Costs to the agency are the staff needed to assist with the rulemaking procedures, such as maintaining the rulemaking docket, publishing notices, and drafting rulemaking documents. All costs are directly associated with the Department's general functions and duties as an agency subject to Iowa Code chapter 17A. This proposed rulemaking does not add to the costs of the Department.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed rulemaking on state revenues.

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

There are no specific financial costs to implement or enforce this proposed rulemaking outside of any costs associated with the Department's statutory duties pursuant to Iowa Code chapter 17A. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions.

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

In adopting by reference the Uniform Rules on Agency Procedure, the Department has already taken a minimally restrictive path in implementing its statutory duties pursuant to Iowa Code chapter 17A. The Department has not identified a more cost-effective or less intrusive method for this proposed rulemaking. The contents of this rulemaking are largely dictated by Iowa Code chapter 17A. Furthermore, the Department is updating this chapter in accordance with the government realignment implemented by 2023 Iowa Acts, Senate File 514, and has thus proposed rules that would allow any division, board, or commission under the administrative authority of the Department to rely on this chapter rather than promulgating its own administrative chapter on this topic. This could reduce the overburdening text of the Iowa Administrative Code, increase efficiencies, and standardize Department processes.

6. Alternative methods considered by the agency:

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

See response to section 5 above.

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

See response to section 5 above.

Small Business Impact

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

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

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

This rulemaking is not believed to have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 AGENCY PROCEDURE FOR RULEMAKING

The department of inspections, appeals, and licensing adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure related to agency procedure for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the Iowa general assembly's website. References to "the agency" include the department or any division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A, unless the division, board, or commission has separate rulemaking authority and has adopted rules governing procedures for rulemaking.

481—4.3(17A) Public rulemaking docket.

4.3(2) Anticipated rulemaking. In lieu of the words "(commission, board, council, director)", insert "director, board, commissioner, or the like, as applicable".

481—4.4(17A) Notice of proposed rulemaking.

4.4(3) Notices mailed. In lieu of the words "(specify time period)", insert "one calendar year".

481—4.5(17A) Public participation.

4.5(1) Written comments. Strike the words "(identify office and address) or".

4.5(5) Accessibility. In lieu of the words "(designate office and telephone number)", insert "the department, board, commissioner, or the like, as applicable".

481—4.6(17A) Regulatory analysis.

4.6(2) *Mailing list.* In lieu of the words “(designate office)”, insert “the department, division, board, commissioner, or the like, as applicable”.

481—4.11(17A) Concise statement of reasons.

4.11(1) *General.* In lieu of the words “(specify the office and address)”, insert “the department or board, as applicable”.

481—4.13(17A) Agency rulemaking record.

4.13(2) *Contents.* Amend paragraph “c” by inserting “director, board, commissioner, or the like, as applicable” in lieu of “(agency head)”.

These rules are intended to implement Iowa Code chapter 17A and section 25B.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 8
“Licensing and Child Support Noncompliance, Student Loan Repayment
Noncompliance, and Nonpayment of State Debt”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 252J.8, 272C.4, and 272D.8
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 252J and 272D and
section 272C.4 and 2023 Iowa Acts, Senate File 514.

Public Hearing

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

January 3, 2024
10 a.m.

6200 Park Avenue
Des Moines, Iowa 50321

Public Comment

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

Ashleigh Hackel
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking repromulgates Chapter 8, “Licensing and Child Support Noncompliance, Student Loan Repayment Noncompliance and Nonpayment of State Debt,” and implements Iowa Code chapter 252J, “Child Support—Licensing Sanctions,” chapter 272C, “Regulation of Licensed Professions and Occupations,” and chapter 272D, “Debts Owed State or Local Government—Licensing Sanctions,” and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 252J.8 provides that “a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the [child support recovery] unit.”

Iowa Code section 272D.8 similarly directs a licensing authority to adopt rules “for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the [centralized collection unit of the Department of Revenue].” Iowa Code section 272C.4 directs a licensing board to adopt rules “to prohibit the suspension or revocation of a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.”

This proposed rulemaking implements the aforementioned Iowa Code sections by providing definitions and procedures related to licensing action taken or prohibited related to child support noncompliance, student loan repayment noncompliance, and nonpayment of a state debt. The rules are drafted for applicability to any division, board, or commission under the administrative authority

of the Department pursuant to 2023 Iowa Acts, Senate File 514. As many licensing authorities joined the Department in the realignment effected by that legislation, this rulemaking allows the Department to maintain one standard administrative chapter implementing these Iowa Code sections and removing similar text from the individual Iowa Administrative Code chapters maintained by the licensing authorities that realigned with the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Department incurs costs by employing staff to carry out the functions addressed in the proposed rulemaking, including notifying licensees of suspension of license, following up on possible noncompliance, and responding to inquiries. There is no cost to the general public.

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

The public benefits from these proposed rules because the rules require those with professional licenses to be held accountable for the debts addressed as directed by the General Assembly.

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

- Quantitative description of impact:

This proposed rulemaking presents no impact to the Department or public in terms of costs. This rulemaking merely implements statutory duties set forth in Iowa Code sections 252J.8, 272C.4, and 272D.8, and those duties are within the Department's general functions. Licensees subject to licensing action pursuant to this chapter could incur costs to defend or reinstate a license, but those costs are borne by the statutory directives implemented rather than this rulemaking itself.

- Qualitative description of impact:

As many licensing authorities joined the Department in the realignment effected by 2023 Iowa Acts, Senate File 514, this proposed rulemaking allows the Department to maintain one standard administrative chapter implementing Iowa Code sections 252J.8, 272C.4, and 272D.8 and removing similar text from the individual Iowa Administrative Code chapters maintained by the licensing authorities that realigned with the Department. This rulemaking will reduce the overall text of the Iowa Administrative Code, standardize Department processes, and increase efficiencies.

3. Costs to the State:

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

Costs to the agency are the staff needed to manage provisions of this rulemaking, including notifying licensees of suspension, following up on possible noncompliance and responding to inquiries. All costs are directly associated with the statutory directives and the Department's general functions. This rulemaking does not add to the costs of the Department in excess of the general functions.

- Anticipated effect on state revenues:

There is no anticipated impact from this proposed rulemaking on state revenues.

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

There are no specific financial costs to implement or enforce this proposed rulemaking outside of any costs associated with the Department's statutory duties identified. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions. The benefits include clear and consistent implementation of applicable Iowa Code.

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

The Department has not identified a more cost-effective or less intrusive method for this proposed rulemaking. The content of this rulemaking is largely dictated by Iowa Code sections 252J.8, 272C.4, and 272D.8.

6. Alternative methods considered by the agency:

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

See response to section 5 above.

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

Iowa Code sections 252J.8, 272C.4, and 272D.8 provide the requirements related to this proposed rulemaking.

Small Business Impact

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

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

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

This proposed rulemaking is not believed to have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8

LICENSING AND CHILD SUPPORT NONCOMPLIANCE, STUDENT LOAN REPAYMENT NONCOMPLIANCE, AND NONPAYMENT OF STATE DEBT

481—8.1(252J,272D) Definitions. For the purpose of this chapter, the following definitions apply:

“*Applicant*” means a person seeking the issuance of a license.

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

“*License*” means the same as defined in Iowa Code sections 252J.1 and 272D.1.

CHILD SUPPORT NONCOMPLIANCE

481—8.2(252J) Definitions. For the purpose of this division, the following definitions apply:

“*Certificate of noncompliance*” means the same as defined in Iowa Code section 252J.1.

“*Licensing authority*” means the same as defined in Iowa Code section 252J.1 and includes the department and any board, commission, or other entity of the department having authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

481—8.3(252J) Child support certificates of noncompliance. The licensing authority will suspend, revoke, or deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit in accordance with Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter apply.

8.3(1) Notice required by Iowa Code section 252J.8 will be served upon the applicant or licensee by restricted certified mail, return receipt requested; personal service in accordance with Iowa Rule of Civil Procedure 1.305; or the acceptance of service by the applicant or licensee personally or through authorized counsel.

8.3(2) The effective date of the denial, revocation, or suspension is 60 days following service of the notice upon the applicant or licensee.

8.3(3) The licensing authority is authorized to prepare and serve the notice mandated by Iowa Code section 252J.8 upon the applicant or licensee.

8.3(4) Applicants and licensees are responsible for keeping the licensing authority informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, including providing the licensing authority copies, within seven days of filing or issuance, of applications filed with the district court pursuant to Iowa Code section 252J.9, court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

8.3(5) All licensing authority fees required for license application, renewal or reinstatement must be paid before a license will be issued, renewed or reinstated after proceedings under Iowa Code chapter 252J.

8.3(6) A licensee or applicant may file an application with the district court within 30 days of service of a licensing authority notice pursuant to Iowa Code sections 252J.8 and 252J.9. The filing of the application stays the licensing authority's action until the licensing authority receives a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial, revocation, or suspension, the licensing authority will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.3(7) The licensing authority will notify the applicant or licensee in writing within ten days of the effective date of the denial, suspension, or revocation of a license, and will similarly notify the applicant or licensee when the license is issued, renewed, or reinstated following the licensing authority's receipt of a withdrawal of the certificate of noncompliance.

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

STUDENT LOAN REPAYMENT NONCOMPLIANCE

481—8.4(272C) Student loan repayment noncompliance. Pursuant to Iowa Code section 272C.10(4), a person who is in default or delinquent on student loan payments will not be denied a license or have a license suspended or revoked solely on the basis of such default or delinquency.

This rule is intended to implement Iowa Code section 272C.4.

NONPAYMENT OF STATE DEBT

481—8.5(272D) Definitions. For the purpose of this division, the following definitions apply:

"Certificate of noncompliance" means the same as defined in Iowa Code section 272D.1.

"Licensing authority" means the same as defined in Iowa Code section 272D.1, and includes the department and any board, commission, or other entity of the department having authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

481—8.6(272D) State debt certificates of noncompliance. The licensing authority will suspend, revoke, or deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance

from the centralized collection unit of the department of revenue in accordance with Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, the rules in this chapter apply.

8.6(1) Notice required by Iowa Code section 272D.8 will be served upon the applicant or licensee by restricted certified mail, return receipt requested; personal service in accordance with Iowa Rule of Civil Procedure 1.305; or the acceptance of service by the applicant or licensee personally or through authorized counsel.

8.6(2) The effective date of the denial, revocation, or suspension is 60 days following service of the notice upon the applicant or licensee.

8.6(3) The licensing authority is authorized to prepare and serve the notice mandated by Iowa Code section 272D.8 upon the applicant or licensee.

8.6(4) Applicants and licensees are responsible for keeping the licensing authority informed of all court actions, and all actions of the department of revenue taken under or in connection with Iowa Code chapter 272D, including providing the licensing authority copies, within seven days of filing or issuance, of applications filed with the district court pursuant to Iowa Code section 272D.9, court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

8.6(5) All licensing authority fees required for license application, renewal or reinstatement must be paid before a license will be issued, renewed or reinstated after proceedings under Iowa Code chapter 272D.

8.6(6) A licensee or applicant may file an application with the district court within 30 days of service of a licensing authority notice pursuant to Iowa Code sections 272D.8 and 272D.9. The filing of the application stays the licensing authority's action until the licensing authority receives a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial, revocation, or suspension, the licensing authority will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.6(7) The licensing authority will notify the applicant or licensee in writing within ten days of the effective date of the denial, suspension, or revocation of a license, and will similarly notify the applicant or licensee when the license is issued, renewed, or reinstated following the licensing authority's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 49
“Ambulatory Surgical Centers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135R.4 as enacted by 2023 Iowa Acts, Senate File 75

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75

Public Hearing

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

January 3, 2024
10:30 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

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

Ashleigh Hackel
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking promulgates new Chapter 49 “Ambulatory Surgical Centers,” and implements Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75, in accordance with the goals and directives of Executive Order 10 (January 10, 2023).

The rulemaking administers Iowa Code section 135R.4 by establishing a license application and renewal process, including clarifying implementation of Iowa Code chapter 135R in association with the Certificate of Need program set forth in Iowa Code chapter 10A, subpart V, part 2, as enacted by 2023 Iowa Acts, Senate File 514.

The rules also implement an inspection frequency as described in Iowa Code chapter 135R and describe standard procedures as to access to records, referral of pertinent findings or allegations, notifications of final findings, and inspector conflicts of interest. The rules also adopt substantive licensing standards consistent with the requirements of Iowa Code chapter 135R, including compliance with specific standards for coverage in the federal Medicare program for ambulatory surgical centers and external quality data reporting in accordance with Iowa Code chapter 135R and rules promulgated by the Department of Health and Human Services. The rules also describe enforcement and penalties for noncompliance with Iowa Code chapter 135R and standards promulgated in accordance therewith, processes for obtaining waivers, and the public and confidential nature of various records collected or created by the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Ambulatory surgical centers, as defined by Iowa Code section 135R.1 as enacted by 2023 Iowa Acts, Senate File 75, bear costs associated with licensing and compliance with the proposed rules. The Department bears costs associated with implementing Iowa Code chapter 135R and the proposed rules.

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

The general public utilizing ambulatory surgical centers will benefit from enforcement of uniform health and safety operational standards as described in Iowa Code chapter 135R. Ambulatory surgical centers benefit from clear and consistent implementation of the substantive requirements of Iowa Code chapter 135R.

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

- Quantitative description of impact:

Iowa Code section 135R.4 directs the Department to “adopt rules as the department deems necessary to administer the provisions of this chapter relating to the issuance, renewal, denial, suspension, and revocation of a license to establish, operate, and maintain an ambulatory surgical center.” Iowa Code section 135R.4 specifies that said “rules shall be consistent with and shall not exceed the requirements of this chapter and the conditions for coverage in the federal Medicare program for ambulatory surgical centers under 42 C.F.R. pt. 416.” It also requires inspections performed on a schedule that is of the same frequency as inspections required for Medicare-certified ambulatory surgical centers.

In light of the legislative directives as to implementation and the goals of Executive Order 10, the Department has proposed rules that adopt by reference the federal Medicare program standards for ambulatory surgical centers. Accordingly, the substantive regulatory standards of the proposed rules should not have an impact beyond the impact of the legislation.

The Department cannot specifically quantify the number of entities that will be subject to licensure under Iowa Code chapter 135R and that are not already Medicare-certified. The Department estimates that approximately 10 to 20 currently unlicensed and uncertified entities qualify as ambulatory surgical centers.

- Qualitative description of impact:

The Department believes that integrating the federal Medicare program standards for ambulatory surgical centers by reference is the most literal and efficient implementation of Iowa Code chapter 135R, thereby incorporating quality regulation in the simplest form for providers.

3. Costs to the State:

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

Based on the Department’s costs of performing Medicare-certification inspections, the Department projects that performing an inspection for licensure includes time and costs associated with preparation, travel, onsite inspection, and post-inspection written findings of surveyors, inspection review and approval time by the program coordinator, and administrative support time in issuing the inspection results. Program personnel will also regularly accept complaints, review plans of correction, perform subsequent revisits, and respond to various inquiries.

Costs anticipated for initial licensure of one facility can be approximately quantified as follows (hourly rate includes salaries, benefits and support costs):

- Surveyor time and expenses: $86.31 \text{ hours} \times \$50.72/\text{hour} = \$4,377.64$
- Program coordinator time and expenses: $1.93 \text{ hours} \times \$64.74/\text{hour} = \$124.94$
- Administrative support time: $1.68 \text{ hours} \times \$46.30/\text{hour} = \$77.78$
- Total: \$4,580.36

The cost for renewal activity for one facility would be similar to initial licensing.

- Anticipated effect on state revenues:

The Department is not able to specifically quantify the number of currently unlicensed facilities that will require licensure under Iowa Code chapter 135R, but estimates costs as set forth above. Iowa Code chapter 135R requires ambulatory surgical centers pay a \$50 license fee. The Department’s

implementation of this program will be through current personnel because no additional full-time equivalent (FTE) positions have been appropriated.

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

The costs associated with these proposed rules are attributable to the substantive requirements set forth in Iowa Code chapter 135R, rather than the rules. Any costs associated solely with requirements set forth in rule are de minimis costs associated with updating information with the Department. Since Iowa Code section 135R.4 requires action, the Legislature has determined that the costs and benefits of action outweigh the costs and benefits of inaction.

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

Iowa Code section 135R.4 requires that the substantive regulatory requirements are “consistent with and shall not exceed the requirements of this chapter and the conditions for coverage in the federal Medicare program for ambulatory surgical centers under 42 CFR pt. 416.” The Department believes that it has utilized the least costly and least intrusive method of implementing this requirement through adoption by reference of the pertinent standards of 42 CFR Part 416.

6. Alternative methods considered by the agency:

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

In addition to requiring the licensing and inspection of ambulatory surgical centers, 2023 Iowa Acts, Senate File 75, also modified the Certificate of Need requirements to include ambulatory surgical centers. An issue presented to the Department was whether the Legislature intended entities that fall within the definition of “ambulatory surgical center” and were operating prior to enactment of Senate File 75 to go through the Certificate of Need process prior to obtaining an ambulatory surgical center license. Based on the language of the Certificate of Need requirements and pragmatic concerns regarding requiring operational ambulatory surgical centers to undergo the Certificate of Need determination process set forth in greater detail below, the Department determined that the Legislature likely did not intend operational ambulatory surgical centers to undergo the Certificate of Need process prior to initial licensing.

Accordingly, the Department clarified in the proposed rules that an ambulatory surgical center will be granted an initial license and is not required to obtain a Certificate of Need solely because licensure is mandated by Iowa Code chapter 135R if the ambulatory surgical center was operating prior to and continuously since July 1, 2023. The rules also clarify that any ambulatory surgical center beginning operations on or after July 1, 2023, or modifying its operations after July 1, 2023, in a manner that would require a Certificate of Need pursuant to Iowa Code chapter 10A, Subpart V, Part 2, as enacted by 2023 Iowa Acts, Senate File 514, is required to obtain a Certificate of Need prior to submitting its license application to the department.

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

See section 6 above. To expound upon some of the pragmatic concerns with requiring all new ambulatory surgical center licensees to obtain a certification of need, the costs and concerns are set forth in greater detail here.

Certificate of Need requires that applicants submit a filing fee of 0.3 of 1 percent of the estimated total cost of the project, with a minimum fee of \$600 and a maximum of \$21,000. There have been ambulatory surgical centers whose filing fees have been as low as \$600, and some larger projects with a fee of \$21,000. In addition to this fee, some ambulatory surgical centers opt to engage legal counsel in the development of their application and in defending their application in front of the Health Facilities Council (Council), which makes decisions regarding whether to grant a Certificate of Need, thus increasing the costs.

The Council is comprised of five interested citizens appointed by the Governor. A quorum of Council members is four. In the past year, there were three meetings that had to be canceled due to the lack of a quorum. The process for applying for a Certificate of Need begins with a letter of intent, which is required

by the Iowa Code to be submitted no less than 30 days prior to the application. Once the application is received, Department staff reviews it for completeness, and then notifies the applicant about when the applicant's application will be heard. The Council typically meets four times per year, thus each application takes roughly five to six weeks from the final deadline for submission to being heard. In addition to corresponding with the applicant, staff also sends affected party letters to those in the area who might have an interest in a project. Typically, this includes similar facilities in the county of origin and contiguous counties.

Affected parties in opposition to the project can write letters and/or appear at the meeting at which the application will be heard to voice their opinion, which the Council can take into consideration when making the final decision about a project. In FY 2022, there were eight projects heard by the Council, two of which were ambulatory surgical centers. Both of these applications were approved. In FY 2023, there were a total of 16 new projects heard, three of which were ambulatory surgical centers; all three were approved. In the past, there have been several ambulatory surgical center applications that were denied. In these cases, the centers already existed but were still able to provide services. As noted earlier, if the Legislature, through 2023 Iowa Acts, Senate File 75, intended all ambulatory surgical centers affected by the new licensing requirements of Iowa Code chapter 135R to require a Certificate of Need prior to licensure, the existing ambulatory surgical centers denied a Certificate of Need would effectively be put out of business. Not only can the Certificate of Need process be expensive, it is lengthy and there is no guarantee of approval. Therefore, the rule has been written as presented.

Small Business Impact

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

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

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

The rules proposed herewith have been intentionally drafted to implement Iowa Code chapter 135R consistent with the legislative directives and authority set forth therein, without superfluous requirements that may unnecessarily impact businesses, large or small. If an ambulatory surgical center was a small business and identified that a particular rule was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 49:

CHAPTER 49 AMBULATORY SURGICAL CENTERS

481—49.1(90GA,SF75) Definitions.

“*Ambulatory surgical center*” means the same as defined by Iowa Code section 135R.1 as enacted by 2023 Iowa Acts, Senate File 75. “Ambulatory surgical center” includes the individual or group practice office of a private physician, podiatrist, or dentist who there engages in the lawful practice of cosmetic, reconstructive, or plastic surgery.

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

481—49.2(90GA,SF75,10A) Application and licensing.

49.2(1) *Application and licensing.* An ambulatory surgical center shall obtain a license from the department in accordance with Iowa Code section 135R.2 as enacted by 2023 Iowa Acts, Senate File 75. An ambulatory surgical center seeking licensure will make application on forms provided by the department or through the department’s online application system. Upon receipt of a completed application and the \$50 fee set forth in Iowa Code section 135R.3(3) as enacted by 2023 Iowa Acts, Senate File 75, the application will be considered.

49.2(2) *Certificate of need.* An ambulatory surgical center will be granted an initial license and is not required to obtain a new certificate of need solely because licensure is mandated by Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75, if the ambulatory surgical center was operating prior to and continuously since July 1, 2023. Any ambulatory surgical center beginning operations on or after July 1, 2023, shall obtain a certificate of need from the health facilities council pursuant to Iowa Code chapter 10A, Subpart V, Part 2, as enacted by 2023 Iowa Acts, Senate File 514, prior to submitting its license application to the department. Any ambulatory surgical center modifying its operations after July 1, 2023, in a manner that would require a certificate of need pursuant to Iowa Code chapter 10A, Subpart V, Part 2, as enacted by 2023 Iowa Acts, Senate File 514, shall obtain a certificate of need from the health facilities council.

49.2(3) *Renewal and changes of information.* A license issued pursuant to this chapter expires one year after the date of issuance or as indicated on the license. A renewal application shall be submitted to the department 30 days prior to license expiration. The department should be notified of any changes to an applicant’s or licensee’s application information within 30 days of the date the change occurs, including the cessation of operation.

49.2(4) *Public display.* The license shall be displayed in a conspicuous place in the ambulatory surgical center viewed by the public.

481—49.3(90GA,SF75,10A) Inspections.

49.3(1) *Frequency.* Inspections may be initiated because of a complaint or other information received by the department or upon referral from other agencies. The department will perform inspections at the same frequency and utilize any priority tier structure for survey and certification activities required for inspections of Medicare-certified ambulatory surgical centers. The department will recognize, in lieu of its own licensure inspection, the comparable inspection and findings of a Medicare survey or an accrediting organization approved by the Centers for Medicare and Medicaid Services (CMS) for federal certification.

49.3(2) *Access to records.* An inspector with the department may enter an ambulatory surgical center without a warrant and may examine and copy all records and items pertaining to the inspection unless the record or item is protected by some other legal privilege.

49.3(3) *Evaluation of allegations and referral to other agencies.* If an inspection is initiated, the department will evaluate the allegations to determine whether the allegations should also be referred to other local, state, or federal agencies. If the department believes a criminal or regulatory violation has occurred or is occurring, the department shall notify the appropriate law enforcement or regulatory agencies.

49.3(4) *Final findings.* The department will notify the ambulatory surgical center and any complainant, in writing, of the final findings of an inspection.

49.3(5) *Inspector conflict of interest.* An employee of the department will be excluded from participating in the inspection of an ambulatory surgical facility described by Iowa Code section 135R.5(3) as enacted by 2023 Iowa Acts, Senate File 75.

481—49.4(90GA,SF75) General licensing standards.

49.4(1) *Federal specific conditions of coverage.* An ambulatory surgical center shall comply with the specific conditions for coverage in the federal Medicare program for ambulatory surgical centers under 42 CFR Part 416, Subpart C, as amended to July 1, 2023, and federal interpretive guidelines for such regulations, including Appendix L of the State Operations Manual published by CMS, Rev. 215, as amended to July 21, 2023.

49.4(2) *External reporting.* An ambulatory surgical center shall report quality data to the department of health and human services consistent with the data required to be reported to CMS in accordance with rules promulgated by the department of health and human services.

481—49.5(90GA,SF75) Enforcement and penalties.

49.5(1) *Denial, suspension, or revocation.* The license for an ambulatory surgical center may be denied, suspended, or revoked for failure to comply with Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75, or this chapter, including any reason for which an ambulatory surgical center could be denied, suspended, or terminated from the federal Medicare program for ambulatory surgical centers under 42 CFR Part 416 as amended to July 1, 2023, and federal interpretive guidelines, including Appendix L of the State Operations Manual published by CMS, Rev. 215, as amended to July 21, 2023.

49.5(2) *Effective date and contested case appeals.* Unless otherwise stated, a denial, suspension or revocation of license is effective 30 days after certified mailing or personal service of the notice upon the licensee. The licensee may request a contested case hearing by submitting a request, in writing, to the department within 30 days of the mailing or service. Contested case appeals and hearings are governed by 481—Chapter 9, 481—Chapter 10, and 481—Chapter 16.

49.5(3) *Enjoining an unlicensed ambulatory surgical center.* An injunction or other process against any person to restrain or prevent the establishment, operation, or maintenance of an ambulatory surgical center without a license may be pursued by the department in accordance with Iowa Code section 135R.7 as enacted by 2023 Iowa Acts, Senate File 75.

49.5(4) *Operation of unlicensed ambulatory surgical center a serious misdemeanor.* A person establishing, operating, or maintaining an ambulatory surgical center without a license commits a serious misdemeanor as set forth in Iowa Code section 135R.9 as enacted by 2023 Iowa Acts, Senate File 75.

481—49.6(90GA,SF75,10A) Public and confidential information. The department's final findings with respect to compliance by an ambulatory surgical center with requirements for licensing will be made available to the public on the department's website. Other information relating to an ambulatory surgical center obtained by the department that does not constitute the department's final findings from an inspection, including the name and identifying information about a complainant, are confidential in accordance with Iowa Code section 135R.6 as enacted by 2023 Iowa Acts, Senate File 75. This rule does not inhibit the referral of otherwise confidential information to other law enforcement or regulatory agencies pursuant to Iowa Code section 10A.105(5).

49.6(1) *Public disclosure.* The following records are open and available for inspection:

- a. License application forms and accompanying materials;
- b. Final findings of the department's inspections;
- c. Official notices of any enforcement action.

49.6(2) *Confidential information.* Confidential information includes the following:

a. Information obtained by the department that does not comprise a final finding resulting from an inspection. Inspection information that does not comprise a final finding may be made public in a contested case proceeding concerning the department's final findings, including the denial or revocation of registration.

- b. Names and identifying information of all complainants.

49.6(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information will be redacted prior to providing the record for inspection.

481—49.7(90GA,SF75,10A) Waivers. Requests for waiver may be submitted to the department in accordance with 481—Chapter 6. Waivers may be granted by the director of the department when, in the director's discretion, good and sufficient reasons underlying the need for a waiver have been established; no substantial risk to the health, safety, or welfare of patients is presented by approving the waiver; and alternate means are employed or compensating circumstances exist to justify the waiver. Any waiver granted is limited to the specific project under consideration and does not establish a precedent for similar acceptance in other cases.

These rules are intended to implement 2023 Iowa Acts, Senate File 75, and 2023 Iowa Acts, Senate File 514.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 280
“Licensure of Social Workers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154C, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154C, 272C, 147, and 17A

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/vox-tsse-fzg
Or dial: 1.402.921.2210
PIN: 266 255 272#

Public Comment

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

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50309
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the profession of social work. Iowa residents, licensees and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure as a social worker in the state of Iowa, as directed in statute. These include the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Analysis of Impact

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

There is no known direct cost to the general public, but there is a cost to the applicant since complying with the minimum requirements to enter into the profession are at the expense of the licensee. The fee for initial Iowa social work licensure is \$120, and the renewal fee varies by license type as follows: licensed bachelor social worker (LBSW) is \$72, licensed master social worker (LMSW) is \$120, and licensed independent social worker (LISW) is \$144. Iowa’s initial licensure application process is similar to those implemented by other state boards of social work. The application fees vary by state, however. The application fee for Nebraska is \$125; Minnesota is \$75 for a new graduate and \$115 for a licensee from another state; Illinois is \$50; South Dakota is \$130 for LBSW, \$170 for LMSW, and \$210 for LISW; Kansas is \$150 for LBSW and \$200 for LMSW and LISW; and Missouri is \$70.

The licensee would also have costs related to educational requirements and examination requirements. The Board of Social Work has not identified an exact cost of education for this field since it varies depending on the school the licensee chooses to attend to meet those requirements. Examination costs are consistent across states with a national examination. The fee for the bachelor and master's level examination is \$230; the independent level is \$260.

Board staff review applications for initial and renewal licenses, answer inquiries on licensing and field phone calls. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. It takes roughly 0.45 full-time equivalent (FTE) position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The public and professionals benefit from the proposed rulemaking. Establishing minimum licensing requirements ensures that practitioners are competent to practice. Without an established threshold for entry into the profession, individuals who are not appropriately trained could cause serious harm to the public.

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

- Quantitative description of impact:

Educational institutions provide academic training for social workers to obtain their license in Iowa. Additional private industries and educational institutions provide examinations and materials for preparation for the examination. Because the cost of education is so variable depending on the institution the person attends, the Board is unable to put an exact cost on the cost of education or examination preparation.

The initial license fee in Iowa is \$120, and the renewal fee in Iowa varies by license type as follows: LBSW is \$72, LMSW is \$120, and LISW is \$144 for each renewal period.

- Qualitative description of impact:

Establishing minimum requirements for licensure ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public by a licensee who is not qualified to perform the work in the field.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing applications for initial licenses, renewals and reinstatements. Staff salaries to support the work of the Board are covered by the Fund. It takes roughly 0.45 FTE position to review application materials. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

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

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

The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of social workers in other states, which makes obtaining licensure in multiple states simpler for applicants.

The costs to licensees in Iowa are similar to those of surrounding states. The surrounding states all require similar licensing procedures for social workers.

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

The Board has not identified a more cost-effective alternative to the licensure of social workers. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of social workers in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

6. Alternative methods considered by the agency:

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

The Board has not identified a more cost-effective alternative to the licensure of social workers. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of social workers in other states, which makes obtaining licensure in multiple states simpler for applicants.

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

The Board has not identified a more cost-effective alternative to the licensure of social workers. The Board believes all current requirements ensure public safety and ensure a minimum competency of care is provided to Iowans. Licensure requirements could be reduced or eliminated for the purpose of lowering the bar of entry into the profession, but the Board would be concerned about the public safety of Iowans in that scenario. In addition, the rulemaking provides consistency related to the licensure of social workers in other states, which makes obtaining licensure in multiple states simpler for applicants.

Due to state government alignment, this Board is now part of DIAL. The DIAL Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule revisions support this effort. DIAL is actively pursuing a single licensing platform to assist in standardizing licensing.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of licensing requirements for social workers. While some social workers likely are running a small business of their own, some also work for large corporations and hospitals. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 280 and adopt the following **new** chapter in lieu thereof:

SOCIAL WORKERS

CHAPTER 280 LICENSURE OF SOCIAL WORKERS
CHAPTER 281 CONTINUING EDUCATION FOR SOCIAL WORKERS
CHAPTER 282 PRACTICE OF SOCIAL WORKERS
CHAPTER 283 DISCIPLINE FOR SOCIAL WORKERS

CHAPTER 280
LICENSURE OF SOCIAL WORKERS

645—280.1(154C) Definitions. For purposes of these rules, the following definitions apply:

“*Active license*” means a license that is current and has not expired.

“*ASWB*” means the Association of Social Work Boards.

“*Board*” means the board of social work.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*LBSW*” means licensed bachelor social worker.

“*Licensee*” means any person licensed to practice as a social worker in the state of Iowa.

“*License expiration date*” means December 31 of even-numbered years.

“*LISW*” means licensed independent social worker.

“*LMSW*” means licensed master social worker.

“*Mandatory reporter training*” means the training requirements in Iowa Code section 232.69.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—280.8(17A,147,272C).

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C).

645—280.2(154C) Social work services subject to regulation. Social work services provided to an individual in this state through telephonic, electronic or other means, regardless of the location of the social worker, shall constitute the practice of social work and be subject to regulation in Iowa.

645—280.3(154C) Requirements for licensure. The following criteria shall apply to licensure:

280.3(1) The applicant submits a completed application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.19(147,154C).

280.3(2) No application will be considered by the board until official copies of academic transcripts have been received by the board except as provided in subrule 280.4(5).

280.3(3) The applicant provides verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based

verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

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

280.3(4) The applicant will take the examination(s) provided in rule 645—280.4(154C).

280.3(5) Licensees who were issued their initial licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal date two years later.

280.3(6) Incomplete applications that have been on file in the board office for more than two years will be:

- a. Considered invalid and be destroyed; or
- b. Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

280.3(7) In lieu of the requirements in subrules 280.3(2) and 280.3(3), the board will accept the ASWB Social Work Registry verification of academic transcripts and verification of licensure in other states.

645—280.4(154C) Written examination.

280.4(1) The applicant will take and pass the ASWB examination at the appropriate level as follows:

- a. Bachelor level social worker—the basic level examination.
- b. Master level social worker—the intermediate level examination.
- c. Independent level social worker—the clinical level examination.

280.4(2) The board will accept only official results from the ASWB examination service that are sent directly from the examination service to the board.

280.4(3) The ASWB passing score will be utilized as the Iowa passing score.

280.4(4) An applicant may sit for the examination if the applicant meets the requirements stated in rule 645—280.3(154C). Upon written request of the applicant, the board may authorize a student to sit for the examination prior to the receipt of the official transcript if the student is in the last semester of an approved master of social work program. The student shall submit an application for licensure at the master's level and the fee, and, in lieu of a transcript, the student shall request that the school submit a letter directly to the board office. The letter shall state that the student is currently enrolled in a master of social work program and the student's expected date of graduation. Upon completion of degree requirements, the applicant shall have the transcript showing the date of the degree sent directly from the school to the board office.

280.4(5) In lieu of the requirements in subrule 280.4(2), the board will accept the ASWB Social Work Registry verification of the ASWB examination results.

280.4(6) In lieu of the requirements in subrule 280.4(1), the board will accept verification of passing the state of California equivalent level licensing examination.

645—280.5(154C) Educational qualifications.

280.5(1) Bachelor level social worker. An applicant for a license will possess a bachelor's degree in social work from a college or university accredited by the Council on Social Work Education at the time of graduation.

280.5(2) Master and independent level social worker. An applicant for a license will present evidence satisfactory to the board that the applicant:

- a. Possesses a master's degree in social work from a college or university accredited by the Council on Social Work Education at the time of graduation; or
- b. Possesses a doctoral degree in social work from a college or university approved by the board at the time of graduation.

280.5(3) Foreign-trained social workers shall provide an equivalency evaluation of their educational credentials by International Education Research Foundation, Inc., Credentials Evaluation Service,

P.O. Box 3665, Culver City, California 90231-3665, telephone 310.258.9451, website www.ierf.org or email at info@ierf.org; or obtain a certificate of equivalency from the Council on Social Work Education, 1701 Duke Street, Suite 200, Alexandria, Virginia 22314-3457, telephone 703.683.8080, website www.cswe.org. The professional curriculum must be equivalent to that stated in these rules. The applicant shall bear the expense of the curriculum evaluation.

645—280.6(154C) Supervised clinical experience. An applicant for licensure as an independent level social worker must complete a supervised clinical experience as set forth in this rule.

280.6(1) Minimum requirements. The supervised clinical experience must satisfy all of the following requirements:

a. Timing. The supervised clinical experience cannot begin until after licensure as a master level social worker.

b. Duration. The supervised clinical experience must be a minimum of two years.

c. Minimum number of hours. The supervised clinical experience consists of at least 3,000 hours of practice.

d. Minimum number of direct client hours. The supervised clinical experience consists of at least 1,500 hours of direct client contact.

e. Minimum number of direct supervision hours. The supervised clinical experience must consist of at least 110 hours of direct supervision equitably distributed throughout the supervised clinical experience, including at least 24 hours of live or recorded direct observation of client interaction. A maximum of 50 hours of direct supervision may be obtained through group supervision. Direct supervision can occur in person or by using videoconferencing. After 110 hours of direct supervision are complete, ongoing direct supervision will continue to occur for the remainder of the supervised clinical experience.

f. Number of supervisors. A supervisee may utilize a maximum of four supervisors at any given time. A supervisee is responsible for notifying each supervisor if another supervisor is also being utilized to allow for coordination as appropriate.

g. Number of supervisees. A supervisor will determine the number of supervisees who can be supervised safely and competently and will not exceed that number.

h. Content. The supervised clinical experience must involve performing psychosocial assessments, diagnostic practice using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR), published March 2022, and providing treatment, including the establishment of treatment goals, psychosocial therapy using evidence-based therapeutic modalities, and differential treatment planning. The supervised clinical experience will prepare the supervisee for independent practice and must include training on practice management, ethical standards, legal and regulatory requirements, documentation, coordination of care, and self-care.

280.6(2) Eligible supervisors. A supervisor must satisfy all of the following requirements:

a. Hold an active license as an independent level social worker, mental health counselor, or marital and family therapist in Iowa.

b. Have a minimum of three years of independent practice.

c. Have completed at least a six-hour continuing education course in supervision or one graduate-level course in supervision.

d. Be knowledgeable of the applicable ethical code and licensing rules governing the supervisee.

e. Any request for a supervisor who does not meet these requirements must be approved by the board before supervision begins.

280.6(3) Supervision plan. Prior to beginning supervision, the supervisee will submit a written supervision plan to the board using the current form published by the board. The supervisee will also submit a written supervision plan to the board prior to beginning supervision with a new supervisor.

280.6(4) Supervision report. When supervision is complete, or when a supervisor ceases providing supervision to the supervisee, the supervisee will ensure a completed supervision report using the current form published by the board is submitted to the board. If the supervisor reports that the supervisee is not adequately prepared for independent licensure, or reports violations of the board's rules or applicable

ethical code, the board may require the supervisee to complete additional supervision or training as deemed appropriate prior to licensure.

280.6(5) *Supervised clinical experience in other states.* An applicant who completed some or all of the supervised clinical experience in another state without obtaining licensure in that state should contact the board to determine whether some or all of the supervised clinical experience completed can be used to qualify for licensure in Iowa.

280.6(6) *Grandfather clause.* Any new or additional requirements imposed by this rule do not apply to supervision that started prior to July 20, 2022.

645—280.7(154C) License renewal.

280.7(1) The biennial license renewal period for a license to practice social work will begin on January 1 of odd-numbered years and end on December 31 of the next even-numbered year. Every licensee will renew on a biennial basis. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice does not relieve the licensee of the responsibility for renewing the license.

280.7(2) Renewal procedures.

a. A licensee seeking renewal will:

(1) Meet the continuing education requirements of rule 645—281.2(154C) and the mandatory reporting requirements of subrule 280.7(3); and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

b. Those persons licensed for the first time will not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 27 hours of continuing education per biennium for each subsequent license renewal.

c. Persons licensed to practice social work shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

d. Failure to receive the notice of renewal will not relieve the licensee of the responsibility for submitting the required materials and the renewal fee to the board office 30 days before license expiration.

e. A social worker whose Iowa license is delinquent, closed, retired, voluntarily surrendered, suspended, or revoked cannot advance to a higher level until the license is again active.

280.7(3) Mandatory reporting of child abuse and dependent adult abuse.

a. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa will complete an initial two-hour child abuse mandatory reporter training course offered by the department of health and human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters will take a one-hour recertification training every three years, prior to the expiration of a current certificate.

b. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa will complete an initial two-hour dependent adult abuse mandatory reporter training course offered by the department of health and human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters will take a one-hour recertification training every three years, prior to the expiration of a current certificate.

c. The requirement for mandatory reporter training for identifying and reporting child and dependent adult abuse will be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 281.

d. The board may select licensees for audit of compliance with the requirements in paragraphs 280.7(3) “*a*” and “*b*.”

280.7(4) Late renewal. To renew a late license, the licensee will complete the renewal requirements and submit the late fee within the grace period.

280.7(5) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a social worker in Iowa until the license is reactivated. A licensee who practices as a social worker in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

280.7(6) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

645—280.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

280.8(1) Submit a reactivation application.

280.8(2) Pay the reactivation fee that is due as specified in 645—subrule 5.19(4).

280.8(3) Provide verification of current competence to practice social work by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant will provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

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

(2) Verification of completion of 27 hours of continuing education within two years of application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

(3) If the license has been on inactive status for more than five years, an applicant will provide the verifications in both subparagraphs (4) and (5) below plus the verification in subparagraph (6) or (7) below.

(4) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

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

(5) Verification of completion of 27 hours of continuing education within two years of application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

(6) Verification of passing the ASWB examination within the last five years at the appropriate or higher level as follows:

1. Bachelor level social worker – the bachelor's level examination; or
2. Master level social worker – the master's level examination; or

3. Independent level social worker – the clinical level examination; or
 - (7) Verification of continued social work practice at the appropriate or higher level in another state for a minimum of two years immediately preceding the application for reactivation.
- b.* Reserved.

645—280.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—280.8(17A,147,272C) prior to practicing social work in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 154C and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 281
“Continuing Education for Social Workers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154C, 147, 272C, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154C, 147, 272C, and 17A

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/vox-tsse-fzg
Or dial: 1.402.921.2210
PIN: 266 255 272#

Public Comment

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

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50309
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for social workers. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that social workers maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Analysis of Impact

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

Licensees are responsible for the cost of continuing education. Private industry offers these courses, so the Board of Social Work is not privy to exact costs. Licensees have multiple options. Courses can range anywhere from \$100 per hour to \$0 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options.

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

The intended benefit of continuing education is to ensure that social workers maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans, protecting public health and safety.

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

- Quantitative description of impact:

Private industry including educational institutions, professional associations, and businesses offers these courses, so the Board is not privy to exact costs. Courses can range anywhere from \$100 per hour to \$0 per hour. The Board allows for online coursework, which increases the availability of free or low-cost options. The Board does not have data to correlate increased public safety to continuing education hour requirements.

Currently, Iowa requires 27 hours of continuing education for these license types every two years.

- Qualitative description of impact:

There has been a historical belief that continuing education has a public safety benefit because it ensures the licensed professionals are receiving education on up-to-date standards of care and potentially reduces the number of complaints. While there is no evidence to prove this correlation, this has been a long-standing belief that boards around the country have held, as is evidenced by the fact that most other boards around the country require some form of continuing education.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which include continuing education. The time needed to manage this provision is generally in the form of responding to questions related to continuing education requirements. An executive officer supports the full scope of work of this Board at approximately 0.45 full-time equivalent (FTE) position, which includes answering questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc.

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

- Anticipated effect on state revenues:

Costs associated with completing continuing education hours are paid to entities that provide continuing education opportunities, not the State. There is no anticipated impact on state revenues as a result of this rulemaking.

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

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

Reducing or eliminating continuing education hours would reduce/eliminate the cost to the licensee to meet this requirement. The Board has not recommended a reduction in hours.

The Board believes there could be an impact to public safety if continuing education requirements were eliminated. This could lead to more complaints, investigations, and ultimately public discipline.

There would be a loss of revenue for the private industry organizations that offer these continuing education programs.

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

A less restrictive alternative would be to reduce the amount of continuing education required. A review of surrounding states has shown that Iowa is in line with neighboring jurisdictions. Iowa requires 40 hours of continuing education every two years. A review of surrounding states indicates that Illinois, Missouri, and South Dakota each require 30 hours; Nebraska requires 32 hours; and Minnesota and Kansas require 40 hours. Staff held conversations with Board members inquiring whether the Board

would recommend lowering the continuing education requirements. The Board did not recommend a change in continuing education hours.

6. Alternative methods considered by the agency:

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

Staff held conversations with members of the Board inquiring whether the Board would recommend lowering the continuing education requirements. The Board has considered a change of the total continuing education hours, the frequency, and the safety of the public. While the Board is not inclined at this time to make changes, it will consider evidence-based practice and data for future review.

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

The Board did consider less restrictive alternatives, such as reducing the number of continuing education hours. The Board believes that eliminating continuing education requirements would increase the number of complaints and investigations that the Board would need to conduct, but the Board has not been able to analyze this correlation so is unable to submit evidence of this belief.

Small Business Impact

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

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

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

Social workers practice in a number of settings including private practice clinics, major hospital systems, residential health care facilities, and educational institutions. While some licensees likely are running a small business of their own, some also work for large corporations and hospitals. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Conversely, the entities that provide continuing education may face a negative impact on their revenue due to less demand for entities' continuing education services.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 281 and adopt the following **new** chapter in lieu thereof:

CHAPTER 281 CONTINUING EDUCATION FOR SOCIAL WORKERS

645—281.1(154C) Definitions. For the purpose of these rules, the following definitions apply:

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

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

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

“Board” means the board of social work.

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

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

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

“License” means license to practice.

“Licensee” means any person licensed to practice as a social worker in the state of Iowa.

645—281.2(154C) Continuing education requirements.

281.2(1) The biennial continuing education compliance period extends for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state will be required to complete a minimum of 27 hours of continuing education approved by the board.

281.2(2) Requirements of new licensees. Those persons licensed for the first time during the license renewal period will not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second renewal may be used. The new licensee will be required to complete a minimum of 27 hours of continuing education per biennium for each subsequent license renewal.

281.2(3) Requirement of supervisors. For licensure at the independent level, persons serving in a supervisory role must complete three hours of continuing education in supervision.

281.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

281.2(5) No hours of continuing education will be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

281.2(6) The licensee will maintain a personal file with all documentation of the continuing education credits obtained.

645—281.3(154C,272C) Standards.

281.3(1) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters that integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both;
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date, location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor; and
- f. Contains one of the following content areas:

- (1) Human behavior.
 1. Theories and concepts of the development of human behavior in the life cycle of individuals, families and the social environment;
 2. Community and organizational theories;
 3. Normal, abnormal and addictive behaviors;
 4. Abuse and neglect; and
 5. Effects of culture, race, ethnicity, sexual orientation and gender.
- (2) Assessment and treatment.
 1. Psychosocial assessment/interview;
 2. Utilization of the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) of the American Psychiatric Association, published March 2022;
 3. Theoretical approaches and models of practice—individual, couple, and family therapy and group psychotherapy;
 4. Establishing treatment goals and monitoring progress;
 5. Techniques of social work practice; and
 6. Interdisciplinary consultation and collaboration.
- (3) Social work research, program evaluation, or practice evaluation.
- (4) Management, administration, and social policy.
 1. Organizational policies and procedures;
 2. Advocacy and prevention in social work practice;
 3. Management of social work staff and other personnel; and
 4. Management of social work programs.
- (5) Theories and concepts of social work education.
- (6) Social work ethics as they pertain to the rules of conduct.
- (7) An area, as demonstrated by the licensee, that directly relates to the licensee's individual practice as a social worker. The licensee will submit for consideration by the board a specific explanation of how the program relates to the licensee's individual practice setting as a social worker.

281.3(2) *Specific criteria.* Continuing education hours of credit can be obtained by completing:

- a. A minimum of three hours per biennium in social work ethics.
- b. Academic coursework that meets the criteria set forth in the rules. Continuing education equivalents are as follows:
 - 1 academic semester hour = 15 continuing education hours
 - 1 academic quarter hour = 10 continuing education hours
- c. Programs designed for the purpose of enhancing the licensee's administrative, management or other clinical skills.
 - d. Activities/programs that are sponsored/approved by:
 - (1) ASWB Approved Continuing Education (ACE) Program; or
 - (2) National Association of Social Workers (NASW) Continuing Education Unit (CEU) Approval Program.
 - e. Pro-bono/volunteer work that meets the following criteria:
 - (1) A licensee may earn a maximum of 3 of the required 27 hours of continuing education for credit during one biennium by performing pro-bono/volunteer services for indigent, underserved populations, or in areas of critical need within the state of Iowa. Such services must be approved in advance by the board.
 - (2) A licensee will apply for prior approval of pro-bono/volunteer services by sending a letter to the board indicating that the following requirements will be met:
 1. The site for these services is identified including information about the clients, the services that will be offered, how they will be performed and the learning objectives.
 2. A contract will be established between licensee and client(s), and each party will be aware that the services are being provided without charge.
 3. The services will be subject to all the legal responsibilities and obligations related to the licensee's profession.

4. The licensee will keep records and files of these client services pursuant to the rules of 645—Chapter 282.

5. A representative from the site for pro-bono/volunteer services must provide a letter stating that these services are to be performed by the licensee.

6. Upon review, the licensee will receive a letter from the board indicating prior approval for these pro-bono/volunteer services that will be done for continuing education credit.

7. Following completion of such services:

- The licensee must provide the board a letter stating that the services were performed as planned.
- The representative on the site must provide a letter indicating such completion.

f. Instruction of a course at an approved college, university or graduate school of social work. A licensee may receive credit on a one-time basis not to exceed three hours of continuing education credit per biennium.

g. Instruction/presentation/moderation of continuing education programs. A licensee may receive credit on a one-time basis, not to exceed three hours of continuing education credit per biennium, for programs at which the licensee is actually in attendance for the complete program provided the licensee receives a certificate of attendance in compliance with this rule.

h. Authorship of professional papers, publications or books and preparation of presentations and exhibits. A presentation must be made before a professional audience. Presentations may receive credit on a one-time basis for the article, publication, book or the preparation of a presentation or exhibit, not to exceed three hours of continuing education credit per biennium.

i. Supervision of a social work practicum student(s) from an accredited social work education program. A licensee may receive one credit for every 100 hours supervised, not to exceed 6 hours of continuing education credit per biennium.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 282
“Practice of Social Workers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154C, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154C, 272C, 147, and 17A

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call: meet.google.com/vox-tsse-fzg
Or dial: 1.402.921.2210
PIN: 266 255 272#

Public Comment

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

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50309
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides Iowans, licensees, and employers with practice guidance and requirements for social workers. The rules provide guidance on what is considered appropriate and what is not appropriate practice. Categories include informed consent, competency, supervision, privacy and confidentiality, recordkeeping, access to records, billing and fees, dual relationships and conflicts of interest, sexual relationships, physical contact, termination of services, misrepresentations, impairments, research, organization relationships and business practices, discrimination and sexual harassment, electronic social work services, National Association of Social Workers (NASW) Code of Ethics, and general guidance.

Analysis of Impact

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

There are often costs associated with practice standards in the form of effort and money associated with compliance, as is true for any service-oriented industry. Members of the public would have costs associated with the services they are seeking to receive. Each licensee’s practice has different variables, such as number of clients seen, nature of services provided, how services are delivered (i.e., telehealth or in person), administrative support, etc. The Board of Social Work does not have a mechanism for estimating what these total costs might be to the public and to the licensee.

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, answering questions from licensees and the public,

administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.45 full-time equivalent (FTE) position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The general public and licensees benefit from this rulemaking. The chapter provides standards of practice for licensees to ensure a licensee is following standards of care and providing adequate services to the consumer. The public benefits by knowing they are receiving quality services in this industry.

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

- Quantitative description of impact:

There are a large number of licenses in this profession. Master's and independent level licensees routinely provide mental health services to Iowans. There are approximately 573 licensed bachelor social workers (LBSW), 1,854 licensed master's social workers (LMSW), and 2,683 licensed independent social workers (LISW) who provide these services to Iowans. The Board received 55 complaints in 2021 and 51 in 2022. The Board initiated 15 public disciplinary actions over those two years. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that vulnerable Iowans who are receiving mental health services could be placed at risk. Social work is regulated in all 50 states.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Qualitative description of impact:

Establishing practice standards ensures safety for the licensee and the consumer. If this profession were not regulated, it could mean lower-skilled individuals providing services.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage the full scope of Board activities, which includes oversight of practice standards, answering questions from licensees and the public, administration of Board meetings, etc. An executive officer supports the work of this Board at approximately 0.45 FTE position. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues as a result of this rulemaking.

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

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

There are a large number of licenses in this profession. Master's and independent level licensees routinely provide mental health services to Iowans. There are approximately 573 LBSW, 1,854 LMSW, and 2,683 LISW who provide these services to Iowans. The Board received 55 complaints in 2021 and 51 in 2022. The Board initiated 15 public disciplinary actions over those two years. The Board believes that the benefits achieved justify the costs because the rules provide required guardrails for providing this important service to Iowans. If this profession were not regulated, it could mean that vulnerable Iowans who are receiving mental health services could be placed at risk. Social work is regulated in all 50 states.

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

Licensing is the highest form of regulation. Lower forms of regulation could be viable, such as registration. That said, social work is regulated in all 50 states. Social workers practice a form of mental health therapy that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

6. Alternative methods considered by the agency:

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

Currently, social workers are regulated in all 50 states. Social workers practice a form of mental health therapy that is technical in nature and requires a high level of skill, so the Board believes that regulation is necessary.

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

The Board did consider less restrictive alternatives, such as registration as opposed to licensure. The Board ultimately decided that to ensure public safety and the integrity of the profession, licensure requirements should stay in effect. Currently, all 50 states regulate social work. Not regulating this profession could jeopardize public safety and lead to serious injury for consumers. The Board believes regulations are necessary and critical to ensuring public safety, which is the paramount concern.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for social workers. While some licensees could be running a small business, some also work for large hospitals, clinics and agencies. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 282 and adopt the following **new** chapter in lieu thereof:

CHAPTER 282 PRACTICE OF SOCIAL WORKERS

645—282.1(154C) Definitions.

“*Client*” means the individual, couple, family, or group to whom a licensee provides direct social work services.

“Clinical services” means services provided by an LMSW or LISW that involve the professional application of social work theory and methods in diagnosing, assessing, treating, and preventing psychosocial disabilities or impairments, including emotional and mental disorders.

“Counseling” means a method used by licensees to assist clients in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

“Psychosocial therapy” means a specialized, formal interaction between an LMSW or LISW and a client in which a therapeutic relationship is established and maintained to assist the client in overcoming or abating specific emotional, mental, or social problems and achieving specified goals for well-being. Psychosocial therapy is a form of psychotherapy which emphasizes the interface between the client and the client’s environment. Therapy is a planned, structured program based on a diagnosis and is directed to accomplish measurable goals and objectives specified in the client’s individual treatment plan.

645—282.2(154C) Rules of conduct.

282.2(1) *Informed consent.*

a. A licensee will provide services to clients only in the context of a professional relationship based, when appropriate, on valid written informed consent. A licensee will use clear and understandable language to inform clients about the nature of available services, potential benefits and risks, limits and risks of confidentiality, alternative ways of receiving assistance, applicable fees, and involvement of and sharing information with third parties.

b. If a client has difficulty communicating, a licensee will attempt to ensure the client’s comprehension. This may include providing the client with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible. A licensee will provide information in a manner that is understandable and culturally appropriate for the client. Clients will be given sufficient opportunity to ask questions and receive answers about social work services, including electronic delivery of services, if appropriate.

c. If a client lacks the capacity to provide informed consent, a licensee will protect the client’s interests by seeking permission from an appropriate third party and will inform the client consistent with the client’s level of understanding. In such instances, a licensee will seek to ensure that the third party acts in a manner consistent with the client’s wishes and interests. A licensee will take reasonable steps to enhance the client’s ability to give informed consent.

d. If a client is receiving services involuntarily, a licensee will provide information about the nature and extent of services and about the extent of the client’s right to refuse services.

e. The provision of social work services to an individual in this state through any electronic means, including the Internet, telephone, or the Iowa communications network or any fiberoptic media, regardless of the location of the licensee, constitutes the practice of social work in the state of Iowa and will be subject to regulation in accordance with Iowa Code chapters 147 and 154C and the administrative rules of the board. A licensee who provides services via electronic media will inform recipients of the limitations and risks associated with such services.

f. A licensee will obtain a client’s informed consent before audiotaping or videotaping the client or permitting a third party to observe services provided to the client.

g. A licensee will develop policies regarding the sharing, retention, and storage of digital and other electronic communications and records and will inform clients of applicable policies.

282.2(2) *Competence.*

a. A licensee will provide services and represent oneself as competent only within the boundaries of the licensee’s education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

b. A licensee will provide services in substantive areas or use intervention techniques or approaches that are new only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those areas, interventions, or techniques.

c. When generally recognized standards do not exist with respect to an emerging area of practice, a licensee will exercise careful judgment and take responsible steps, including appropriate education, research, training, consultation and supervision, to ensure competence and to protect clients from harm.

282.2(3) *Supervision.*

a. A licensee will exercise appropriate supervision over persons who practice under the supervision of the licensee.

b. A licensee who provides supervision or consultation will have the necessary knowledge and skill to supervise or consult appropriately and will do so only within the licensee's areas of knowledge and competence.

c. A licensee who provides supervision or consultation is responsible for setting clear, appropriate, and culturally sensitive boundaries.

d. A licensee will not engage in any dual or multiple relationships with supervisees if there is a risk of exploitation of or potential harm to the supervisee.

e. A licensee will not engage in sexual activities or sexual contact with a supervisee, student, trainee, or other colleague over whom the licensee exercises professional or supervisory authority.

f. A licensee will not employ, assign, or supervise an individual in the performance of services that require a license if the individual has not received a license to perform the services or if the individual has a suspended, revoked, lapsed, or inactive license.

g. A licensee will not practice without receiving supervision, as needed, given the licensee's level of practice, experience, and need.

282.2(4) *Privacy and confidentiality.*

a. A licensee will not disclose or be compelled to disclose client information unless required by law, except under the following limited circumstances:

(1) Situations in which the licensee determines that disclosure is necessary to prevent serious, foreseeable, and imminent harm to the client or another specific identifiable person.

(2) If the client waives the privilege by bringing criminal, civil, or administrative charges or action against a licensee.

(3) With the written informed consent of the client that explains to whom the client information will be disclosed or released and the purpose and time frame for the release of information. If the client is deceased or unable to provide informed consent, a licensee will obtain written consent from the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.

(4) To testify in a court or administrative hearing concerning matters pertaining to the welfare of children.

(5) To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

(6) Pursuant to a validly issued subpoena or court order.

In the event of a disclosure of information under any of the circumstances stated above, the licensee will disclose the least amount of confidential information necessary and will reveal only that information that is directly relevant to the purpose for which the disclosure is made.

b. Before the disclosure is made, on the basis of client consent or other legal basis, a licensee will inform the client, to the extent possible, about the disclosure of confidential information and the potential consequences of the disclosure.

c. A licensee will discuss with clients and other interested parties the nature of confidentiality and limitations of a client's right to confidentiality. A licensee will review with clients the circumstances under which confidential information may be requested and when disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

d. When a licensee provides counseling or psychosocial therapy services to families, couples, or groups, the licensee will seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. A licensee

will inform participants in family, couples, or group counseling or psychosocial therapy that the licensee cannot guarantee that all participants will honor such agreements.

e. A licensee will inform clients involved in family, couples, marital, or group counseling or psychosocial therapy of the licensee's, the licensee's employer's, and the agency's policy concerning the licensee's disclosure of confidential information among the parties involved in the counseling or psychosocial therapy.

f. A licensee will not disclose confidential information to third-party payers unless a client has authorized such disclosure. A licensee will inform the client of the nature of the client information to be disclosed or released to the third-party payer.

g. A licensee will not discuss confidential information in any setting unless privacy can be ensured.

h. A licensee will protect the confidentiality of clients during legal proceedings to the extent permitted by law.

i. A licensee will protect the confidentiality of clients when the licensee is responding to requests from members of the media.

j. A licensee will protect the confidentiality of clients' written and electronic records and other sensitive information. A licensee will take reasonable steps to ensure that client records are stored in a secure location and that client records are not available to others who are not authorized to have access.

k. A licensee will take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones, telephone answering machines, and other electronic or computer technology.

l. A licensee will transfer or dispose of client records in a manner that protects client confidentiality and is consistent with federal and state statutes, rules and regulations and the guidelines of the licensee's employer or agency, if applicable.

m. A licensee will take reasonable precautions to protect client confidentiality in the event of the licensee's termination of practice, incapacitation, or death.

n. A licensee will not disclose identifying information when discussing a client for teaching or training purposes or in public presentations unless the client has consented to disclosure of confidential information.

o. A licensee will not disclose identifying information when discussing a client with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

p. Consistent with the preceding standards, a licensee will protect the confidentiality of deceased clients.

282.2(5) *Recordkeeping.*

a. A licensee will maintain sufficient, timely, and accurate documentation in client records. A licensee's records will reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

b. A licensee who provides clinical services in any employment setting, including private practice, will maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.

c. A licensee who provides clinical services will store records in accordance with state and federal statutes, rules, and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee will store all client records for a minimum of seven years following the termination of services to ensure reasonable future access.

282.2(6) *Access to records.* A licensee who provides clinical services will:

a. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client will provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious

harm to the client. Both the client's request and the rationale for withholding some or all of a record should be documented in the client's records.

b. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

282.2(7) *Billing and fees.*

a. A licensee will bill only for services that have been provided.

b. A licensee will not accept goods or services from the client or a third party in exchange for the licensee's services.

c. A licensee will not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the licensee's employer or agency.

d. A licensee will not accept, give, offer or solicit a fee, commission, rebate, fee split, or other form of consideration for the referral of a client.

e. A licensee will not permit any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant to the licensee.

f. A licensee who provides clinical services will, when appropriate:

(1) Establish and maintain billing practices that accurately reflect the nature and extent of services provided.

(2) Inform the client of the fee for services at the initial session or meeting with the client. A licensee will provide a written payment arrangement to a client at the commencement of the professional relationship.

282.2(8) *Dual relationships and conflicts of interest.*

a. "Dual relationship" means that a licensee develops or assumes a secondary role with a client, including but not limited to a social relationship, an emotional relationship, an employment relationship, or a business association. For purposes of these rules, "dual relationship" does not include a sexual relationship. Standards governing sexual relationships are found in subrule 282.2(9).

(1) Current clients. A licensee will not engage in a dual relationship with a client.

(2) Former clients. A licensee will not engage in a dual relationship with a client within five years of the termination of the client relationship. A licensee will not engage in a dual relationship with a former client, regardless of the length of time elapsed since termination of the client relationship, when there is a risk of exploitation or potential harm to a client or former client.

(3) Unavoidable dual relationships with current and former clients. If a dual relationship with a current or former client is unavoidable, the licensee will take steps to protect the client and will be responsible for setting clear, appropriate, and culturally sensitive boundaries. The burden will be on the licensee to show that the dual relationship was unavoidable. In determining whether a dual relationship was unavoidable, the board will consider the size of the community, the nature of the relationship, and the risk of exploitation or harm to a client or former client.

b. Conflicts of interest.

(1) A licensee will avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.

(2) A licensee will not continue in a professional relationship with a client when the licensee has become emotionally involved with the client to the extent that objectivity is no longer possible in providing the required professional services.

(3) A licensee will inform the client when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the client's interests primary and protects the client's interests to the greatest extent possible. In some cases, protecting the client's interests may require termination of the professional relationship with proper referral of the client.

(4) A licensee will not take unfair advantage of any professional relationship or exploit others to further the licensee's personal, religious, political, or business interests.

(5) A licensee who provides services to two or more people who have a relationship with each other will clarify with all parties, when appropriate and in a manner consistent with the confidentiality standards of subrule 282.2(4), which individuals will be considered clients and the nature of the licensee's professional obligations to the various individuals who are receiving services. A licensee

who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles will clarify, when appropriate and in a manner consistent with the confidentiality standards at subrule 282.2(4), the licensee's role with the parties involved and take appropriate action to minimize any conflict of interest.

282.2(9) *Sexual relationships.*

a. Current clients. A licensee will not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee will not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee will not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee will not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee will not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee will not provide clinical services to an individual with whom the licensee has had prior sexual contact.

282.2(10) *Physical contact.* A licensee will not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries that govern such contact.

282.2(11) *Termination of services.*

a. A licensee will terminate services to a client when such service is no longer required or no longer serves the client's needs or interests.

b. A licensee will take reasonable steps to avoid abandoning clients who are still in need of services. A licensee will assist in making appropriate arrangements for continuation of services when necessary.

c. A licensee will not terminate services to pursue a social, financial, business, romantic, or sexual relationship with a client.

d. A licensee who anticipates the termination or interruption of services to a client will notify the client promptly and seek the transfer, referral, or continuation of services in relation to the client's needs and preferences.

e. A licensee who is leaving an employment setting will inform clients, to the extent possible given the nature of the termination of the employment relationship, of appropriate options for the continuation of services and of the benefits and risks of the options.

f. If the employer who terminates a licensee is also a licensee, the employer will provide notice to clients or allow the licensee the opportunity to provide notice to clients to ensure appropriate case closure or continuation or transfer of services if continued treatment is necessary.

g. A licensee who provides clinical services will comply with the following additional standards regarding termination of the client relationship:

(1) Termination of a client relationship will be documented in the client record. Absent written documentation of termination, the professional relationship will be considered ongoing.

(2) A licensee who practices in a fee-for-service setting may terminate services to a client who is not paying an overdue balance only if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client. Prior to terminating services under this subrule, a licensee will make reasonable efforts to collect the unpaid fees and will make appropriate referrals for the client.

282.2(12) *Misrepresentations, disclosure.* A licensee will not:

- a.* Knowingly make a materially false statement, or fail to disclose a relevant material fact, in a letter of reference, application, referral, report or other document.
- b.* Knowingly allow another person to use the licensee's license or credentials.
- c.* Knowingly aid or abet a person who is misrepresenting the person's professional credentials or competencies.
- d.* Impersonate another person or misrepresent an organizational affiliation in one's professional practice.
- e.* Further the application or make a recommendation for professional licensure of another person who is known by the licensee to be unqualified in respect to character, education, experience, or other relevant attribute.
- f.* Fail to notify the appropriate licensing authority of any human services professional who is practicing or teaching in violation of the laws or rules governing that person's professional discipline.
- g.* Engage in professional activities, including advertising, that involve dishonesty, fraud, deceit, or misrepresentation.
- h.* Advertise services in a false or misleading manner or fail to indicate in the advertisement the name, the highest relevant degree and licensure status of the provider of services.
- i.* Fail to distinguish, or purposely mislead the reader or listener in public announcements, addresses, letters and reports as to whether the statements are made as a private individual or whether they are made on behalf of an employer or organization.
- j.* Engage in direct solicitation of potential clients for pecuniary gain in a manner or in circumstances that constitute overreaching, undue influence, misrepresentation or invasion of privacy.
- k.* Fail to inform each client of any financial interests that might accrue to the licensee for referral to any other person or organization or for the use of tests, books, or apparatus.
- l.* Fail to inform each client that the client may be entitled to the same services from a public agency, if the licensee is employed by that public agency and also offers services privately.
- m.* Make claims of professional superiority that cannot be substantiated by the licensee.
- n.* Guarantee that satisfaction or a cure will result from the performance of professional services.
- o.* Claim or use any secret or special method of treatment or techniques that the licensee refuses to divulge to professional colleagues.
- p.* Take credit for work not personally performed whether by giving inaccurate information or failing to give accurate information.
- q.* Offer social work services or use the designation of licensed bachelor social worker, licensed master social worker, or licensed independent social worker; or use the designations LBSW, LMSW, or LISW or any other designation indicating licensure status; or hold oneself out as practicing at a certain level of licensure unless the licensee is duly licensed as such.
- r.* Permit another person to use the licensee's license for any purpose.
- s.* Practice outside the scope of a license.

282.2(13) Impairments.

- a.* A licensee will not:
 - (1) Practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician.
 - (2) Practice in a professional relationship while experiencing a mental or physical impairment that adversely affects the ability of the licensee to perform professional duties in a competent and safe manner.
 - (3) Practice in a professional relationship if involuntarily committed for treatment of mental illness, drug addiction, or alcoholism.

b. A licensee who self-reports an impairment or suspected impairment to the board may be eligible for confidential monitoring by the impaired practitioner review committee. The licensee will be provided the Impaired Practitioner Report form to initiate the process. Standards governing the impaired practitioner review committee may be found in 645—Chapter 16.

282.2(14) Research. If engaged in research, a licensee will:

- a.* Consider carefully the possible consequences for human beings participating in the research.
- b.* Protect each participant from unwarranted physical and mental harm.

c. Ensure that the consent of the participant is voluntary and informed and that each participant executes a signed informed consent form that details the nature of the research and any known possible consequences.

d. Treat information obtained as confidential.

e. Not knowingly report distorted, erroneous, or misleading information.

282.2(15) *Organization relationships and business practices.* A licensee will not:

a. Solicit the clients of colleagues or assume professional responsibility for clients of another agency or colleague without appropriate communication with that agency or colleague.

b. Abandon an agency, organization, institution, or group practice without reasonable notice or under circumstances that seriously impair the delivery of professional care to clients.

c. Deliberately falsify client records.

d. Fail to submit required reports and documents in a timely fashion to the extent that the well-being of the client is adversely affected.

e. Delegate professional responsibilities to a person when the licensee knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

282.2(16) *Discrimination and sexual harassment.*

a. A licensee will not practice, condone, or facilitate discrimination against a client, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

b. A licensee will not sexually harass a client, student, or supervisee. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

282.2(17) *General.* A licensee will not:

a. Practice without receiving supervision as needed, given the licensee's level of practice, experience, and need.

b. Practice a professional discipline without an appropriate license or after expiration of the required license.

c. Physically or verbally abuse a client or colleague.

d. Obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority; or sell, prescribe, give away, or administer controlled substances.

282.2(18) *Relationship between the board's rules of conduct and the National Association of Social Workers (NASW) Code of Ethics.* The NASW Code of Ethics is one resource for practitioners with respect to practice and ethical issues, and selected sections from the NASW Code of Ethics have been incorporated into the rules of conduct. A licensee's professional conduct is governed by the board's rules of conduct, and a licensee may be disciplined for violation of these rules.

282.2(19) *Electronic social work services.* A licensee will:

a. Assess the client's suitability and capacity for online and remote services at the point of the client's first contact and use professional judgment to determine whether an initial in-person, videoconference, or telephone consultation is warranted before undertaking electronic social work services.

b. Take reasonable steps to verify the client's identity, ability to consent to services, and location. When verification of a client's identity is not feasible, social workers will inform the client of the limitations of services that can be provided.

c. Continually assess a client's suitability for electronic social work services during the course of the professional relationship.

These rules are intended to implement Iowa Code chapters 21, 147, 154C, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 645—Chapter 283
“Discipline for Social Workers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 154C, 272C, 147, and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 154C, 272C, 147, and 17A

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call: meet.google.com/vox-tsse-fzg
Or dial: 1.402.921.2210
PIN: 266 255 272#

Public Comment

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

Tony Alden
6200 Park Avenue
Des Moines, Iowa 50309
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Purpose and Summary

The proposed rulemaking provides protection to Iowans since it publicly defines disciplinary options when a social worker fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, licensees can be subject to discipline against their license. Iowans have the ability to submit a complaint to the Board of Social Work, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

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

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. This chapter is related to standards of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at \$1,000 per violation up to a maximum of \$10,000 per public order.

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.45 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees regarding practice standards, continuing education, Board meeting administration, etc. The Board receives a number of complaints each year. In 2021, the Board received 55 and in 2022, it received 51. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

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

The intended benefit of this rulemaking is to ensure public safety and maintain a high level of care for Iowans. The Board receives a number of complaints and regularly issues discipline. In 2021, the Board received 55 and in 2022, it received 51. The Board initiated 15 public disciplinary actions during that two-year period. The Board has approximately 5,000 active licensees.

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

- Quantitative description of impact:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

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

Costs to the agency are the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 0.45 FTE position.

Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this rulemaking are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, \$1,000 in civil penalties were paid into the General Fund by disciplinary fees assessed by the Board.

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

The Board receives a number of complaints each year. In 2021, the Board received 55 and in 2022, it received 51. The Board initiated 15 public disciplinary actions during that two-year period. Licensees routinely provide mental health services to Iowans. Licensees who fail to meet practice standards have

the potential to inflict serious harm to vulnerable Iowans who receive their services, so the Board believes that regulation is necessary.

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

The Board has not identified a less-restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

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

The 19 boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the social work profession and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

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

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important to ensure Iowans receive services from competent practitioners.

Small Business Impact

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

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

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

The proposed chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for social workers. While some licensees could be running a small business, some also work for large hospitals, clinics and agencies. To exempt a small business from adhering to this rule would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 645—Chapter 283 and adopt the following new chapter in lieu thereof:

CHAPTER 283 DISCIPLINE FOR SOCIAL WORKERS

645—283.1(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of social work, including but not limited to the rules of conduct found in rule 645—282.2(154C).

This rule is intended to implement Iowa Code chapters 147, 154C and 272C.

ARC 7195C

CAPITAL INVESTMENT BOARD, IOWA[123]**Notice of Intended Action****Proposing rulemaking related to agency realignment
and providing an opportunity for public comment**

The Iowa Capital Investment Board hereby proposes to rescind Chapter 1, “Iowa Capital Investment Board – Administration,” Chapter 2, “Tax Credit for Investments in Qualifying Businesses and Community-Based Seed Capital Funds,” Chapter 3, “Tax Credit for Investments in Venture Capital Funds,” and Chapter 4, “Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 15E.63(11) as amended by 2023 Iowa Acts, House File 688, section 18.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15E.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department of Revenue was directed on November 21, 2023, to propose this Notice of Intended Action to rescind the remaining chapters for the Iowa Capital Investment Board. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

After review of the Iowa Administrative Code pursuant to Iowa Code section 15E.63(11) as amended by 2023 Iowa Acts, House File 688, the Department determined that the rules for the Board can be rescinded in their entirety. Effective June 20, 2013, the Board and the Iowa Fund of Funds are governed by the program wind-up and future repeal provisions of Iowa Code section 15E.72. Chapters 1 and 4 relate to functions of the Board prior to the wind-down that are no longer applicable. Chapter 2 relates to a program administered by the Iowa Economic Development Authority that no longer involves the Board, making rules on its role no longer relevant. The Iowa Economic Development Authority has its own rules and statutes on the program in Iowa Code sections 15E.41 through 15E.46 and 261—Chapter 115. Chapter 3 describes a tax credit that was previously administered by the Board but that was repealed in 2010.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Public Hearing

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

January 3, 2024
9 to 9:30 a.m.

Via video/conference call

January 3, 2024
2 to 2:30 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Alana Stamas before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **123—Chapter 1.**
- ITEM 2. Rescind and reserve **123—Chapter 2.**
- ITEM 3. Rescind and reserve **123—Chapter 3.**
- ITEM 4. Rescind and reserve **123—Chapter 4.**

ARC 7131C

CITY DEVELOPMENT BOARD[263]**Notice of Intended Action****Proposing rulemaking related to organization and administration
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 1, "Organization and Administration," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3 and 368.10.

CITY DEVELOPMENT BOARD[263](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 368.9 and 368.10.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 1 and adopt a new chapter in lieu thereof. The proposed new chapter will omit statutory language from the rules and use more concise language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
12:30 to 12:45 p.m.

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

January 9, 2024
8:30 to 8:45 a.m.

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

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

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

Review by Administrative Rules Review Committee

CITY DEVELOPMENT BOARD[263](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ORGANIZATION AND ADMINISTRATION

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. Detailed information about the board's policies and procedures can be found in Iowa Code chapter 368, in rules adopted by the board, and at www.iowaeda.com/land-planning.

263—1.2(368) Office of the board. All official communications, including submissions and requests, may be addressed to City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or to cdb@iowaeda.com.

263—1.3(368) Membership and quorum requirements. The board annually elects from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. Three members of the board constitute a quorum, and a quorum must be present in order for the board to take action. The affirmative vote of a majority of board members is necessary for action taken by the board.

263—1.4(368) Meetings. The board conducts regular meetings at least every other month at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the board may designate. The chairperson or the chairperson's designee prepares an agenda for each meeting, listing matters to be addressed. Meetings of the board are subject to the requirements of Iowa Code chapter 21.

These rules are intended to implement Iowa Code sections 368.9 and 368.10.

ARC 7132C

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

**Proposing rulemaking related to agency procedure for rulemaking
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 2, "Agency Procedure for Rule Making," Iowa Administrative Code, and to adopt a new Chapter 2, "Agency Procedure for Rulemaking."

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

CITY DEVELOPMENT BOARD[263](cont'd)

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 2 and adopt a new chapter in lieu thereof. The new chapter will omit statutory language from the rules and clarify how the Board can be contacted regarding its rules.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
12:45 to 1 p.m.

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

January 9, 2024
8:45 to 9 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

CITY DEVELOPMENT BOARD[263](cont'd)

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
AGENCY PROCEDURE FOR RULEMAKING

263—2.1(17A) Incorporation by reference. The city development board incorporates by this reference all such matters in Iowa Code chapter 17A that relate to procedures for rulemaking.

263—2.2(17A) Contact information.

2.2(1) General. Inquiries about board rules and the rulemaking process may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

2.2(2) Comments on proposed rules. Any public comment on a Notice of Intended Action or similar document relating to rules may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or as directed in the Notice of Intended Action or similar document.

These rules are intended to implement Iowa Code chapter 17A.

ARC 7133C

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

**Proposing rulemaking related to petitions for rulemaking
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 3, “Petitions for Rule Making,” Iowa Administrative Code, and to adopt a new Chapter 3, “Petitions for Rulemaking.”

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.17.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 3 and adopt a new chapter in lieu thereof. The proposed new chapter will clarify how to access the Uniform Rules on Agency Procedure and will omit unnecessary words.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

CITY DEVELOPMENT BOARD[263](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
1 to 1:15 p.m.

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

January 9, 2024
9 to 9:15 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
PETITIONS FOR RULEMAKING

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—3.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption of the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

CITY DEVELOPMENT BOARD[263](cont'd)

263—3.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 17A.7.

ARC 7134C

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

**Proposing rulemaking related to declaratory orders
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 4, “Declaratory Orders,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.9.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 4 and adopt a new chapter in lieu thereof. The new chapter will clarify how to access the Uniform Rules on Agency Procedure and will omit unnecessary words.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

CITY DEVELOPMENT BOARD[263](cont'd)

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
1:15 to 1:30 p.m.

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

January 9, 2024
9:15 to 9:30 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
DECLARATORY ORDERS

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—4.1(17A) Petition for declaratory order. In lieu of “(designate agency)”, insert “city development board”. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption on the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

263—4.2(17A) Notice of petition. In lieu of “___ days (15 or less)”, insert “15 days”.

263—4.3(17A) Intervention.

4.3(1) In lieu of “___ days”, insert “15 days”.

263—4.5(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 17A.9.

ARC 7135C

CITY DEVELOPMENT BOARD[263]**Notice of Intended Action****Proposing rulemaking related to fair information practices
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 5, “Fair Information Practices,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 386.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 22.11.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 5 and adopt a new chapter in lieu thereof. The new chapter will clarify how to access the Uniform Rules on Agency Procedure and will omit unnecessary words.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

CITY DEVELOPMENT BOARD[263](cont'd)

January 2, 2024
1:30 to 1:45 p.m.

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

January 9, 2024
9:30 to 9:45 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
FAIR INFORMATION PRACTICES

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—5.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of “(official or body issuing these rules)”, insert “city development board”.

263—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of “(insert agency head)”, insert “city development board”. In lieu of “(insert agency name and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

5.3(2) Office hours. In lieu of “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays”.

5.3(7) Fees.

c. *Supervisory fee.* In lieu of “(specify time period)”, insert “two hours”.

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 22.11.

ARC 7136C**CITY DEVELOPMENT BOARD[263]****Notice of Intended Action****Proposing rulemaking related to waiver rules
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 6, “Waiver Rules,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 6 and adopt a new chapter in lieu thereof. The new chapter will omit repetition of statutory language and clarify Board policies and procedures regarding waivers.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

CITY DEVELOPMENT BOARD[263](cont'd)

January 2, 2024
1:45 to 2 p.m.

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

January 9, 2024
9:45 to 10 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
WAIVER RULES

263—6.1(17A) Definitions.

“Board” means the same as defined in Iowa Code section 368.1(3).

“Petitioner” means a person who petitions an agency for the waiver of a rule.

“Waiver” means the same as defined in Iowa Code section 17A.9A(5) as applied to an action by the board.

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

263—6.3(17A) Applicability. The board may grant a waiver of a rule as permitted by Iowa Code section 17A.9A(1).

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 263—6.6(17A), the board may issue a waiver if the board makes the applicable findings in Iowa Code section 17A.9A(2).

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

CITY DEVELOPMENT BOARD[263](cont'd)

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related city development proceeding.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in Iowa Code section 17A.9A(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.
6. Any information known to the requester regarding the board's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.
8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

263—6.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the board's chair, or a committee of the board, or a quorum of the board.

263—6.8(17A) Notice. The board will acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a pending city development action pursuant to subrule 6.5(1). If a petition for waiver is filed with the board pursuant to subrule 6.5(2), the provisions of Iowa Code sections 17A.10 to 17A.18A apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

263—6.10(17A) Ruling. Iowa Code section 17A.9A(3) describes certain procedural aspects for considering a petition for waiver and issuing a ruling thereon, including the burden of persuasion; the manner in which a petition for waiver must be evaluated; the limits of the waiver, if one is issued; and the circumstances under which the board may place a condition on the waiver. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The board shall have the sole discretion to decide whether to grant a waiver.

CITY DEVELOPMENT BOARD[263](cont'd)

6.10(1) *Form of ruling.* An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver, if one is issued.

6.10(2) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(3) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(4) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

6.10(5) *Filing of waiver ruling.* Within 60 days of granting or denying a waiver, the board shall submit information as required by Iowa Code section 17A.9A(4).

263—6.11(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

263—6.12(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

263—6.13(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code section 17A.9A.

ARC 7137C

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

**Proposing rulemaking related to voluntary annexation
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 7, “Voluntary Annexation,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 368.

CITY DEVELOPMENT BOARD[263](cont'd)

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 7 and adopt a new chapter in lieu thereof. The new chapter will omit repetition of statutory language and consolidate other redundant language that was previously repeated in multiple rules within the chapter. Additionally, the new chapter will clarify Board policies and procedures. The citation in the proposed chapter to rule 263—8.10(368) is to that rule as proposed in the Notice of Intended Action for 263—Chapter 8 (ARC 7138C, IAB 12/13/23).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
2 to 2:30 p.m.

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

January 9, 2024
10 to 10:30 a.m.

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

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

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

Review by Administrative Rules Review Committee

CITY DEVELOPMENT BOARD[263](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) Purpose and scope. This chapter addresses the requirements and processes for city development board approval of voluntary annexation within another city's urbanized area; voluntary annexation, including property without the owner's consent; and boundary adjustments between cities by petition and consent. Such requests for board approval shall be initiated pursuant to Iowa Code section 368.7 or 368.25A and this chapter. A city's request for board approval of such actions will be referred to in this chapter as a petition.

263—7.2(368) Contents of petition. This rule describes the information and documentation a city is required to include in its petition.

7.2(1) Landowner application requirements. The board will verify that each landowner's application for annexation includes the items required by Iowa Code section 368.7(1) "c" and is dated and signed by all owners of record or their authorized representatives. If voluntary annexation is requested for a parcel of land being sold on contract, the contract seller and the contract buyer should both approve the application. If voluntary annexation is requested for property owned by a business organization or entity other than a natural person or persons, the applicant should provide documentation establishing authorization to act on behalf of the owner entity.

7.2(2) City requirements. In addition to any applicable landowner applications submitted in compliance with subrule 7.2(1), a city's petition must include all of the following:

a. A general statement of the proposed annexation, briefly describing the current and expected use of the annexation territory, any services that the city currently provides to the territory, and the reasons for a landowner's request for annexation, if known.

b. A statement indicating whether the city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory proposed to be annexed, including the right-of-way to the center line of all secondary roads adjoining the territory. If the applicable county and city have entered an agreement pursuant to Iowa Code chapter 28E that allows exclusion of the right-of-way, a copy of the agreement shall be included with the petition.

d. Documentation that the county auditor has verified the accuracy and completeness of the legal description of all territory proposed to be annexed and verified current ownership of the parcel(s) included in the proposed territory. If the auditor fails to respond to the city's request for verification within 14 days, the city may provide a copy of the request and a statement indicating that no response was received.

e. A map clearly showing the entire boundary of the existing city, all territory proposed to be annexed, adjacent roadways, and the relationship of the territory to the petitioning city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all information required by this paragraph.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposed annexation and, if so, certification that the city has complied with the notice requirements of Iowa Code section 368.5. If the territory proposed for annexation includes right-of-way

CITY DEVELOPMENT BOARD[263](cont'd)

for a state highway, documentation of consultation with the Iowa department of transportation should also be included.

g. Certification that the city has complied with all applicable notice and hearing requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice. If railway right-of-way or public land is included without the written consent of the owner or agency with jurisdiction over the public land, the city shall certify notice was given to the owner or agency as required by Iowa Code section 368.7(1) "c." For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34).

h. A city council resolution approving the landowner's application, including, if applicable, the terms of the transition of city taxes as provided by Iowa Code sections 368.7(5) and 368.11(3) "m."

7.2(3) Additional information for petitions, including nonconsenting landowners. In addition to the information to be included pursuant to subrule 7.2(2), a petition that includes property without the consent of the owner(s) must provide the additional information indicated in this subrule.

a. Names and addresses of all owners of land included without the owners' consent and a legal description of all land owned by each nonconsenting owner.

b. Documentation submitted pursuant to paragraph 7.2(2) "d" relating to county auditor verification, including verification of the legal description of land owned by each nonconsenting owner.

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5.

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with Iowa Code section 368.7(1) "a." Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city.

f. The city council's resolution approving the annexation submitted pursuant to paragraph 7.2(2) "h" that must set forth the reason(s) that land is included without the consent of the owner(s).

263—7.3(368) Filing. A city shall send two copies of its petition, including all supporting documentation, to the board. The petition will be deemed filed with the board on the date it is received by board staff. Board staff will acknowledge receipt of a petition.

263—7.4(368) Staff review. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the petition to determine whether the city has included all required information. If the petition is incomplete, staff shall notify the petitioning city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the petition to the board.

263—7.5(368) Submission to the board—notice.

7.5(1) A petition filed pursuant to this chapter will be considered by the board at the first board meeting conducted 31 or more days after the petition is filed. The board shall provide notice of all meetings at which the board will consider a petition to the petitioning city and the entities required by Iowa Code section 368.7(3) to receive notice of an application. Such notices will be provided by regular mail.

7.5(2) If rule 263—7.8(368) applies, the board may proceed as described in that rule at a board meeting less than 31 days after the petition is filed, at the request of the petitioning city. However, if the board considers a petition pursuant to this subrule, the filings to complete an annexation approved by the board will only be made if no other petition for any or all of the applicable territory is filed with the board within 30 days of the filing of the petition.

CITY DEVELOPMENT BOARD[263](cont'd)

263—7.6(368) Amendment of petition.

7.6(1) After a petition has been filed with the board, it may not be amended to include additional territory.

7.6(2) A city may, upon its own motion or at the request of the board, seek amendment to delete one or more parcels included in the territory proposed for annexation.

a. A motion to amend a petition may be made at any time prior to issuance of the board order approving or denying the petition.

b. The board shall provide notice of a proposed amendment to all owners of land included in the petition, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and all other parties of record in the board proceeding. Such notices will be provided by regular mail.

c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice provided pursuant to paragraph 7.6(2) “*b.*”

d. The board may grant a motion to amend a petition if it determines that the amendment serves the public interest.

263—7.7(368) Initial board review.

7.7(1) The board shall review all petitions filed pursuant to this chapter to determine compliance with the requirements of Iowa Code chapter 368 and this chapter. If a petition is incomplete or otherwise not in compliance with the requirements of Iowa Code chapter 368 or this chapter, the board may request further information from a landowner or city or may dismiss the petition.

7.7(2) If the annexation requested in the petition is barred pursuant to Iowa Code section 368.17, the board shall deny the petition, stating in its order the reason(s) for the denial.

263—7.8(368) Board proceedings on unanimous petitions when no conflicting petition is received within 30 days.

7.8(1) *Applicability.* Petitions will be considered pursuant to this rule when all territory proposed for annexation is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5.

7.8(2) *Information considered.* Any interested person or party may submit written comment prior to or at the time of board consideration of the petition. The board may:

a. Allow an opportunity for oral comment;

b. Consider public documents; or

c. Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.8(3) *Criteria.* The board shall consider whether the proposed annexation serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code section 368.16.

263—7.9(368) Board proceedings on petitions which include nonconsenting landowners.

7.9(1) *Applicability.* Petitions will be considered pursuant to this rule when not more than 20 percent of the land area of the territory proposed for annexation is included without the consent of the owner, pursuant to Iowa Code section 368.7(1) “*a.*”

7.9(2) *Hearing and information considered.*

a. If a petition to which this rule applies is complete and in proper form, the board will conduct a public hearing on the petition. The board shall provide notice of the hearing to all owners of land included in the petition, the petitioning city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and the state department of transportation. Such notice shall be provided by regular mail sent at least ten days prior to the hearing.

b. The board hearing will be conducted informally. Representatives of the petitioning city shall be given an opportunity to explain the proposed annexation, the city’s reason for including nonconsenting

CITY DEVELOPMENT BOARD[263](cont'd)

landowners, and any other information the city believes will assist the board in acting on the petition. The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board during the hearing or in writing prior to the hearing.

c. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.9(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3). The board may not approve a petition considered pursuant to this rule unless the board finds that the land of the nonconsenting owners was included to avoid creating an island or create more uniform boundaries. A petition considered pursuant to this rule shall not be approved unless four members of the board vote in favor of approving the petition.

263—7.10(368) Board proceedings when one or more conflicting petitions are received within 30 days.

7.10(1) Applicability. Petitions will be considered pursuant to this rule if any other petitions containing common territory are submitted to the board pursuant to Iowa Code chapter 368 within 30 days. If all conflicting petitions are validly dismissed or denied by the board, the board will proceed on a remaining petition as if no conflicting petition had been filed.

7.10(2) Hearing and information considered. If conflicting petition(s) are complete and in proper form, the board shall consider any petitions, including voluntary application(s) submitted by a landowner pursuant to Iowa Code section 368.7(4), and shall conduct a public hearing pursuant to the procedure set forth in subrule 7.9(2).

7.10(3) Criteria. Within 90 days of receipt of the petition, the board or a committee appointed by the board shall meet to assess the petition, including voluntary application(s) submitted by a landowner and any evidence received at the public hearing. If the petition meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the petition unless the board makes an applicable finding as described in Iowa Code section 368.7(4) “a.”

7.10(4) Conversion to an involuntary petition. If the petition is not approved, the board shall issue an order setting forth its reason(s) for failing to approve the petition and requiring conversion of the petition into an involuntary petition. Within 30 days of the board’s order issued pursuant to this subrule, the city shall withdraw its petition or convert its petition into an involuntary petition containing all information required by Iowa Code section 368.11 and any rules adopted by the board applicable to involuntary petitions.

7.10(5) Local committee. Following conversion to an involuntary petition, the board shall order appointment of a special local committee to consider all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A and rule 263—8.10(368). The special local committee shall conduct a public hearing to receive evidence and comment on all petitions pending before it. The committee will determine the order of presentation prior to commencement of the hearing. The committee will conduct the hearing pursuant to 263—Chapter 9.

7.10(6) Committee action. The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the petitions before it.

a. The committee shall resolve common territory issues by amending or denying one or more of the pending petitions.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each remaining petition in accordance with Iowa Code sections 368.16 and 368.17 and any applicable rules adopted by the board.

c. A petition converted to an involuntary petition pursuant to subrule 7.10(4) that contains some land without the consent of the owner shall not be approved unless at least four of the board members and at least one-half of the local representatives vote in favor of approval.

CITY DEVELOPMENT BOARD[263](cont'd)

d. The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.10(7) Board action. Upon receipt of a committee decision approving all or a portion of a petition pursuant to subrule 7.10(6), the board shall proceed in acting on the decision pursuant to 263—Chapter 10.

263—7.11(368) Board proceedings when a conflicting involuntary petition was filed more than 30 days before a voluntary petition.

7.11(1) Applicability. Petitions will be considered pursuant to this rule if a petition that includes voluntary application(s) submitted by a landowner is filed more than 30 days following filing of a conflicting involuntary petition filed pursuant to Iowa Code section 368.11 and 263—Chapter 8.

7.11(2) Delay. The board will receive the petition including voluntary application(s) submitted by a landowner and table action on it until processing of the petition for involuntary annexation is complete.

7.11(3) Same city. If the petition including voluntary application(s) submitted by a landowner proposes to annex territory to the same city filing the involuntary petition, the board may proceed on the voluntary petition pursuant to rule 263—7.8(368).

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) Petition. A petition to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to Iowa Code section 368.25A. The petition pursuant to this rule shall be in substantially the same form as a petition submitted pursuant to Iowa Code section 368.7 and rule 263—7.2(368).

7.12(2) Hearing and information considered. If the petition is complete and in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities pursuant to the procedure set forth in subrule 7.9(2). The board shall give notice of the public hearing in the same manner as notice given pursuant to Iowa Code section 368.11(5). The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.12(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3).

263—7.13(368) Board decisions—costs.

7.13(1) Board approval. If the board approves a petition considered pursuant to this chapter, the board shall issue a written decision and provide a copy of the decision to the clerk of the annexing city; the entities required by Iowa Code section 368.7(3) to receive notice of an application; the state department of transportation; and any other parties of record in the board's proceeding, including, if applicable, a city from which territory is severed pursuant to rule 263—7.12(368). Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2). The cost of recording the board order shall be paid by the city to which territory is annexed.

7.13(2) Board denial. If the board denies a petition considered pursuant to this chapter, the board shall issue an order setting forth the reasons for the denial. A copy of the order shall be provided to the clerk of any impacted city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, the state department of transportation, and any other party of record in the board's proceeding.

These rules are intended to implement Iowa Code chapter 368.

ARC 7138C

CITY DEVELOPMENT BOARD[263]**Notice of Intended Action****Proposing rulemaking related to petitions for involuntary city development action
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 8, “Petitions for Involuntary City Development Action,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 368.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 8 and adopt a new chapter with the same title in lieu thereof. The proposed chapter will omit repetition of statutory language and clarify Board policies and procedures.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

CITY DEVELOPMENT BOARD[263](cont'd)

January 2, 2024
2:30 to 3 p.m.

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

January 9, 2024
10:30 to 11 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8

PETITIONS FOR INVOLUNTARY CITY DEVELOPMENT ACTION

263—8.1(368) Purpose. This chapter addresses the requirements and processes for city development board approval of petitions for involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation. Such petitions shall be initiated pursuant to Iowa Code section 368.11 or 368.13 and this chapter. The body or bodies initiating the petition will be referred to in this chapter as the petitioner.

263—8.2(368) Contents of the petition. This rule describes the information and documentation a petitioner is required to include in its petition.

8.2(1) General requirements. The petition must provide all applicable information required by Iowa Code section 368.11(3). The petition must clearly identify the petitioner, the proposed action, and the name and address of each property owner within the affected territory. Affected territory shall be identified by complete legal description including, if applicable, right-of-way to the center line of secondary roads. The petition shall state that it does not propose any action prohibited by Iowa Code section 368.17. The petition shall include an overview of the proposed action and briefly describe the affected city or cities, the affected territory and the reasons for the proposed action.

8.2(2) Moratorium. The petition shall contain a statement indicating whether an applicable city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.2(3) Map. The map or maps included in the petition shall clearly show all boundaries of the affected city or cities and all affected territory, adjacent roadways, the relationship of the affected territory to any city, and all geographic features deemed relevant to the proposed action. If the petition proposes incorporation, the proposed city boundary shall be shown. The board may request that the petitioner provide information demonstrating the existing and anticipated use of the territory.

CITY DEVELOPMENT BOARD[263](cont'd)

8.2(4) *County auditor verification.* The petition shall include documentation that the county auditor has verified the accuracy and completeness of the legal description of all affected territory and verified current ownership of the parcel(s) included. If the auditor fails to respond to the petitioner's request for verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that no response was received.

8.2(5) *Assessed valuations.* The petition shall include the assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the affected territory. Documentation shall be provided that the information required by this subrule has been verified in writing by the applicable city or county assessor. If the assessor fails to provide the requested verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that the verification was not provided.

8.2(6) *Population density.* Population density shall be delineated for the existing city, for the territory, and for the resulting city if the proposal is approved. Population density shall be expressed as persons per acre if the petition proposes annexation or persons per square mile if the petition proposes incorporation, discontinuance, severance or consolidation.

8.2(7) *Population growth.* If the petition seeks annexation, consolidation or incorporation, the petition shall include projected population growth for the city and the territory. Population projections shall be for a 10- or 20-year period and may be taken from an existing comprehensive plan or may be calculated based on relevant data if no comprehensive plan exists.

8.2(8) *Regulations and projections.* The petition shall include a description of current and proposed zoning regulations that apply to the affected territory. Projected development and land use patterns shall be described as if existing land use regulations will be continued and as if new applicable land use regulations would be applied after annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

If the petition proposes annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided.

8.2(9) *Topography.* Topographical information shall be in map and narrative form. Maps shall include any affected city and the affected territory and shall consist of contour lines at ten-foot intervals as may be taken from contour maps of the United States Geological Survey or any other source acceptable to the board. A narrative description shall identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions proposing annexation or incorporation, the narrative shall also address potential impacts of topography on development of urban uses and the extension of municipal services.

8.2(10) *Plans.* Petitions shall describe plans for disposal of assets, assumption of liabilities, and provision of services as applicable to the action requested in the petition.

a. Petitions for annexation, consolidation and incorporation shall describe existing and proposed municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance, and the estimated cost of providing proposed services.

b. Petitions for annexation shall describe the capability of the existing city sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the addition of territory and projected development. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness and the assets a city may receive including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

c. Petitions for incorporation shall describe the capability of the proposed city to develop a sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the territory proposed for incorporation and an explanation of the assets the proposed city may receive, including property tax, an increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

CITY DEVELOPMENT BOARD[263](cont'd)

d. Petitions for severance and discontinuance shall describe the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city. Such petitions shall also include a statement of the capability and intent of the county in which the city or territory is located to assume responsibility for police protection, street and road maintenance and repair, and other services and an analysis of the capability of the township fire district to provide fire protection.

e. Petitions for discontinuance shall include an inventory of all real estate, funds, and personal property owned by the city and all existing liabilities of the city, and a proposal for disposition of all assets and satisfaction or assumption of all liabilities.

8.2(11) *Committee consideration.* The petition shall include documentation to allow assessment of the relevant considerations for committee approval in Iowa Code section 368.16.

8.2(12) *Service agreements.* The petition shall identify services that may be provided through agreement with township fire districts and rural water and sanitary districts and proposed agreements with any county or city for police protection, ambulance service, or any other service deemed to be of importance to the proposed boundary adjustment and shall present examples of existing service agreements.

8.2(13) *Shared roads.* The petition shall include a proposed formal agreement between affected municipal corporations and counties for the maintenance and improvement and traffic control of any road that is divided as a result of an incorporation or a boundary adjustment.

263—8.3(368) Preliminary notice and public meeting. A petitioner initiating an involuntary city development proceeding shall comply with the applicable notice, publication, and public meeting requirements contained in Iowa Code section 368.11. For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34). Proof of substantial compliance with these requirements, including copies of certified mail receipts, certification of publication of notice of the meeting, minutes of the public meeting and copies of the documents received at the meeting, shall accompany each petition submitted pursuant to this chapter.

263—8.4(368) Filing and service. The petitioner shall send two copies of a petition, including all supporting documentation, to the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall acknowledge receipt of the petition. The petitioner shall serve notice of the filing as required by Iowa Code section 368.11(1) within seven days of filing a petition with the board. The petitioner shall file proof of compliance with the service requirement with the board.

263—8.5(368) Costs. All costs that are incurred in drafting a petition, preparing supporting documents, mailing and publishing notices and other preliminary proceedings and the cost of recording, if the proposal is approved, shall be borne by the petitioner.

263—8.6(368) Staff review of petition. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the request to determine whether the petitioner has filed all required information. If the petition is incomplete, staff shall notify the petitioner, identifying the required item(s) omitted and offering the petitioner an opportunity to provide the omitted information prior to submission of the petition to the board.

263—8.7(368) Submission of petition to the board—notice. A petition filed pursuant to this chapter will be considered by the board at the first meeting conducted 31 days or more after the petition is filed. The board shall provide the petitioner with notice of all meetings at which the board will consider the petition.

263—8.8(368) Board review of petition—waiver. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and this chapter. In conducting this review, the board will presume that factual assertions made within the petition

CITY DEVELOPMENT BOARD[263](cont'd)

are accurate. The board may, however, request and examine appropriate public records or request additional information from the petitioner if deemed necessary to its review. The board may waive any requirement of this chapter upon finding the requirement inapplicable to the petition under review.

263—8.9(368) Board action on petition. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with Iowa Code section 368.11 and this chapter. The board may dismiss a petition pursuant to Iowa Code section 368.12.

263—8.10(368) Formation of local committee. If the petition is accepted by the board for further proceedings, the board shall direct the appointment of local representatives to a committee as required by Iowa Code section 368.14. Committee appointments shall be made by resolutions of the appropriate governing bodies within 45 days of issuance of the board's order. The resolutions shall state that the local representative selected is qualified to serve on the committee pursuant to Iowa Code section 368.14. Copies of the resolutions and the address and telephone number of each local representative shall be promptly submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

These rules are intended to implement Iowa Code chapter 368.

ARC 7139C**CITY DEVELOPMENT BOARD[263]****Notice of Intended Action****Proposing rulemaking related to committee proceedings on petitions for involuntary city development action and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 9, "Committee Proceedings on Petitions for Involuntary City Development Action," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 368.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 9 and adopt a new chapter with the same name in lieu thereof. The proposed chapter will omit repetition of statutory language and clarify Board policies and procedures. Citations to rules in 263—Chapter 8 are to the newly proposed chapter in the Notice of Intended Action for 263—Chapter 8 (**ARC 7138C**, IAB 12/13/23).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

CITY DEVELOPMENT BOARD[263](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
3 to 3:30 p.m.

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

January 9, 2024
11 to 11:30 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY CITY DEVELOPMENT ACTION

263—9.1(368) Formation of committee. A committee formed pursuant to Iowa Code section 368.14 and rule 263—8.10(368) shall conduct proceedings consistent with Iowa Code sections 368.15 through

CITY DEVELOPMENT BOARD[263](cont'd)

368.19. The board shall notify all parties that the committee has been formed and direct the parties to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the board.

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled when the board accepts a petition. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee, as established by Iowa Code section 368.14, must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Meeting format or location. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by electronic means in which all parties have an opportunity to participate. The chairperson will consider convenience of the witnesses or parties, as well as the nature of the case, when a meeting format or location is chosen. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

263—9.3(368) Parties to proceedings. An individual or entity may become a party by filing a written appearance identifying one person upon whom the board or committee may serve all orders or correspondence. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If available, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority that contains the territory will be considered a party without filing an appearance.

263—9.4(368) Filing of documents. Each party shall serve any document that it files with the board or committee on all other parties and provide proof of service. The board or committee shall give all parties a copy of any document filed with the board or committee that was not served on all other parties or that was provided by someone other than a party. All parties shall have an opportunity to comment on any such document either orally or in writing as the board or committee so specifies. Except as otherwise provided by law, a document is deemed filed at the time it is received by board staff.

9.4(1) Form of motions.

a. No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

b. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the committee.

c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

a. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert board title) and to the names and

CITY DEVELOPMENT BOARD[263](cont'd)

addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

b. The committee chairperson may by order permit service or filing of a particular document by email or similar electronic means, unless precluded by a provision of law. In the absence of such an order, electronic transmission shall not satisfy service or filing requirements but may be used to supplement service or filing.

9.4(3) Time requirements.

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the committee may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the committee shall afford all parties an opportunity to be heard or to file written arguments.

263—9.5(17A) Ex parte communication.

9.5(1) There shall be no communication, directly or indirectly, between the committee members that would constitute prohibited ex parte communications pursuant to Iowa Code section 17A.17. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to a committee member any ex parte communications they have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications pursuant to subrule 9.5(1) commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate in any communications with the committee. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, email or other means of notification. Where permitted, oral communications may be initiated through electronic means including all parties or their representatives.

9.5(4) Committee members may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(5) Board staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 9.5(1).

9.5(6) Communications with the committee members involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with committee members when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(7) A committee member who receives a prohibited ex parte communication must initially determine if the effect of the communication is so prejudicial as to warrant disqualification pursuant to rule 263—9.6(17A). If disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, the documents identified in this subrule shall be included in the record of the proceeding and served on all parties. Any party desiring

CITY DEVELOPMENT BOARD[263](cont'd)

to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

9.5(8) Promptly after being assigned to serve as committee member, a committee member shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(9) The committee may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the committee.

263—9.6(17A) Disqualification.

9.6(1) A committee member shall withdraw from participation in the making of any proposed or final decision in a proceeding pursuant to this chapter if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship who (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

9.6(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information that is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) If a committee member knows of information that might reasonably be deemed a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit, including a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

9.6(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

CITY DEVELOPMENT BOARD[263](cont'd)

263—9.7(368) Prehearing activities.

9.7(1) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date.

- a.* Notice of a prehearing conference shall be provided as described in subrule 9.2(4).
- b.* A prehearing conference may be ordered for the purpose of formulating issues and considering the following:
 - (1) The simplification of issues.
 - (2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.
 - (3) Stipulations of law or fact or on the admissibility of exhibits.
 - (4) The procedure at the hearing.
 - (5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.
 - (6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) *Discovery.* Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

a. Discovery procedures applicable in civil actions apply to proceedings conducted pursuant to this chapter. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the committee. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 9.4(3). The committee may rule on the basis of the written motion and any response or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) *Subpoenas.* Witnesses who are subpoenaed are entitled to the same fees as subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Board staff shall issue subpoenas upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearings and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at depositions or hearings or may be issued separately.

- b.* A request for a subpoena shall include the following information, as applicable:
- (1) The name, address and telephone number of the person requesting the subpoena;
 - (2) The name and address of the person to whom the subpoena shall be directed;
 - (3) The date, time and location at which the person shall be commanded to attend and give testimony;
 - (4) Whether the testimony is requested in connection with a deposition or hearing;
 - (5) A description of the books, papers, records or other real evidence requested;
 - (6) The date, time and location for production or inspection and copying.
- c.* Each subpoena shall contain, as applicable:

CITY DEVELOPMENT BOARD[263](cont'd)

- (1) The caption of the case;
- (2) The name, address and telephone number of the person who requested the subpoena;
- (3) The name and address of the person to whom the subpoena is directed;
- (4) The date, time and location at which the person is commanded to appear;
- (5) Whether the testimony is commanded in connection with a deposition or hearing;
- (6) A description of the books, papers, records or other real evidence the person is commanded to produce;
- (7) The date, time, and location for production, or inspection and copying;
- (8) The time within which a motion to quash or modify the subpoena must be filed;
- (9) The signature, address and telephone number of the board's administrator or designee;
- (10) The date of issuance;
- (11) A return of service.

d. Board staff shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the committee a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the committee may issue a decision. The committee may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the committee may schedule oral argument or hearing by electronic means or in person.

263—9.8(368) Notice of public hearings. Notices shall comply with subrule 9.2(4).

9.8(1) Notice of the public hearing shall include:

- a.* A statement of the time, place and nature of the hearing;
- b.* A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c.* A reference to the particular sections of the statutes and rules involved; and
- d.* A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and chapter 21.

263—9.9(368) Continuance. Hearings or proceedings relating to matters that are within the jurisdiction of the committee may be continued by the committee, and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion, and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

CITY DEVELOPMENT BOARD[263](cont'd)

9.9(3) In determining whether to grant a continuance, the committee may require documentation of any grounds for continuance, and may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties or witnesses;
- h.* The timeliness of the request; and
- i.* Other relevant factors.

9.9(4) Board staff may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, board staff may deny an uncontested application for a continuance or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

263—9.10(368) Public hearings.

9.10(1) *General provisions.*

a. Public hearings shall be held on dates and at locations determined by the committee. The hearing shall be held in a place open to the public.

b. The committee shall, prior to serving notice, make the petition or plan available for public inspection. The committee shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, including a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and may ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) *Format of public hearings.* The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

CITY DEVELOPMENT BOARD[263](cont'd)

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

d. At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

e. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) *Testimony at hearings.* At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) *Evidence.* Rules of evidence shall be those set forth in Iowa Code section 17A.14.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the committee chairperson, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies shall also be furnished to members of the committee. All exhibits admitted

CITY DEVELOPMENT BOARD[263](cont'd)

into evidence shall be appropriately marked, and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) *Record of public hearing.*

a. Oral proceedings shall be recorded.

b. Board staff shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Transcription of the oral proceedings will be retained by the board for two years following the decision or until the case is resolved, whichever is later.

c. Upon request, the board shall provide a copy of the whole record or any portion of the record. The requesting party may be required to pay the cost of preparing a copy of the record.

9.10(6) *Posthearing brief.* The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4) "*i.*" The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the committee from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when deemed necessary or in the public interest by the chairperson. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

263—9.11(368) Committee decision.

9.11(1) After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition.

a. Notice of the meeting will be provided pursuant to subrule 9.2(4).

b. The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.

c. No additional oral or written testimony will be taken or considered.

d. The committee may conduct its deliberations in closed session pursuant to Iowa Code section 21.5 but shall announce its decision in open session.

e. Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.

f. The committee may amend the petition or plan prior to approving it.

g. Decisions shall be in writing and rendered following the hearing. The decision shall include:

(1) Identification of parties and basic issues.

CITY DEVELOPMENT BOARD[263](cont'd)

- (2) Summary of findings of fact.
- (3) Summary of conclusions of law.
- (4) Ruling.
- (5) Reasons for ruling.
- (6) Order for implementation of the decision.

9.11(2) Committee decisions, orders or rulings shall be signed by the chairperson or the chairperson's authorized designee. Copies of the written decision shall be mailed to the parties.

9.11(3) A request for a decision that seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be made pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) Within 30 days of being notified of the filing of an appeal, board staff shall transmit a certified copy of the entire record of proceedings to the reviewing court. By stipulation of all parties to the appeal, the record of the proceedings may be shortened.

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision as specified in the order. If no date is specified in the order, the date of the committee decision is the date it is mailed or the date of delivery if service is by another means.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether, on the basis of paragraph 9.13(4) "c," the applicant requests an opportunity to provide additional evidence.

c. A party may request the taking of additional evidence only by establishing:

- (1) The facts or other evidence arose after the original proceeding;
- (2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

d. No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.

e. Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.

f. The committee may grant or deny an application with or without a hearing on the application.

(1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.

(2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee or the date it is received if another method of delivery is used.

(3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee may, on

CITY DEVELOPMENT BOARD[263](cont'd)

the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues.

(4) If the committee denies an application, the committee shall proceed as if no application had been filed.

These rules are intended to implement Iowa Code chapters 17A and 368.

ARC 7140C**CITY DEVELOPMENT BOARD[263]****Notice of Intended Action****Proposing rulemaking related to board proceedings on petitions for involuntary boundary change after committee approval and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 10, “Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 368 and section 17A.19.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 10 and adopt a new chapter in lieu thereof. The proposed new chapter will omit repetition of statutory language and clarify Board policies and procedures.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

CITY DEVELOPMENT BOARD[263](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 2, 2024
3:30 to 4 p.m.

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

January 9, 2024
11:30 a.m. to 12 noon

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 263—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10

BOARD PROCEEDINGS ON PETITIONS FOR INVOLUNTARY BOUNDARY
CHANGE AFTER COMMITTEE APPROVAL

263—10.1(368) Election. If a petition or plan is approved, the board shall submit the proposal at an election held pursuant to Iowa Code section 368.19, regardless of appeal or applications for rehearing filed pursuant to rule 263—9.13(368).

263—10.2(368) Final order. The board will issue an order stating the boundary change is complete in conjunction with the procedure after approval specified in Iowa Code section 368.20 and include such order with documents filed or recorded.

263—10.3(368) Record.

10.3(1) The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a.* The original petition or plan and any amendment;
- b.* Proofs of service and publication of required public hearing notices;
- c.* All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d.* The public hearing transcript and all evidence received at public hearing;
- e.* All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those not parties;
- f.* Public documents referenced by the board or committee;
- g.* The committee's findings of fact, conclusions of law and determination;

CITY DEVELOPMENT BOARD[263](cont'd)

- h.* The board's election order;
- i.* Certification and proof of publication of election results;
- j.* The board's final order.

10.3(2) The record shall be opened when a petition is filed with the board and shall be closed when the board has issued its final order.

263—10.4(368) Appeal.

10.4(1) When an appeal is filed pursuant to Iowa Code section 368.22, the appellant shall notify the board and provide a copy of the appeal.

10.4(2) Within 30 days after the filing of the petition, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the case that is the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened.

263—10.5(368) Board supervision of proposal execution. The board shall proceed accordingly in the following cases:

10.5(1) Discontinuance. The board will supervise discontinuance of a city pursuant to Iowa Code section 368.21. The board shall take control of all city balances, property, and records during the six-month period following the last notice of discontinuance published by the board. Upon the close of the six-month period, the board shall determine the extent of any unpaid allowed claims and such determination shall be verified by a certified public accountant or by the state auditor. In the case of unpaid allowed claims, the board shall approve payment from the discontinued city's account or shall direct the appropriate governing body to levy the necessary taxes.

10.5(2) Boundary adjustment. The board may, upon request of the applicable governing bodies, provide advisory assistance in implementation of an annexation, severance, or consolidation.

10.5(3) Consolidation. After a consolidation has been approved in an election held pursuant to Iowa Code section 368.19, the board may authorize the cities to continue to operate as individual cities until an election of a new city council has been held and the result certified. The election of a new city council shall be held within 90 days of the date of the appeal period authorized by Iowa Code section 368.22.

These rules are intended to implement Iowa Code section 17A.19 and chapter 368.

ARC 7141C

CITY DEVELOPMENT BOARD[263]

Notice of Intended Action

**Proposing rulemaking related to identification and annexation of islands
and providing an opportunity for public comment**

The City Development Board hereby proposes to rescind Chapter 11, "Islands—Identification and Annexation," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 1991 Iowa Acts, House File 182.

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 11. The Board was directed to initiate this Notice of Intended Action.

The chapter describes the process by which islands (as defined in Iowa Code section 368.1(10)) were identified by county boards of supervisors and annexed to surrounding cities by the Board pursuant to

CITY DEVELOPMENT BOARD[263](cont'd)

1991 Iowa Acts, House File 182. The legislation granted the Board the authority to annex islands to surrounding cities that were identified prior to January 15, 1992, and also prevented the creation of additional islands after the effective date of the Act. Because the time period for identification and annexation of islands has passed and no additional islands can be created, the chapter is obsolete.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **263—Chapter 11**.

ARC 7194C**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action****Proposing rulemaking related to complaints, investigations, and contested case hearings
and providing an opportunity for public comment**

The Educational Examiners Board hereby proposes to amend Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 272.2(15) as amended by 2023 Iowa Acts, House File 430.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 272.2.

Purpose and Summary

2023 Iowa Acts, House File 430, directs the Board to adopt rules related to retention of records, public notice, the evaluation of past complaints, and investigations. This proposed rulemaking implements that legislation.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Beth Myers
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309-0147
Fax: 515.281.7669
Email: beth.myers@iowa.gov

Public Hearing

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

January 31, 2024
1 to 2 p.m.

Board Room
701 East Court Avenue, Suite A
Des Moines, Iowa

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend subrule 11.4(9) as follows:

11.4(9) Confidentiality. All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. Records related to written complaints shall be collected and retained and shall be evaluated if a similar complaint has been filed against the same licensed practitioner. A finding of probable cause, a final written decision, and a finding of fact by the board in a disciplinary proceeding is constitute a public record.

ITEM 2. Amend rule 282—11.5(272) as follows:

282—11.5(272) Investigation of complaints or license reports. The chairperson of the board or the chairperson's designee may request an investigator to investigate the complaint or report received by the board from another state, territory or other jurisdiction concerning license or certificate revocation or suspension pursuant to subrule 11.4(7); providing that the jurisdictional requirements have been met on the face of the complaint. The investigation shall be limited to the allegations contained on the face of the complaint. The investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists. The investigation of the complaint shall be finalized even if the licensed practitioner resigns or surrenders the practitioner's license, certificate, authorization, or statement of recognition during the investigation. The board shall investigate whether or not an administrator who is employed by the school that employs a licensed practitioner who is the subject of an investigation initiated under Iowa Code section 272.15(1) "a" as amended by 2023 Iowa Acts, House File 430, filed a written complaint and whether or not the administrator was required to report to the board pursuant to Iowa Code section 272.15 as amended by 2023 Iowa Acts, House File 430.

ARC 7193C**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action****Proposing rulemaking related to renewal or extension fees
and providing an opportunity for public comment**

The Educational Examiners Board hereby proposes to amend Chapter 12, “Fees,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 17A.6 as enacted by 2023 Iowa Acts, House File 688, and sections 272.2 and 272.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 272.10.

Purpose and Summary

2023 Iowa Acts, House File 672, creates a new renewal option with a reduced fee. 2023 Iowa Acts, House File 688, directs all agencies to adopt rules related to fees. This proposed rulemaking implements that legislation.

Fiscal Impact

No new costs are anticipated; however, agency revenues will be reduced by an estimated \$116,000 per year. Twenty-five percent of fees collected annually by the Board are credited to the General Fund, and the reduction in fees will result in a decrease of approximately \$37,000 to the General Fund annually.

Jobs Impact

The rulemaking will help with recruitment and retention for educators.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Beth Myers
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309-0147
Fax: 515.281.7669
Email: beth.myers@iowa.gov

Public Hearing

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

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

January 31, 2024
1 to 2 p.m.

Board Room
701 East Court Avenue, Suite A
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend rule 282—12.2(272) as follows:

282—12.2(272) Fees for the renewal or extension of licenses, certificates, statements of professional recognition, and authorizations. The fee for the renewal or extension of a license, certificate, statement of professional recognition, or authorization shall be \$85 unless otherwise specified below:

1. The renewal of the paraeducator certificate shall be \$40.
2. The renewal of the behind-the-wheel authorization shall be \$40.
3. A one-year extension for renewal of a coaching authorization shall be \$40.
4. A one-year extension of the initial license shall be \$25. This extension may be issued if the applicant needs one additional year to meet the experience requirement for the standard license, but has met Iowa teaching standards, pursuant to rule 282—20.4(272).
5. A The fee shall be \$25 fee for an extension of the initial administrator license, which may be issued instead of renewing the initial administrator license if the applicant verifies one of the criteria listed in 282—subrule 20.8(2).
6. The fee for the renewal of a license, certificate, statement of professional recognition, or authorization for practitioners with a master's degree or higher who have ten or more years of experience in education shall be \$50.

ARC 7169C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to general accreditation standards
and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 496.

Purpose and Summary

EDUCATION DEPARTMENT[281](cont'd)

This proposed rulemaking addresses items required by Senate File 496. These deal with age-appropriate instruction; requirements for library programs, including library materials and online availability of library catalogs; compliance with newly enacted Iowa Code section 279.80 (related to the provision of any “program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in kindergarten through grade six”); and provisions with parental rights for accurate information regarding their children’s gender identity.

The proposed rulemaking contains new enforcement mechanisms in addition to those currently existing under Chapter 12. Those new enforcement mechanisms are required by Senate File 496.

Fiscal Impact

There is an unknown fiscal impact to the Iowa Department of Education. The estimated fiscal impact for districts was set out in the Fiscal Note prepared for Senate File 496, available at www.legis.iowa.gov/docs/publications/FN/1370427.pdf.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 2:30 to 3 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 10:30 to 11 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

EDUCATION DEPARTMENT[281](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Strike “multicultural and gender fair” wherever it appears in **281—Chapter 12** and insert “age-appropriate, multicultural, and gender fair” in lieu thereof.

ITEM 2. Strike “Multicultural and gender fair” wherever it appears in **281—Chapter 12** and insert “Age-appropriate, multicultural, and gender fair” in lieu thereof:

ITEM 3. Strike “multicultural, gender fair” wherever it appears in **281—Chapter 12** and insert “age-appropriate, multicultural, and gender fair” in lieu thereof:

ITEM 4. Adopt the following new definitions of “Age-appropriate” and “Sex act” in rule **281—12.2(256)**:

“*Age-appropriate*,” with the exception of the human growth and development, means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. “Age-appropriate” does not include any material with descriptions or visual depictions of a sex act. A reference or mention of a sex act in a way that does not describe or visually depict a sex act as defined in these rules is not included in the previous sentence. For purposes of human growth and development instruction required by Iowa Code section 279.50, “age-appropriate” means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

“*Sex act*” means any sexual contact between two or more persons by any of the following:

1. Penetration of the penis into the vagina or anus.
2. Contact between the mouth and genitalia or mouth and anus or by contact between the genitalia of one person and the genitalia or anus of another person.
3. Contact between the finger, hand, or other body part of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to Iowa Code chapters 148, 148C, 151, or 152.
4. Ejaculation onto the person of another.
5. Use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.
6. The touching of a person's own genitals or anus with a finger, hand, or artificial sexual organ or other similar device at the direction of another person.

ITEM 5. Adopt the following new paragraph **12.3(12)“d”**:

d. General. Each school district shall establish a kindergarten through grade 12 library program that is consistent with Iowa Code section 280.6 and with the educational standards established in this chapter, contains only age-appropriate materials, and supports the student achievement goals of the total school curriculum.

(1) If, after investigation, the department determines that a school district or an employee of a school district has violated the provisions of this paragraph related to library programs containing only age-appropriate materials, beginning January 1, 2024, the school district or employee of the school district, as applicable, shall be subject to the following:

1. For the first violation of this paragraph, the department shall issue a written warning to the board of directors of the school district or the employee, as applicable.
2. For a second or subsequent violation of this paragraph, if the department finds that a school district knowingly violated this paragraph, the superintendent of the school district shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

EDUCATION DEPARTMENT[281](cont'd)

3. For a second or subsequent violation of this paragraph, if the department finds that an employee of the school district who holds a license, certificate, authorization, or statement of recognition issued by the board of educational examiners knowingly violated this paragraph, the employee shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

(2) This paragraph relates solely to library programs operated by the district, which means library programs over which the district exercises administrative control.

(3) Concerning enforcement provisions relating to library books containing only age-appropriate materials, the department may exercise enforcement discretion if any violation is voluntarily and permanently corrected prior to the department making a determination of a violation.

(4) For library collections that serve multiple grade ranges, the district will exercise reasonable physical, administrative, and technological controls to ensure that students have access to age-appropriate materials based on the students' age and grade.

(5) In complying with the requirements in Iowa Code section 279.77(3) as enacted by 2023 Iowa Acts, Senate File 496, section 13, the district, if it does not make available a comprehensive list of all books available to all students in libraries offered by the district on its website in real time, must post an updated list at least two times per calendar year.

ITEM 6. Adopt the following **new** subrules 12.3(15) and 12.3(16):

12.3(15) *Compliance with Iowa Code section 279.80.*

a. A school district shall not provide any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in kindergarten through grade six.

b. "Gender identity" and "sexual orientation" have the meanings given in Iowa Code section 216.2.

c. In monitoring and enforcing this subrule, the department will not conclude that a neutral statement regarding sexual orientation or gender identity violates Iowa Code section 279.80 as enacted by 2023 Iowa Acts, Senate File 496, or this subrule.

12.3(16) *Parental rights in education.*

a. A school district shall not knowingly give false or misleading information to the parent or guardian of a student regarding the student's gender identity or intention to transition to a gender that is different than the sex listed on a student's official birth certificate or certificate issued upon adoption if the certificate was issued at or near the time of the student's birth.

b. If a student enrolled in a school district requests an accommodation that is intended to affirm the student's gender identity from a licensed practitioner employed by the school district, including a request that the licensed practitioner address the student using a name or pronoun that is different than the name or pronoun assigned to the student in the school district's registration forms or records, the licensed practitioner shall report the student's request to an administrator employed by the school district, and the administrator shall report the student's request to the student's parent or guardian. Concerning a student's request to use a name that is different from the name on the student's registration forms or records, that request is governed by this subrule only if the request is an accommodation intended to affirm a student's gender identity.

c. If, after investigation, the department determines that a school district or an employee of a school district has violated this subrule, the school district or employee of the school district, as applicable, shall be subject to the following:

(1) For the first violation of this subrule, the department shall issue a written warning to the board of directors of the school district or the employee, as applicable.

(2) For a second or subsequent violation of this subrule, if the department finds that a school district knowingly violated this subrule, the superintendent of the school district shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

(3) For a second or subsequent violation of this subrule, if the department finds that an employee of the school district who holds a license, certificate, authorization, or statement of recognition issued

EDUCATION DEPARTMENT[281](cont'd)

by the board of educational examiners knowingly violated this subrule, the employee shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

d. Concerning enforcement of this subrule, the department may exercise enforcement discretion if any violation is voluntarily and permanently corrected prior to the department making a determination of a violation.

ARC 7158C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to PACE program and gap tuition assistance program
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 25, “Pathways for Academic Career and Employment Program; Gap Tuition Assistance Program,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 260H.8 and 260I.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 260H and 260I.

Purpose and Summary

This proposed rulemaking is directed by Executive Order 10. After review and Regulatory Analysis, the Department of Education identified many instances of overly restrictive language and language that duplicates statutory text verbatim. The rulemaking eliminates that language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

EDUCATION DEPARTMENT[281](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 1 to 1:30 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 9 to 9:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM; GAP TUITION
ASSISTANCE PROGRAM

DIVISION I
GENERAL PROVISIONS

281—25.1(260H,260I) Definitions.

“Department” means the Iowa department of education.

“Director” means the director of the Iowa department of education.

“Dislocated worker” means an individual eligible for services and benefits under the federal Trade Adjustment Act of 2002, P.L. 107-210. To be eligible, an individual must meet both criteria 1 and 2, plus any one of criteria 3 through 8:

1. The individual is registered for the selective service, if applicable; and
2. The individual is a citizen or national of the United States, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee or an individual authorized by the Attorney General to work in the United States.
3. The individual:
 - Has been laid off or terminated, and
 - Is eligible for or has exhausted entitlement to unemployment compensation, and
 - Is unlikely to return to the individual's previous industry or occupation; or
4. The individual:
 - Is in receipt of a notice of layoff or termination from employment, and
 - Will be entitled to unemployment compensation at the time of layoff or termination, and
 - Is unlikely to return to the individual's previous industry or occupation; or
5. The individual:

EDUCATION DEPARTMENT[281](cont'd)

- Has been laid off or terminated, or has received a termination notice, and
- Has been employed for a duration of time to sufficiently demonstrate attachment to the workforce, and
- Is not eligible for unemployment compensation due to insufficient earnings, or has performed services for an employer not covered under the unemployment compensation law, and
- Is unlikely to return to the individual's previous industry or occupation; or
- 6. The individual has been laid off or terminated, or has received notice of layoff or termination, as a result of a permanent closure of or any substantial layoff at a plant, facility or enterprise; or
- 7. The individual was formerly self-employed and is unemployed from the individual's business; or
- 8. The individual:
 - Is a displaced homemaker who has been providing unpaid services to family members in the home, and
 - Has been dependent on the income of another family member, and is no longer supported by that income, and
 - Is unemployed or underemployed, and
 - Is experiencing difficulty in obtaining or upgrading employment.

"Federal poverty level" means the most recently revised poverty income guidelines published by the federal Department of Health and Human Services.

"IWD" means the Iowa workforce development department.

"Low skilled" means an adult individual who is basic skills deficient, has lower level digital literacy skills, has an education below a high school diploma, or has a low level of educational attainment that inhibits the individual's ability to compete for skilled occupations that provide opportunity for a self-sufficient wage.

"State board" means the Iowa state board of education.

"Underemployed" means an adult individual who is working less than 30 hours per week, or who is employed any number of hours per week in a job that is substantially below the individual's skill level and that does not lead to self-sufficiency.

"Unemployed" means an adult individual who is involuntarily unemployed and is actively engaged in seeking employment.

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

281—25.2(260) PACE program. The pathways for academic career and employment program (hereinafter referred to as PACE) is established to provide funding to community colleges for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to ensure gainful employment and customized support services.

25.2(1) Target populations. Individuals included in target populations are those individuals who meet one or more of the following:

- a. Are deemed by definition to be low skilled.
- b. Earn incomes at or below 250 percent of the federal poverty level.
- c. Are unemployed.
- d. Are underemployed.
- e. Are dislocated workers.

25.2(2) Eligibility criteria for projects. Projects eligible for funding for PACE are to be projects that further the ability of members of target populations to secure gainful, quality employment; that further partnerships linking community colleges to industry and nonprofit organizations; and that further the following program outcomes:

- a. Enabling members of the target populations to:
 - (1) Acquire and demonstrate competency in basic skills.

EDUCATION DEPARTMENT[281](cont'd)

- (2) Acquire and demonstrate competency in a specified technical field.
- (3) Complete a specified level of postsecondary education.
- (4) Earn a national career readiness certificate.
- (5) Obtain employer-validated credentials.

(6) Secure gainful employment in high-quality, local jobs.

b. Meeting economic and employment goals, including:

(1) Economic and workforce development requirements in each region served by the community colleges as defined by local advisory boards established pursuant to Iowa Code section 84A.4.

(2) Needs of industry partners in areas including but not limited to the fields of information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a local advisory board established pursuant to Iowa Code section 84A.4.

281—25.3(260H) Program component requirements. Program components for a PACE project implemented at a community college are to meet the terms of Iowa Code section 260H.5.

281—25.4(260H) Pipeline program. Each community college receiving funding for PACE is to meet the terms of Iowa Code section 260H.6.

281—25.5(260H) Career pathways and bridge curriculum development program. Each community college receiving funding for PACE is to meet the terms of Iowa Code section 260H.7.

281—25.6(260H) Pathway navigators. A community college may use moneys for the PACE program to employ pathway navigators to assist students as specified in Iowa Code section 260H.7A.

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

281—25.7(260I) Gap tuition assistance program. A gap tuition assistance program is established to provide funding to community colleges for need-based tuition assistance to enable applicants to complete continuing education certificate training programs for in-demand occupations.

25.7(1) Applicants for tuition assistance. Eligibility for tuition assistance will be based on financial need. Eligibility criteria are set forth in Iowa Code sections 260I.3 and 260I.4.

25.7(2) Eligible costs. Costs of an eligible certificate program are set forth in Iowa Code section 260I.5.

25.7(3) Eligible certificate programs. For the purposes of this division, “eligible certificate program” means a program satisfying the criteria in Iowa Code section 260I.6.

281—25.8(260I) Initial assessment. An eligible applicant for tuition assistance under this division is subject to an initial assessment administered by the community college pursuant to Iowa Code section 260I.7. In assessing an applicant under this division, a community college will use the national career readiness certificate; an assessment eligible under the Adult Education and Family Literacy Act, 20 U.S.C. Ch. 73, and approved by the department for use in an adult education and literacy program; or an established process utilizing valid measures for determining preparedness for the eligible certificate program, which may include processes for measuring academic preparedness used by the community college for placement of students into credit coursework.

281—25.9(260I) Program interview. An eligible applicant for tuition assistance under this division is subject to an initial interview with the gap tuition assistance coordinator for the community college receiving the application. This interview is subject to the provision of Iowa Code section 260I.8.

281—25.10(260I) Participation requirements. Participating individuals are subject to the provisions of Iowa Code section 260I.9.

EDUCATION DEPARTMENT[281](cont'd)

281—25.11(260I) Oversight. Statewide oversight, evaluation, and reporting efforts for the gap tuition assistance program are coordinated by the department pursuant to the terms of Iowa Code section 260I.10.

25.11(1) A steering committee consisting of the Iowa department of education, the Iowa workforce development department, and community college continuing education deans and directors is established to determine if the performance measures of the gap tuition assistance program are being met and to correct any deficiencies. The steering committee will meet at least quarterly to evaluate and monitor the performance of the gap tuition assistance program.

25.11(2) A common intake tracking system is established pursuant to Iowa Code section 260I.10(2).

25.11(3) The steering committee will develop the required program criteria for PACE and gap tuition assistance-certified programs to be eligible for tuition assistance and program funding. These criteria will be developed based on best practices in the development and delivery of career pathway programs that provide a clear sequence of education coursework and credentials aligned with regional workforce skill needs; clearly articulate from one level of instruction to the next; combine occupational skills and remedial adult education; lead to the attainment of a credential or degree; assist with job placement; and provide wraparound social and socioeconomic support services with the goal of increasing the individual's skills attainment and employment potential.

25.11(4) To ensure efficient delivery of services, the department, in consultation with the community colleges, may redistribute funds available to the community colleges for purposes of this division.

These rules are intended to implement Iowa Code chapters 260H and 260I.

ARC 7159C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to workforce training and economic development funds
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 27, "Workforce Training and Economic Development Funds," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 260C.18A.

Purpose and Summary

This proposed rulemaking is in response to Executive Order 10. After review and Regulatory Analysis, the Department of Education determined the current Chapter 27 contains many instances of overly restrictive language and language that duplicates statutory text verbatim. This rulemaking eliminates that language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

EDUCATION DEPARTMENT[281](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 1 to 1:30 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 9 to 9:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27

WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

281—27.1(260C) Definitions.

“Community college” or “college” means a community college established under Iowa Code chapter 260C.

“Department” means the Iowa department of education.

“Fund” or “funds” means the workforce training and economic development funds created by Iowa Code section 260C.18A and allocated to each community college.

EDUCATION DEPARTMENT[281](cont'd)

“Project” means a training or educational activity funded under this chapter.

“State board” or *“board”* means the Iowa state board of education.

“Targeted areas” means the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy, including the alternative and renewable energy sectors listed in Iowa Code section 476.42(1)“a”; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

281—27.2(260C) Funds allocation. A fund is created and the department will allocate moneys as specified in Iowa Code section 260C.18A(2).

281—27.3(260C) Community college workforce and economic development fund plans and progress reports. Each community college, to receive its allocation for the forthcoming fiscal year, is to prepare and submit to the department for state board consideration the following items for the fiscal year.

27.3(1) Workforce training and economic development fund plan. Each college will adopt a workforce training and economic development fund plan for the upcoming year that outlines the community college’s proposed use of moneys appropriated to its fund. Plans are to be based on fiscal years and submitted to the department, in a manner prescribed by the department, by September 30 for the current fiscal year allocation. Plans are to describe how the college proposes to allocate funds to support individual allowable uses pursuant to rule 281—27.4(260C) and the planned amount to be used to support targeted areas.

27.3(2) Progress reports. Each college that receives an allocation of moneys pursuant to rule 281—27.2(260C) will prepare an annual progress report detailing the plan’s implementation. The report is to be submitted to the department by September 30 of each year in a manner and form as prescribed by the department. The report will provide information regarding projects supported by the college’s fund, including the number of participants enrolled in each program, the number of participants who complete each program, the dollars spent on each allowable use pursuant to rule 281—27.4(260C), the dollars spent in targeted areas, and other data necessary to report on state program performance metrics.

281—27.4(260C) Use of funds. Moneys deposited into each community college fund are to be expended as specified in Iowa Code section 260C.18A. Any individual project using over \$1 million of moneys from a workforce training and economic development fund requires prior approval from the state board.

281—27.5(260C) Annual plan and progress report approval.

27.5(1) The state board will review and consider approval of reports and plans submitted pursuant to rule 281—27.3(260C).

27.5(2) The state board may reject a plan or progress report for any of the following reasons, including:

- a. Incomplete information or data;
- b. Failure to comply with rule 281—27.4(260C);
- c. Project not operated in compliance with state or federal law.

27.5(3) If the state board does not accept a college’s annual progress report, the college is subject to the following actions as prescribed by the board based upon the severity of the noncompliance or default, including:

- a. The withholding of a portion of new fiscal year moneys based upon amounts awarded deemed to be ineligible;
- b. Tighter oversight and control of the college’s fund by the department;
- c. Loss of funds for one year;
- d. Other action deemed appropriate by the board.

These rules are intended to implement Iowa Code section 260C.18A.

ARC 7160C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to high school equivalency diplomas
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 32, “High School Equivalency Diploma,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 259A.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 259A.

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 32 related to high school equivalency diplomas. The Department of Education is proposing to remove unduly restrictive rule language. The Department is also proposing to remove an age restriction for High School Equivalency Test (HiSET) takers who are in the juvenile justice system (proposed subrule 32.2(3)). That age restriction is contrary to the underlying statute.

In reviewing this chapter, the Department consulted with colleagues at the Iowa Department of Workforce Development.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

January 3, 2024
1 to 1:30 p.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

January 4, 2024
9 to 9:30 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

281—32.1(259A) Definitions. As used in this chapter:

“*Adult education and literacy program*” means the same as defined in 877—Chapter 32.

“*Approved program*” means any defined option established under this chapter for the completion of a high school equivalency diploma that has been approved by the department.

“*Approved test*” means the entire battery of subtests given under a high school equivalency test adopted by the department and administered at department-approved testing sites.

“*Contact hour*” means the same as described in 281—Chapter 21.

“*Continuous enrollment*” means a participant has not exited from the approved program as defined in the federal Workforce Innovation and Opportunity Act (34 CFR §361.150(c)), as effective on December 13, 2023).

“*Demonstrated competence*” means the ability to apply the knowledge and skills required to perform critical functions specific to a program of study. Competencies that measure the attainment of the knowledge, skills, and abilities equivalent to a high school program of study are to be aligned with content standards for adult education as referenced in 877—Chapter 32 and twenty-first century learning skills.

“*Department*” means the Iowa department of education.

“*Eligible institution*” means an entity as described in 877—Chapter 32.

“*High school credit*” means credit awarded for the successful completion of a secondary course or demonstrated competence equivalent to one-half unit as defined in 281—Chapter 12.

“*High school equivalency diploma*” means the credential granted by the department to adults who did not graduate from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of the knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

“*Resident*” means an individual who satisfies the provisions of 281—subrule 21.2(11).

“*Twenty-first century learning skills*” means the same as defined in 281—Chapter 12.

EDUCATION DEPARTMENT[281](cont'd)

“Work-site learning” means a planned and supervised work experience, equivalent to the training services defined in the federal Workforce Innovation and Opportunity Act, 29 U.S.C. §3174(c)(3)(D), as effective on December 13, 2023, that follows workplace laws and regulations, including the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, if applicable.

281—32.2(259A) Eligibility to participate.

32.2(1) No one under 16 years and nine months of age is allowed to participate in an approved program, with the exception of a person who is at least 16 years of age and satisfies one or more of the following conditions:

- a. Is a resident of an Iowa juvenile institution;
- b. Is an active participant in Job Corps; or
- c. Is under the supervision of a probation office.

32.2(2) Anyone 16 years and nine months of age or older who is not enrolled in a secondary school nor is a high school graduate is permitted to apply for enrollment in an approved program. The requirements for admission into an approved program are:

- a. Proof of age and, for an applicant under 18 years of age, consent of the applicant’s parent or guardian.
- b. For an applicant under 19 years of age, verification of nonenrolled status from the last high school attended.
- c. Completion of a comprehensive intake by an eligible institution. For purposes of this chapter, the intake includes all of the following:

- (1) Assessment of the applicant’s reading level and career interests and aptitudes.
- (2) Discussion of program options available to the applicant regarding completion of a high school equivalency diploma, to include the requirements, expectations, benefits, and limitations of each option.
- (3) Development of a plan for the completion of one of the options discussed and subsequent activities necessary to work toward an identified goal, career pathway, occupation, or further education.

32.2(3) An eligible participant who successfully completes an approved program will not be awarded a high school equivalency diploma until the participant reaches 18 years of age and the participant’s ninth grade class has graduated from high school. This subrule does not apply to eligible participants described in paragraphs 32.2(1) “a” through “c,” who may receive their diploma at any time after completion.

281—32.3(259A) By whom administered. An approved program is to be administered by an eligible institution, which may provide one or more approved programs. The department will maintain a process by which an eligible institution may apply to offer an approved program.

281—32.4(259A) Diploma, transcript, verification fees. Upon payment to the department or its designee of a fee for the actual cost of production and distribution of a high school equivalency diploma, transcript, or verification letter not to exceed \$20 per document, the department will issue a high school equivalency diploma, transcript, or verification letter to an applicant who has achieved the minimum standards established in this chapter. Upon payment to the department or its designee of a fee for the actual cost of verification and issuance of a duplicate diploma, transcript, and verification letter not to exceed \$20, the department or its designee will issue a duplicate diploma, transcript, or provide verification to the applicant or person authorized by the applicant to request these documents. Approved providers must track and submit to the department evidence of the applicant’s completion of the program requirements for the issuance of a high school equivalency diploma.

281—32.5(259A) Application, course, and testing fees. The applicant or the applicant’s supporting agency is to pay an application, course, or testing fee to cover only necessary and reasonable testing or program costs. Fees paid directly to an approved program are considered program income and are to adhere to the federal Office for Management and Budget Uniform Guidance cost principles, as codified in 2 CFR §200.80, effective as of December 13, 2023.

281—32.6(259A) High school equivalency diploma program based on a department-approved test. The department will award a high school equivalency diploma to an applicant who achieves the appropriate minimum standard scores on an approved test.

32.6(1) *Validity of test scores.* Scores on an approved test remain valid for a period of five years from the date of the first subtest taken. If an applicant has not earned a high school equivalency diploma within this five-year period, the applicant must retake any expired subtest. The only exception is for test series that expire prior to the five-year period, in which case all previously taken subtests are void.

32.6(2) *Retest.* Any applicant not achieving the minimum standard test score on any subtest in effect at the time of testing is permitted to apply for retest. Applicants may retest twice per calendar year, provided one of the following conditions is met:

- a.* A period of three months from the date of initial testing has elapsed; or
- b.* The applicant completes instruction in an adult education and literacy program in each subject area to be retested. This instruction is to be certified by an official of the adult education and literacy program provider to the test administrator authorized to release the retest.

281—32.7(259A) High school equivalency diploma program based on attainment of high school credits. The department will award a high school equivalency diploma to an applicant who demonstrates completion of an approved program consisting of at least 36 high school credits. The approved program will be inclusive of the graduation requirements established under 281—Chapter 12 and consist of at least eight high school credits in English or communications; six credits in mathematics; six credits in science; six credits in social studies, including government; and ten elective credits that meet the requirements of subrule 32.7(4).

32.7(1) *Award of prior credit.* The applicant is to provide certified, translated transcripts from any Iowa school district, accredited public or nonpublic high school, or regionally accredited college or university to document completion of credits earned that are equivalent to those required in an approved program established under this rule. Additional documentation may be requested to validate credits earned.

32.7(2) *Minimum participation requirement.* An eligible applicant is to demonstrate competence through continuous enrollment in an approved program for a minimum of two high school credits.

32.7(3) *Minimum graduation requirements.* If the applicant is not continuously enrolled in an approved program, the applicant becomes subject to the minimum graduation requirements applicable to the date of reenrollment.

32.7(4) *Electives.*

a. Coursework for electives will align with twenty-first century learning skills and be classified in one of the following five areas:

- (1) Civic literacy;
- (2) Health literacy;
- (3) Technology literacy;
- (4) Financial literacy;
- (5) Employability skills.

b. Work-site learning may be counted toward an elective, under the following conditions:

(1) Evidence of prior work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for prior work-site learning will not be counted toward the minimum participation requirement, as described in subrule 32.7(2).

(2) Current work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for current work-site learning may be counted toward the minimum participation requirement, as described in subrule 32.7(2).

32.7(5) *Postsecondary credit.* Credit awarded by a regionally accredited postsecondary institution for the successful completion of a course that applies toward the requirements of a postsecondary credential, including a certificate, diploma, or associate, bachelor, or graduate-level degree program, will be accepted to fulfill the requirements for the satisfactory completion of a program as follows:

EDUCATION DEPARTMENT[281](cont'd)

a. One postsecondary semester credit or its equivalent is equal to one-third high school credit. The resulting high school credit may be used to satisfy either a core or elective credit requirement of an approved program.

b. Twenty contact hours of noncredit postsecondary coursework is equal to one-third high school credit provided the coursework is aligned to regional career pathways and occupational needs. This credit can be used to satisfy an elective credit requirement of an approved program.

281—32.8(259A) High school equivalency diploma program based on postsecondary degree.

32.8(1) *Postsecondary degree from a United States postsecondary institution.* The department will award a high school equivalency diploma to a resident applicant who presents an associate degree or higher that includes general education coursework and is awarded by a regionally accredited postsecondary institution. The applicant is to provide official transcripts to an adult education and literacy program to document completion of program requirements.

32.8(2) *Postsecondary degree from a foreign postsecondary institution.* The department will award a high school equivalency diploma to a resident applicant who presents a postsecondary degree equivalent to an associate degree or higher, provided that the following conditions are met:

a. The applicant presents to an adult education and literacy program an official transcript from an institution of higher education attesting to the completion of the program of study for the postsecondary degree. If the transcript is not in English, the applicant will also provide a certified translation.

b. The applicant is a United States citizen or meets both of the following conditions:

(1) Demonstrates proficiency in speaking, listening, reading, and writing as defined by the department's approved English language proficiency standards; and

(2) Has successfully completed a course in government or civics education as a component of an approved program.

These rules are intended to implement Iowa Code chapter 259A.

ARC 7162C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to educational standards and program requirements for children's residential facilities and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 35, "Educational Standards and Program Requirements for Children's Residential Facilities," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 282.34.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 282.34.

Purpose and Summary

This proposed rulemaking is pursuant to Executive Order 10. After review and Regulatory Analysis, the Department of Education identified many instances of overly restrictive language and language that duplicates statutory text verbatim. This rulemaking eliminates that language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 1:30 to 2 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35

EDUCATIONAL AND PROGRAM STANDARDS FOR CHILDREN'S RESIDENTIAL FACILITIES

EDUCATION DEPARTMENT[281](cont'd)

281—35.1(282) General. All school-age children, including children younger than 5 years of age and older than 18 years of age who are eligible children to receive special education, who are living in any children's residential facility providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, are to be provided an appropriate education.

281—35.2(282) Definitions. For purposes of this chapter, the following definitions apply:

"*Child*" or "*children*" means an individual or individuals under 18 years of age. A child is "school-age" if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

"*Children's residential facility*" means the same as defined in Iowa Code section 237C.1(3) and may also be referred to as a "private facility." It does not include any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of health and human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies.

281—35.3(282) Establishing an appropriate educational program. A children's residential facility may accept any child of school age or a child who is eligible to receive special education services only after it has been issued a certificate of approval by the department of health and human services and has established an appropriate educational program and services under this chapter.

35.3(1) A private facility will establish an appropriate educational program using one of the options provided in Iowa Code section 282.34(1).

35.3(2) Any contract established by the private facility with a school district or accredited nonpublic school is to include, at a minimum, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting obligation will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule is to be submitted to the department of education for review and approval by the director of the department prior to enactment. A contract that fails to comply with any of the provisions of this chapter is void.

35.3(3) Children residing in a private facility who need treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district providing the instructional program or instructional supervision. The classroom is to meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

35.3(4) Nothing included in this chapter regulates religious education curricula of any private facility.

281—35.4(282) Notices, fees, and reporting.

35.4(1) A private facility is to comply with Iowa Code sections 282.34(1) "*b*" and 282.34(1) "*c*."

35.4(2) If the educational programs and educational services are provided by or through the public school district of location, only fees related to the educational programs and educational services that are authorized by the Iowa Code, including but not limited to Iowa Code chapter 282, may be charged. The public school district cannot charge nonresident students a higher fee than resident students.

35.4(3) A private facility is to comply with requests by the Iowa department of education for basic educational and financial information.

EDUCATION DEPARTMENT[281](cont'd)

281—35.5(282) Provision of appropriate educational services.

35.5(1) A private facility is to fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency's responsibilities for child find under 281—Chapter 41, including making a child available for evaluation and provision of services for which the child is eligible.

35.5(2) If a child does not need treatment or security by a private facility in such a time or manner as is needed to remain on the campus of the private facility, a child with an individual education plan is to be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

35.5(3) The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care or placement of a child will cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curricula, assignments, and materials to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

35.5(4) A private facility that houses eligible children who are four years of age by September 15 of the school year will notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from its statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

These rules are intended to implement Iowa Code section 282.34.

ARC 7161C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to extracurricular interscholastic competition
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code, and adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 256.46 and 280.13.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 256.46 and 280.13.

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 36 on interscholastic athletic eligibility. The Department of Education proposes removing numerous unnecessarily restrictive terms, obsolete language on all-star contests, an unnecessary requirement that the organizations file documents with the Department (as opposed to keeping them for the Department's inspection), and unnecessary language that merely restates statutory text.

EDUCATION DEPARTMENT[281](cont'd)

Additionally, the Department proposes clarifying that the burden of proving eligibility in disputes lies with the athlete. The Department also proposes reducing the penalty for a failing grade from 30 days to 20 days, to be equitable between sports seasons.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 1:30 to 2 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 36 and adopt the following **new** chapter in lieu thereof:

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

281—36.1(280) Definitions.

“Associate member school” means a nonaccredited nonpublic school that has been granted associate member status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13, upon approval by the department based upon proof of compliance with:

1. Iowa Code section 279.19B, and rules adopted by the department related to the qualifications of the affected teaching staff, and
2. The student eligibility rules of this chapter.

Associate membership is subject to the requirements, dues, or other obligations established by the organization for which associate membership is sought.

“Coach” means an individual, with coaching endorsement or authorization as required by Iowa law, employed by a school district under the provisions of an extracurricular athletic contract or employed by a nonpublic school in a position responsible for an extracurricular athletic activity. “Coach” also includes an individual who instructs, diagnoses, prescribes, evaluates, assists, or directs student learning of an interscholastic athletic endeavor on a voluntary basis on behalf of a school or school district.

“Compete” means participating in an interscholastic contest or competition and includes dressing in full team uniform for the interscholastic contest or competition as well as participating in pregame warm-up exercises with team members. “Compete” does not include any managerial, recordkeeping, or other noncompetitor functions performed by a student on behalf of a member or associate member school.

“Department” means the Iowa department of education.

“Dropout” means a student who quit school because of extenuating circumstances over which the student had no control or who voluntarily withdrew from school. This does not include a student who has been expelled or one who was doing failing work when the student voluntarily dropped from school.

“Executive board” means the governing body authorized under a constitution or bylaws to establish policy for an organization registered under this chapter.

“Executive officer” means the executive director or secretary of each governing organization.

“Member school,” for purposes of this chapter, means a public school or accredited nonpublic school that has been granted such status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13.

“Parent” means the natural or adoptive parent having actual bona fide custody of a student.

“Student” means a person under 20 years of age enrolled in grades 9 through 12. For purposes of these rules, ninth grade begins with the summer immediately following eighth grade. The rules contained herein apply uniformly to all students.

“Superintendent” means a superintendent of a local school or a duly authorized representative.

“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.

281—36.2(280) Registered organizations. Organizations registered with the department include the following:

- 36.2(1)** Iowa High School Athletic Association (hereinafter association).
- 36.2(2)** Iowa Girls’ High School Athletic Union (hereinafter union).
- 36.2(3)** Iowa High School Music Association (hereinafter music association).
- 36.2(4)** Iowa High School Speech Association (hereinafter speech association).
- 36.2(5)** Unified Iowa High School Activities Federation (hereinafter federation).

EDUCATION DEPARTMENT[281](cont'd)

281—36.3(280) Filings by organizations. Each organization will maintain a current file of the following items, available for inspection by the department:

- 36.3(1)** Constitution and bylaws, approved by the state board of education.
- 36.3(2)** Current membership and associate membership lists.
- 36.3(3)** Organization policies.
- 36.3(4)** Minutes of all meetings of organization boards.
- 36.3(5)** Proposed constitution and bylaw amendments or revisions.
- 36.3(6)** Audit reports.
- 36.3(7)** General bulletins.
- 36.3(8)** Other information pertinent to clarifying organization administration.

281—36.4(280) Executive board.

36.4(1) *Membership.* Each organization will have an executive board, containing some representation from school administrators, teachers, and elective school officers; provided, however, that the membership will include the following:

a. One member who is a member of a school board in Iowa, appointed by the Iowa association of school boards to represent the lay public.

b. One member, who is either a coach, sponsor or director of an activity sponsored by the organization to which the member is elected and who works directly with the students or the program. This member is to be elected by ballot of the member schools, the vote to be cast by the school's designated representative of the organization involved.

36.4(2) *Organization elections.* The election procedure for each organization is to be conducted as provided by the organization's constitution, which is to set criteria for protecting the voter's anonymity and ensuring adequate notice of elections. In addition, one representative designated by the department director will be present at the counting of all ballots and will validate election results.

36.4(3) *Federation membership.* The federation, in addition to conforming to other requirements in this rule, will have in its membership the executive board of the association, union, music association, speech association, and school administrators of Iowa.

281—36.5(280) Fiscal provisions.

36.5(1) *Salary.* No remuneration, salary, or remittance may be made to any member of an executive board, representative council or advisory committee of an organization for the member's service.

36.5(2) *Expenses.* Travel and actual expenses of executive board members, representative council members, advisory committee members, and officers may be paid from organizational funds only when on official business for the organization. Actual expenses are to be paid for travel for transportation outside the state, along with necessary and reasonable expenses that are to be itemized. Itemized accounting of the travel and business expenses of employees are to be furnished to the department in an annual report on a form prescribed by the department.

36.5(3) *Financial report.* Full and detailed reports of all receipts and expenditures are to be filed annually with the department.

36.5(4) *Bond.* The executive board of each activity organization will purchase a blanket fidelity bond from a corporate surety approved by the executive board, conditioned upon the faithful performance of the duties of the executive officer, the members of the executive board, and all other employees of the activity organization. Such blanket bond is to be in a penal amount set by the executive board and is to be the sum of 50 percent of the largest amount of moneys on hand in any 30-day period during the preceding fiscal year, and 20 percent of the net valuation of all assets of the activity organization as of the close of the last fiscal year, but such bond will in no case be in an amount less than \$10,000.

36.5(5) *Audit.*

a. General. The financial condition and transaction of all organizations will be examined once each year, or more often if directed by the director of education, by either a certified public accountant chosen by the organization or by a committee chosen by the organization and approved by the director of education.

EDUCATION DEPARTMENT[281](cont'd)

b. Examinations by auditors. Auditors have the right while making the examination to examine all organization papers, books, records, tickets, and documents of any of the officers and employees of the organizations, and have the right in the presence of the custodian or deputy to have access to the cash drawers and cash in the official custody of the officer and to the records of any depository that has funds of the organization in its custody.

c. Access to records. Upon request, organizations will make available to the department or its delegated representative all records, data, written policies, books, accounts, and other materials relating to any or all aspects of their operations.

281—36.6(280) Appearance before state board. At the request of the state board of education or its executive officer, members of the governing boards and employees of the organizations will appear before and give a full accounting and details on the aforesaid matters to the state board of education.

281—36.7(280) Interscholastic athletics. In addition to the requirements of rule 281—36.8(280), organizations will implement the provisions described below for participants in interscholastic athletic competition.

36.7(1) Physical examination. Every year each student will present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, is to affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic.

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 calendar days is allowed for expired physical certifications.

36.7(2) Sportsmanship. It is the clear obligation of member and associate member schools to ensure that their contestants, coaches, and spectators in all interscholastic competitions practice the highest principles of sportsmanship, conduct, and ethics of competition. The governing organization has the authority to penalize any member school, associate member school, contestant, or coach in violation of this obligation.

36.7(3) Awards. At no time may any student accept an award of cash.

36.7(4) Interstate competition. Every student participating in interstate athletic competition on behalf of the student's school must meet the eligibility rules.

36.7(5) Competition seasons. The length of training periods and competition seasons is determined solely by the governing organization.

36.7(6) Tournaments. The number and type of state tournaments for the various sports is solely determined by the organization. In scheduling and conducting these tournaments, the organization has the final authority for determining the tournament eligibility of all participants. Organization bylaws are to provide for a timely method of seeking an internal review of initial decisions regarding tournament eligibility.

36.7(7) Ineligible player competition. Member or associate member schools that permit or allow a student to compete in an interscholastic competition in violation of the eligibility rules or that permit or allow a student who has been suspended to so compete are subject to penalties imposed by the executive board. The penalties may include forfeiture of contests or events or both, involving any ineligible student(s); adjustment or relinquishment of conference/district/tournament standings; and return of team awards or individual awards or both.

If a student who has been declared ineligible or who has been suspended is permitted to compete in an interscholastic competition because of a current restraining order or injunction against the school, registered organization, or department, and if such restraining order or injunction subsequently is voluntarily vacated, stayed, reversed, or finally determined by the courts not to justify injunctive relief, the penalties listed above may be imposed.

This rule is intended to implement Iowa Code section 280.13.

281—36.8(280) Eligibility requirements.

36.8(1) *Local eligibility and student conduct rules.* Local boards of education may impose additional eligibility requirements not in conflict with these rules. Nothing herein is to be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9. A member or associate member school shall not allow any student, including any transfer student, to compete until such time as the school has reasonably reliable proof that the student is eligible to compete for the member or associate member school under these rules.

36.8(2) *Scholarship rules.*

a. All contestants are to be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants who have attained the age of 20 years old are not eligible.

c. All contestants will receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times. To qualify under this rule, a "subject" will meet the requirements of 281—Chapter 12. Coursework taken from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation is used in determining eligibility. No student is to be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" means the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 20 consecutive calendar days unless the student has already served a period of ineligibility for 20 consecutive calendar days in another school-sponsored activity. A student will not serve multiple periods of ineligibility because of a failing grade.

d. A student with a disability who has an individualized education program will not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, toward the goals on the student's individualized education program, unless the course in which the student receives a failing grade has no relationship to those goals.

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board that may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.

f. All member schools will provide appropriate interventions and necessary academic supports for students who fail or who are at risk to fail.

g. A student is academically eligible upon entering the ninth grade.

h. A student is not eligible to participate in an interscholastic sport if the student has, in that same sport, participated in a contest with or against, or trained with, a National Collegiate Athletic Association (NCAA), National Junior College Athletic Association (NJCAA), National Association of Intercollegiate Athletics (NAIA), or other collegiate governing organization's sanctioned team. A student may not participate with or against high school graduates if the graduates represent a collegiate institution or if the event is sanctioned or sponsored by a collegiate institution. Nothing in this subrule precludes a student from participating in a one-time tryout with or against members of a college team with permission from the member school's administration and the respective collegiate institution's athletic administration.

EDUCATION DEPARTMENT[281](cont'd)

i. No student is eligible to participate in any given interscholastic sport if the student has engaged in that sport professionally.

j. The local superintendent of schools, with the approval of the local board of education, may give permission to a dropout student to participate in athletics upon return to school if the student is otherwise eligible under these rules.

k. Remediation of a failing grade by way of summer school or other means does not affect the student's ineligibility. All failing grades will be reported to any school to which the student transfers.

36.8(3) *General transfer rule.* A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—Chapter 12, exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.8(3) “a” applies. The period of ineligibility applies only to varsity level contests and competitions. In ruling upon the eligibility of transfer students, the executive board will consider the factors motivating student changes in residency, which it may consider from both direct and circumstantial evidence. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

a. Exceptions. The executive officer or executive board will consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school. For purposes of this subparagraph, a contemporaneous change in parental residence includes a change in a student's residence from the residence of one parent or guardian to the residence of a different parent or guardian.

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) A student whose residence changes due to any of the following circumstances set forth in Iowa Code section 256.46 is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance. For purposes of Iowa Code section 256.46(1) “d,” participation in a foreign exchange program is based on a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement, as defined in rule 281—36.13(280), with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

EDUCATION DEPARTMENT[281](cont'd)

(8) A student who is found by the attending district to be a homeless child or youth as defined in rule 281—33.2(256).

(9) In any transfer situation not provided for elsewhere in this chapter, the executive board will exercise its administrative authority to make any eligibility ruling that it deems to be fair and reasonable. The executive board will consider the motivating factors for the student transfer, which it may consider from both direct and circumstantial evidence. The determination will be made in writing with the reasons for the determination clearly delineated. The burden of proving entitlement to administrative discretion under this provision lies with the party seeking it.

b. In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board will consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation will not be approved.

c. A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

d. A school district that has more than one high school in its district will set its own eligibility policies regarding intradistrict transfers, subject to Iowa Code section 279.82(6) as enacted by 2023 Iowa Acts, Senate File 496.

36.8(4) *Open enrollment transfer.* The transfer of a student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment is governed by Iowa Code section 282.18(9).

36.8(5) *Eligibility for other enrollment options.*

a. Shared-time students. A nonpublic school student who is enrolled only part-time in the public school district of the student's residence under a "shared-time" provision or for driver education is not eligible to compete in interscholastic athletics in the public school district.

b. Dual enrollment. A student who receives competent private instruction, not in an accredited nonpublic or public school, may seek dual enrollment in the public school of the student's resident district and is eligible to compete in interscholastic athletic competition in the resident school district provided the student meets the eligibility requirements of these rules and those set by the public school of attendance.

If a student seeking such dual enrollment is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation under dual enrollment. Any period of ineligibility applies only to varsity level contests and competitions.

c. Competent private instruction. A student who receives competent private instruction, and is not dual-enrolled in a public school, may participate in and be eligible for interscholastic athletics at an accredited nonpublic school if the student is accepted by that school and the student meets the eligibility requirements of this chapter and those set by the accredited nonpublic school where the student participates. Application will be made to the accredited nonpublic school on a form provided by the department.

If a student seeking such participation is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation with the accredited nonpublic school. Any period of ineligibility applies only to varsity level contests and competitions.

36.8(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school

EDUCATION DEPARTMENT[281](cont'd)

personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. However, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Coaching activities between June 1 and the first day of fall sports practices will not conflict with sports in season. The associations in their discretion may establish a dead period up to 14 calendar days in length. During a dead period, coaches will not be allowed to have contact with students.

c. **Penalty.** A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

36.8(7) Nonschool team participation. The local school board will, by policy, determine whether or not participation in nonschool athletic events during the same season is permitted and provide penalties for students who may be in violation of the board's policy.

This rule is intended to implement Iowa Code sections 256.46, 280.13 and 282.18.

281—36.9(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.8(1) or paragraph 36.8(2) "*b*," "*c*," "*d*," "*f*," or "*k*" or based on a challenge to a local district finding that a student was not subject to a founded incident of harassment or bullying, or a school contesting a penalty imposed under paragraph 36.8(6) "*b*," will state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or a school, the executive officer will schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board will give at least five business days' written notice of the hearing. The executive board will consider the evidence presented and issue findings and conclusions in a written decision within five business days of the hearing and will mail a copy to the appellant. The burden of proving entitlement to relief under this rule lies with the party seeking it.

281—36.10(280) Appeals to director. If the claimant is still dissatisfied, an appeal may be made in writing to the director of education by giving written notice of the appeal to the state director of education with a copy by registered mail to the executive officer of the governing organization. An appeal is to be in the form of an affidavit and be filed within ten business days after the date of mailing of the decision of the governing organization. The director of education will establish a date for hearing within 20 calendar days of receipt of written notice of appeal by giving at least 5 business days' written notice of hearing to the appellant unless another time is mutually agreeable. The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 are applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code section 17A.2(5). The burden of proving entitlement to relief under this rule lies with the party seeking it.

281—36.11(280) Organization policies. The constitution or bylaws of organizations sponsoring contests for participation by member schools will reflect the following policies:

36.11(1) Expenditure policy. It is the expenditure policy of each organization, after payment of costs incurred in rules 281—36.6(280) through 281—36.9(280) and legitimate expenses for housing, equipment and supplies including by agreement with other organizations having a mutual interest in interscholastic activities, to use all receipts to promote and fiscally sponsor those extracurricular interscholastic contests and competitions deemed by the organization to be most beneficial to all eligible

EDUCATION DEPARTMENT[281](cont'd)

students enrolled in member schools. Organizations with large revenues may provide assistance in staff, space, equipment and the transfer of funds to other organizations whose contests or competitions do not generate sufficient moneys to carry out an adequate program in their areas of service. Each organization will make an annual payment to the federation to cover the necessary expenditures of the federation. The amount of this payment will be determined by the federation.

36.11(2) *Calendar of events.* The federation will establish yearly in advance a calendar of events for the interscholastic contests and competitions sponsored by the organizations.

36.11(3) *Information to local member schools.* The federation will distribute to member schools the yearly calendar of events and other information believed by officers of the federation to be helpful to local school officials in providing a comprehensive program of extracurricular interscholastic contests or competitions.

36.11(4) *Participation.* Participation in interscholastic contests or competitions will be by school teams only and not selected individuals, with the exception of individual sports events such as wrestling, track, cross country, golf, tennis, and music and speech activities.

36.11(5) *Contests outside Iowa.* Out-of-state contest participation by a member school is limited to regularly scheduled interscholastic activities.

36.11(6) *Promoting interstate contests.* No activity organization is to sponsor interstate contests or competition between individuals, teams or groups.

36.11(7) *Chaperones.* It is the responsibility of all school districts to see that all teams or contestants are properly chaperoned when engaged in interscholastic activities.

36.11(8) *Membership.* Membership in an organization is limited to schools accredited by the department or approved by the department solely for purposes of associate membership in a registered organization.

281—36.12(280) *Eligibility in situations of district organization change.* Notwithstanding any other provision of this chapter, in the event eligibility of one or more students is jeopardized or in question as a result of actions beyond their control due to pending reorganization of school districts approved by the voters under Iowa Code chapter 275; action of the district boards of directors under Iowa Code section 274.37; or the joint employment of personnel and sharing of facilities under Iowa Code section 280.15 and the result is a complete discontinuance of the high school grades, or discontinuance of the high school grades pursuant to Iowa Code section 282.7(1), the boards of directors of the school districts involved may, by written agreement, determine the eligibility of students for the time the district of residence does not provide an activity program governed by this chapter. When the respective boards have not provided by written agreement for the eligibility of students whose eligibility is jeopardized or questioned four weeks prior to the normal established time for beginning the activity, students or parents of students involved may request a determination of eligibility from the governing body of the organization involved. All parties directly interested will be given an opportunity to present their views to the governing board.

A determination of eligibility by the governing board will be based upon fairness and the best interests of the students.

In the event that one or more parties involved in the request for determination before the governing board are dissatisfied with the decision of the governing board, an appeal may be made by the dissatisfied party to the director of the department under the provisions of rule 281—36.10(280). A decision of the director in the matter is final.

The above provisions apply insofar as applicable to changes of organization entered into between two or more nonpublic schools.

This rule is intended to implement Iowa Code section 280.13.

281—36.13(280) *Cooperative student participation.* Notwithstanding any other provision of this chapter, in the event a member or associate member school does not directly make participation in an interscholastic activity available to its students, the governing board of the member or associate member school may, by formally adopted policy if among its own attendance centers, or by written agreement

EDUCATION DEPARTMENT[281](cont'd)

with the governing board of another member or associate member school, provide for the eligibility of its students in interscholastic activities provided by another member or associate member school. The eligibility of students under a policy, insofar as applicable, or a written agreement is conditioned upon the following:

36.13(1) All terms and conditions of the agreement are in writing;

36.13(2) The attendance boundary of each school that is party to the agreement is contiguous to or contained within the attendance boundary of one of the other schools, unless the activity is not offered at any school contiguous to the party district, or all schools that are contiguous refuse to negotiate an agreement with the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school member will utilize the attendance boundaries of the public school in which its attendance center is located;

36.13(3) Any interscholastic activity not available to students of the schools participating in the agreement may be included in the agreement. A school's students may be engaged in cooperative activities under the terms of only one agreement.

However, if several schools are in a consortia cooperative agreement for a specific activity, they are not precluded from having a separate agreement with one or more of the same schools for a different activity as long as all schools of the consortia agree to such a separate agreement;

36.13(4) Agreements will be for a minimum of one school year. Amendments may be made to agreements, including allowing additional member schools to join an existing agreement, without necessarily extending the time of existence of the agreement;

36.13(5) All students participating under the agreement are enrolled in one of the schools, are in good standing, and meet all other eligibility requirements of these rules;

36.13(6) A copy of the written agreement between the governing boards of the particular schools involved, and all amendments to the agreement, will be filed with the appropriate governing organization(s) no later than April 30 for the subsequent year, unless exception is granted by the organization for good cause shown. The agreements and amendments are deemed approved unless denied by the governing organization(s) within ten calendar days;

36.13(7) It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice includes situations where a cooperative effort may result in an unfair domination of an activity or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools that was developed under the terms of this rule results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as cooperative student participation is concerned with a particular activity. Determinations are appealable to the director of education under the applicable terms of rule 281—36.10(280). For notice to be timely, it must be given at least 45 calendar days prior to the beginning of the activity season.

This rule is intended to implement Iowa Code section 280.13.

These rules are intended to implement Iowa Code sections 256.46, 280.13, and 282.18.

ARC 7163C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to extracurricular athletic activity conference for member schools and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 37, “Extracurricular Athletic Activity Conference for Member Schools,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 280.13.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 280.13.

Purpose and Summary

After review pursuant to Executive Order 10, the Department of Education proposes to revise Chapter 37 related to activity conference membership by removing unnecessarily restrictive language, as well as consolidating rules for improved organization.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

January 3, 2024
1:30 to 2 p.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

January 4, 2024
9:30 to 10 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 37 and adopt the following new chapter in lieu thereof:

CHAPTER 37
EXTRACURRICULAR ATHLETIC ACTIVITY
CONFERENCE FOR MEMBER SCHOOLS

281—37.1(280) General. It is the policy of the state of Iowa that each school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity. For purposes of this chapter, “member school” means a school or school district granted such status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13 and includes associate members.

37.1(1) Criteria. To the maximum extent appropriate, membership shall be with other schools of comparable size and within reasonable geographic proximity.

37.1(2) Initial responsibility. The initial authority and responsibility for conference development, membership, and alignment rests with the board of directors of each public school district and the authorities in charge of each nonpublic school.

281—37.2(280) Complaint to the director, department of education. A member school that believes it has been unfairly excluded or prevented from obtaining membership in an athletic activity conference that would provide the opportunity for participation of its students in athletic events or contests with students from other member schools of comparable size and within reasonable geographic proximity may file a complaint stating this concern with the director of the department of education. The complaint is to set forth in a plain and concise manner the reasons the member school believes the director should intervene in conference alignment decisions and the specific relief requested by the member school. The complaint is to be signed by the president of the board of directors of a public school district or a representative of the officials in charge of an accredited nonpublic school. The director or the director's designee will, within ten days, acknowledge to the member school receipt of the complaint in writing.

281—37.3(280) Mediation. The director of the department of education will establish a mediation team consisting of the executive director of the Iowa High School Athletic Association (hereinafter association) and the executive secretary of the Iowa Girls' High School Athletic Union (hereinafter

EDUCATION DEPARTMENT[281](cont'd)

union) organizations recognized in 281—Chapter 36, or their designees, to meet with the complainant and representatives of other affected member schools. If the complaint involves conference alignment for athletic activities represented by only one of the organizations, only that organization will be involved in the mediation. A copy of all materials filed with the director by the complainant member school will be provided to the mediation team.

The mediation team will meet with administrators or board members of schools potentially affected by changes in conference alignment related to the complaint. Schools will send representatives who have knowledge of the impact of a conference realignment and full authority to respond on behalf of their member school. Factors to be weighed in reaching resolution include school enrollment figures (current and projected), travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

281—37.4(280) Resolution or recommendation of the mediation team. If mediation results in resolution of the complaint, no further action is necessary on the part of the director and the implementation of the mediation agreement will be left with the boards of directors of school districts and the authorities in charge of nonpublic schools. If no resolution is reached within 50 days of the start of the mediation process, the mediation team will make a recommendation to the director as to the best resolution of the complaint. Copies of this recommendation will be given to all affected member schools. The director will establish a time for a hearing on this recommendation within 45 days of the receipt of the mediation team's recommendation. The director or director's designee will conduct the hearing, at which time all affected parties will be given the opportunity to provide oral or written testimony or submit other evidence. The director or director's designee reserves the right to establish time limits on appearances at the hearing.

281—37.5(280) Decision; effective date. In reaching a decision on the complaint, the director will consider information gathered by the mediation team and its recommendation as well as the written and oral testimony from the hearing. In addition, the director or the director's designee may consult with other individuals, organizations, or conference representatives able to provide input on a decision. If a designee of the director conducts the hearing and review process, the findings of the designee shall be reviewed by the director. A final decision on the complaint will be made by the director. The decision may affect conference realignment or direct other appropriate relief to remedy the complaint. The director will make a decision within 60 days of the hearing, and copies of the decision will be provided to all affected parties.

If the decision results in conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Alignment changes will be made for four-year periods with automatic review by the director after two years so that further necessary changes take effect at the conclusion of the four-year period, unless agreement exists that implementation of the changes can occur at an earlier date.

These rules are intended to implement Iowa Code section 280.13.

ARC 7164C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to work-based learning and career education
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 48, "Work-Based Learning," and Chapter 49, "Individual Career and Academic Plan," and to adopt a new Chapter 49, "Individualized Career and Academic Plan," Iowa Administrative Code.

EDUCATION DEPARTMENT[281](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 279.61.

Purpose and Summary

2023 Iowa Acts, Senate File 514, resulted in the majority of Chapter 48 being transferred to the Iowa Department of Workforce Development. The remaining rule is proposed to be transferred to Chapter 49, and Chapter 48 is proposed to be rescinded and reserved.

The current Chapter 49 contains many instances of overly restrictive language and language that duplicates statutory text verbatim. This proposed rulemaking eliminates that language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
2 to 2:30 p.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

January 4, 2024
10 to 10:30 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

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

EDUCATION DEPARTMENT[281](cont'd)

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **281—Chapter 48**.

ITEM 2. Rescind 281—Chapter 49 and adopt the following **new** chapter in lieu thereof:

CHAPTER 49
INDIVIDUALIZED CAREER AND EDUCATION PLAN

281—49.1(279) Definitions. For purposes of this chapter, the following definitions apply:

“*Approved system*” means a vendor-provided career information and decision-making system that meets the standards of rule 281—49.5(279).

“*Board*” means the board of directors of a public school district.

“*Career cluster*” means a nationally recognized framework for organizing and classifying career and technical education programs.

“*Department*” means the Iowa department of education.

“*Director*” means the director of the Iowa department of education.

“*District plan*” means the career and academic plan developed by each school district that details the delivery of career guidance and development in compliance with this chapter.

“*Educational program*” means the educational program as defined in 281—Chapter 12.

“*Plan*” means the individualized career and academic plan established under this chapter that is created by each student of the school district in eighth grade and which, at a minimum, meets the standards of rule 281—49.2(279).

“*Postsecondary readiness*” means college and career readiness in Iowa as defined by the state board of education.

“*School counseling program*” means the school counseling program established by Iowa Code section 256.11(9A).

“*Student*” means an enrolled student as defined in 281—Chapter 12.

“*Work-based learning*” means planned and supervised connections of classroom, laboratory and industry that prepare students for current and future careers.

281—49.2(279) Individualized career and academic plan. The plan established under this rule is to, at a minimum, comply with the provisions of Iowa Code section 279.61.

281—49.3(279) Essential components. The district is to engage each student in activities that support the following essential components of the individualized career and academic plan:

49.3(1) Self-understanding. Students are to engage in developmentally appropriate inventories and assessments that promote self-understanding and the connection to work and engage in meaningful reflective activities about the results.

49.3(2) Career information. Students are to research careers based on self-understanding results and engage in meaningful reflection about the findings.

49.3(3) Career exploration. Students are to engage in activities that reveal connections among school-based instruction, career clusters, and the world of work and engage in meaningful reflection.

EDUCATION DEPARTMENT[281](cont'd)

49.3(4) *Postsecondary exploration.* Students are to engage in activities to explore relevant postsecondary education and training options related to career interests and engage in meaningful reflection on the exploration experience.

49.3(5) *Career and postsecondary decision.* Students are to complete relevant activities to meet their postsecondary goals consistent with the plan and stated postsecondary intention.

281—49.4(279) District plan.

49.4(1) *Components of district plan.* The school district shall develop a written career plan. The district plan is to include the following components:

a. The district is to, at a minimum, describe the following aspects of the district plan.

(1) The activities to be undertaken in each grade level to achieve the provisions of rule 281—49.2(279).

(2) Integration of the career plan within connected district initiatives and other facets of the school district's comprehensive school counseling program.

(3) At the district's discretion, any additional outcomes to be integrated into the career and academic planning system.

b. Designation of team. The superintendent of each school district is to designate a team of education practitioners to carry out the duties assigned to the school district under this rule. The district plan is to include a list, by job position, of the designated district team.

(1) Team composition. The team will include a school administrator; a school counselor; teachers, including career and technical education teachers; and individuals responsible for coordinating work-based learning activities.

(2) Duties. The team is responsible for the following:

1. Implementation of the district plan.

2. Annually reviewing and, as necessary, proposing to the school district revisions to the district plan.

3. Coordination of activities which integrate essential components into classroom instruction and other facets of the school district's educational program.

4. Regularly consulting with representatives of employers, state and local workforce systems and centers, higher education institutions, and postsecondary training programs.

49.4(2) *Maintenance of district plan.* The district plan will be regularly reviewed and revised by the team and the board.

281—49.5(279) Career information and decision-making systems. Each district shall use a career information and decision-making system that meets the standards established in subrule 49.5(3).

49.5(1) *Review process.* The department will establish a process for the review of vendor-provided career information and decision-making systems to determine which career information and decision-making systems meet the minimum specifications established in subrule 49.5(3).

49.5(2) *State-designated system.* The department will establish a process for the review and approval of a single state-designated career information and decision-making system from among the systems approved through the process established in subrule 49.5(1), which districts may use in compliance with this chapter.

49.5(3) *Minimum functions of approved systems.* An approved system is to, at a minimum, support implementation of rule 281—49.2(279) and meet the following specifications:

a. Allow for the creation of student accounts, which allow a student to store and access the results and information gathered from the inventories, searches, and associated activities outlined in paragraphs 49.5(3) "b" through "d."

b. Include developmentally appropriate inventories and assessments that promote self-understanding and the connection to work. Inventories and assessments are to include an interest inventory; a work values assessment; and an abilities, strengths, or skills assessment.

c. Include a search platform for career information. The platform is to allow a student to access and review career information related to the results of the inventories listed in paragraph 49.5(3) "b."

EDUCATION DEPARTMENT[281](cont'd)

Career information will include current and accurate state and national wage, earning, and employment outlook data for a given occupation; job descriptions, including such information as essential duties and aptitudes; and training and education requirements. The career information search platform is to, at a minimum, allow a student to sort information by wage and earning, career cluster, and training and education requirements.

d. Include a search platform for postsecondary information. Postsecondary information is to include, but not be limited to, a current, accurate, and comprehensive database of accredited professional colleges, technical and community colleges, and public and private baccalaureate colleges and universities; and include or provide links to apprenticeship and military opportunities. The postsecondary information search platform will, at a minimum, allow a student to sort information by program and degree type, institution type, location, size of enrollment, and affiliation and appropriate institutional characteristics, such as designation as a historically black college and university or Hispanic-serving institution, and religious affiliation.

e. Track basic utilization for the functions outlined in paragraphs 49.5(3) “*a*” through “*d*.” Districts are to have the ability to generate and export a report on the utilization statistics.

f. Ensure compliance with applicable federal and state civil rights laws.

g. Disclose the source and age of, as well as frequency of updates to, all information and data.

h. Provide auxiliary services, including:

- (1) A process for districts to submit comments, feedback, and modification requests to the vendor.
- (2) Technical assistance during regular school district operating hours.
- (3) Appropriate training for users.

49.5(4) Supplemental systems. The department will maintain a list of supplemental systems that districts may use to satisfy the components of rule 281—49.2(279).

a. The department is to establish a process for the review of supplemental systems. The review will, at a minimum, identify the components of rule 281—49.2(279) and paragraphs 49.5(3) “*b*” through “*d*,” which are satisfied through the supplemental system. All supplemental systems are to comply with paragraphs 49.5(3) “*f*” and “*g*.”

b. A district that chooses to use a supplemental system is to specify which components of rule 281—49.2(279) are satisfied through the use of the supplemental system in the district plan established in rule 281—49.4(279). A district that chooses to utilize a supplemental tool must continue to utilize and make available to students an approved system.

281—49.6(279) Compliance. The director will monitor school districts for compliance with the provisions of this chapter through the accreditation process established for school districts under 281—Chapter 12.

49.6(1) Maintenance of student records. Each school district is to maintain evidence of student completion of the individualized career and academic plan established in rule 281—49.2(279), pursuant to rule 281—12.3(256).

49.6(2) Reporting. The board of directors of each school will complete the reports set forth in Iowa Code section 279.61(5). The board is to report to the department at least annually, and in a manner and frequency established by the department, regarding student participation in work-based learning programs established by the board, including registered apprenticeships, quality pre-apprenticeships, internships, on-the-job training, and projects through the Iowa clearinghouse for work-based learning.

49.6(3) Department responsibilities. Iowa Code section 279.61(6) is incorporated by this reference.

281—49.7(256) Program established. The provisions of this rule implement the future ready Iowa state-recognized work-based learning program as authorized under Iowa Code sections 256.7 and 261.131.

49.7(1) Definitions. As used in this rule:

“*Apprenticeship program*” means an apprenticeship program authorized under federal statute or by the Iowa office of apprenticeship.

EDUCATION DEPARTMENT[281](cont'd)

“*Eligible program*” means a program eligible under the future ready Iowa skilled workforce last-dollar scholarship program.

49.7(2) *Alignment with last-dollar scholarship.* The rules governing eligibility for students, programs, and institutions are the same as the eligibility criteria specified in 283—Chapter 15 for the future ready Iowa skilled workforce last-dollar scholarship program.

49.7(3) *Eligibility.* Pursuant to 283—subparagraph 15.3(1)“j”(2), a student enrolled in an apprenticeship program aligned to an eligible program may be enrolled in an eligible program on a part-time basis.

These rules are intended to implement Iowa Code section 279.61.

ARC 7165C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to Iowa reading research center and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 61, “Iowa Reading Research Center,” Iowa Administrative Code, and adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 256.7 and 256.9.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 256.7 and 256.9.

Purpose and Summary

The current Chapter 61 contains many instances of overly restrictive language and language that duplicates statutory text verbatim. This proposed rulemaking eliminates that language.

The Department of Education also proposes removing current paragraph 61.6(4)“d,” which currently allows the Iowa Reading Research Center to charge for the actual costs of providing its services. This is inconsistent with the underlying statute, which does not authorize these charges and which requires professional development services to be provided at no cost.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

EDUCATION DEPARTMENT[281](cont'd)

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 2 to 2:30 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61
IOWA READING RESEARCH CENTER

281—61.1(256) Establishment. There is established an Iowa reading research center (center). The director of the department of education will select a public education entity to serve as the host for the center. The director will give preference to a school district, an area education agency, or the joint area education agencies system. The selection of a host is to be for a specified period of time.

281—61.2(256) Purpose. The center's purpose is set forth in Iowa Code section 256.9(49) "c"(1).

281—61.3(256) Intensive summer literacy program. The center hereby establishes program criteria and guidelines for voluntary implementation of the program by school districts.

61.3(1) Program criteria: *summer reading programs pursuant to Iowa Code section 279.68.* Each district that chooses to implement a summer reading program as part of its implementation of Iowa Code section 279.68(2) "a"(6) is to comply with the terms of that section and 281—Chapter 62. A school district will employ appropriately licensed and supervised teachers and paraprofessionals, will monitor student progress, and is encouraged to use an evidence-based curriculum.

EDUCATION DEPARTMENT[281](cont'd)

61.3(2) *Additional voluntary program criteria: intensive summer literacy program.* Each district's voluntary intensive summer literacy program is encouraged to meet, in addition to the terms of subrule 61.3(1), the following program criteria:

a. Criterion 1. Each district is encouraged to adopt instructional practices or programs that have some evidence of success and that include explicit and systematic instruction in foundational reading skills based on student need, consistent with Iowa Code section 279.68.

b. Criterion 2. Each district is to employ skilled, high-quality instructors. For the purposes of this paragraph, a district may hire or employ personnel directly, through an agreement with one or more other districts, through an agreement with one or more accredited nonpublic schools, through an agreement with one or more state agencies or governmental subdivisions, through an agreement with one or more private not-for-profit community agencies, or some combination thereof.

c. Criterion 3. Each district is encouraged to allow sufficient time for meaningful reading instruction and student learning.

d. Criterion 4. Each district is encouraged to provide instruction in small classes and small groups. To meet this criterion, a district is encouraged to employ the same instructional grouping formats described in the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district is encouraged to ensure that it delivers whole-class instruction in class sizes of 15 or fewer students and that it delivers targeted intervention based on student need in small groups of 5 or fewer students.

e. Criterion 5. Each district is encouraged to monitor and promote student attendance.

f. Criterion 6. Each district is encouraged to evaluate student outcomes and the quality of program implementation, including implementation of these voluntary criteria.

g. Criterion 7. Each program is to be under the leadership and supervision of at least one appropriately licensed teacher and at least one appropriately licensed administrator. The two roles may be filled by the same individual. Nonlicensed personnel are to be supervised by an appropriately licensed teacher. It is encouraged that either the teacher or the administrator holds a reading (K-8) endorsement or a reading specialist endorsement.

h. Option to use private providers. A district may enter into an agreement with a private provider that uses evidence-based instructional strategies to provide summer literacy instruction under this chapter and 281—Chapter 62, at the election of a parent and in lieu of programming provided by the district. Any election under this paragraph is at the parent's sole cost.

61.3(3) *Guidelines for implementation by school districts.* The center is to:

a. Publish guidelines to assist school districts in applying the program criteria contained in subrule 61.3(1) and the voluntary criteria contained in subrule 61.3(2) and in improving the performance of intensive summer literacy programs.

b. Make such guidelines available on its website.

281—61.4(256) Nature of the center's operation. The center's work is governed by the provisions of Iowa Code section 256.9(49) "c"(2). Annually, the center submits the report specified in Iowa Code section 256.9(49) "c"(3).

281—61.5(256) Nature of the center's products.

61.5(1) *General.* The center's strategies, models, materials, and assessments, including the products referred to in subrule 61.6(3), are judged by and subject to the following requirements. To the extent possible, strategies, models, materials, and assessments, including the products referred to in subrule 61.6(3), shall:

a. Be research-based.

b. Contain evidence establishing that they are replicable by Iowa school districts, area education agencies, and accredited nonpublic schools.

c. Contain evidence establishing that they are capable of sustainable implementation.

d. Be widely and liberally distributed and used.

EDUCATION DEPARTMENT[281](cont'd)

61.5(2) *Intellectual property.* Regardless of any intellectual property right that may accrue to the center, the department of education and each school district, area education agency, and accredited nonpublic school will have a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center. Regardless of any intellectual property right that may accrue to the center, each school district, area education agency, accredited nonpublic school, and practitioner preparation program approved by the department of education has a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center to provide training to current and prospective teachers and administrators.

281—61.6(256) Governance and leadership of the center.

61.6(1) *Director and other personnel.* The center's director will be employed by the host referred to in rule 281—61.1(256). The director of the department of education or the director's designee, in consultation with the host and the advisory council, will select, determine the compensation of, and annually evaluate the director of the center.

- a.* Responsibilities of the director of the center will include the following:
- (1) Enacting the priorities of the reading research center, as defined by the department;
 - (2) Achieving the Iowa reading research center's mission and purpose;
 - (3) Directing the center's budget;
 - (4) Managing the center's staff;
 - (5) Managing and overseeing the request for proposal (RFP) or contracting process or both to enact priorities of the center;
 - (6) Providing oversight and management of all contracts and projects initiated by the center;
 - (7) Establishing models for an intensive summer literacy program replicable in Iowa schools;
 - (8) Disseminating literacy research and its application; and
 - (9) Submitting required reports to the department and the general assembly.
- b.* The center may employ such other personnel as may be necessary to fulfill its responsibilities, upon approval of such positions by the director of the department of education.

61.6(2) *Advisory council.* When setting priorities for the center, the department of education seeks advice and assistance from an advisory council. The advisory council is to establish its bylaws and govern itself by the following paragraphs:

- a.* The advisory council will consist of representatives of the department, school districts, area education agencies, accredited nonpublic schools, institutions of higher education, organizations representing reading and literacy teachers, community-based nonprofit organizations that are focused on literacy, statewide literacy organizations, and parents. Members who offer other perspectives may be appointed. Members may serve in more than one role. Members are appointed by the director of the department of education or the director's designee. Actual expenses for members of the advisory council may be assumed by the center.
- b.* The advisory council will recommend and continually review center priorities, which are to be consistent with these rules. The advisory council annually will submit to the department a recommended set of projects and priorities for the reading research center.
- c.* The advisory council will provide input to the director of the department on the desired qualifications for the position of director of the center.
- d.* The advisory council will advise and assist the center in preparing the annual report as set out in rule 281—61.4(256).
- e.* The advisory council will foster collaboration across the Iowa reading research and evaluation community and will serve as a facilitator in identifying additional research needs and ways to apply research to practice in Iowa schools and communities.
- f.* The advisory council will assist the director of the center in reviewing proposals for quality, viability, and statewide impact.
- g.* Meetings of the advisory council are public meetings subject to Iowa Code chapter 21.

EDUCATION DEPARTMENT[281](cont'd)

61.6(3) *Use of advisory council recommendations.* The department is to consider the priorities established by its advisory council in determining which projects or activities to direct the center to enact, consistent with these rules and with the center's funding.

61.6(4) *Contracts and awards.* In the furtherance of its work, the center may contract with other entities or may make awards by competitive bid. The rules in this chapter are incorporated by reference in any contract or award under this subrule. Any product produced pursuant to a contract or award is subject to these rules, including subrule 61.5(2).

281—61.7(256) Financing of the center. The center will be financed in the following manner:

61.7(1) *Host as fiscal agent.* The host is the fiscal agent for the center.

61.7(2) *Public or private funds.* The host and the center may solicit and accept funds from public and private sources for the fulfillment of the mission and purpose of the center.

61.7(3) *Oversight by the department.* The department has oversight responsibilities for the financial operations of the center.

These rules are intended to implement Iowa Code sections 256.7(31) “b” and 256.9(49) “c.”

ARC 7166C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to practitioner and administrator preparation programs
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 77, “Standards for Teacher Intern Preparation Programs,” and Chapter 79, “Standards for Practitioner and Administrator Preparation Programs,” Iowa Administrative Code, and to adopt a new Chapter 79 with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.16.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.16.

Purpose and Summary

This proposed rulemaking is in response to Executive Order 10. The Department of Education proposes consolidating two chapters (Chapter 77 and Chapter 79) that have common and overlapping provisions. The Department proposes retaining requirements that have the most demonstrable link to student success.

The status quo rules contain many instances of overly restrictive language and language that duplicates statutory text verbatim. The proposed rulemaking eliminates that language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

EDUCATION DEPARTMENT[281](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 2 to 2:30 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **281—Chapter 77**.

ITEM 2. Rescind 281—Chapter 79 and adopt the following **new** chapter in lieu thereof:

CHAPTER 79

STANDARDS FOR PRACTITIONER AND ADMINISTRATOR PREPARATION PROGRAMS

DIVISION I

GENERAL STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

281—79.1(256) General statement. Programs of practitioner and administrator preparation leading to licensure in Iowa are subject to approval by the state board of education, as provided in Iowa Code

EDUCATION DEPARTMENT[281](cont'd)

chapter 256. All programs having accreditation on August 31, 2001, are presumed accredited unless or until the state board takes formal action to remove accreditation.

281—79.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

“Administrator candidates” means individuals who are enrolled in practitioner preparation programs leading to administrator licensure.

“Administrator preparation programs” means the programs of practitioner preparation leading to licensure of administrators.

“Area education agency” or *“AEA”* means a regional service agency that provides school improvement services for students, families, teachers, administrators and the community.

“BOEE” means the board of educational examiners, the board responsible for establishing licensure requirements and issuing licenses.

“Candidates” means individuals who are preparing to become educational practitioners through a practitioner preparation program.

“Clinical experiences” means a candidate’s direct experiences in PK-12 schools. “Clinical experiences” includes field experiences and student teaching or internships.

“College/university supervisors” means qualified employees or individuals contracted by the college or university offering educator preparation who provide guidance and supervision to candidates during the candidates’ clinical experiences in the schools.

“Cooperating administrators” means school administrators who provide guidance and supervision to administrator candidates during the candidates’ clinical experiences in the schools.

“Cooperating teachers” means appropriately licensed classroom teachers of record who provide guidance and supervision to teacher candidates in the cooperating teachers’ classrooms during the candidates’ field experiences in the schools.

“Delivery model” means the form in which the educator preparation program is delivered to candidates and may include conventional campus-based, face-to-face models, distance learning models, off-campus models, programs delivered through consortia arrangements, and programs or elements delivered by contracted outside providers.

“Department” means the department of education.

“Director” means director of the department.

“Distance learning” means a formal education process in which the major portion of the instruction occurs when the learner and the instructor are not in the same place at the same time and occurs through virtually any media, including printed or digital materials, a learning management system (LMS) or online communications.

“Distance learning program” means a program in which over half of the required courses in the program occur when the learner and the instructor are not in the same place at the same time (more information is contained in the definition of “distance learning”). These programs include those offered by the professional educational unit through a contract with an outside vendor or in a consortium arrangement with other higher education institutions, area education agencies, or other entities.

“Diverse groups” means one or more groups of individuals possessing certain traits or characteristics, including age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status or familial status.

“Educator preparation program” means practitioner preparation program.

“Facility” means a residential or other setting for a child in which the child receives an appropriate educational program. “Facility” includes a foster care facility as defined in Iowa Code section 237.1, a facility that provides residential treatment pursuant to Iowa Code chapter 125, an approved or licensed shelter care home as defined in Iowa Code section 232.2(34), an approved juvenile detention home as defined in Iowa Code section 232.2(32) and a psychiatric medical institution for children as defined in Iowa Code section 135H.1.

“Faculty” means the teaching staff of a university or college responsible for delivering instruction.

EDUCATION DEPARTMENT[281](cont'd)

“Institution” means a college or university in Iowa offering practitioner preparation or an educational organization offering administrator preparation and seeking state board approval of its practitioner preparation program(s).

“Institutional accrediting agency” means an institutional accrediting agency recognized by the U.S. Department of Education. Agencies include regional and national accreditors. The department will maintain a web link to a list of currently approved accreditors on the department’s practitioner preparation web page.

“InTASC” means Interstate Teacher Assessment and Support Consortium, the source of national standards for teachers.

“Intern program” means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

“Iowa core” means a legislatively mandated state initiative that provides local school districts and nonpublic schools a guide to delivering instruction to students based on consistent, challenging and meaningful content.

“Iowa teaching standards” represents a set of knowledge and skills that reflect evidence of best practices regarding effective teaching as listed in rule 281—83.4(284). The standards serve as the basis for comprehensive evaluations of teachers and professional development plans.

“Leadership preparation program” means administrator preparation program.

“Mentor” means an experienced educator who provides guidance to a practitioner, administrator candidate or novice educator. For intern programs, “mentor” means an individual employed by a school district or area education agency as a classroom teacher, or a retired teacher, who holds a valid license issued under Iowa Code chapter 272. The individual must have a four-year record of successful teaching practice with at least two of the four years on a nonprobationary basis and demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers or teacher interns.

“National professional standards” means standards developed by nationally recognized organizations that establish best practices for education.

“NELP standards” means the National Educational Leadership Preparation standards for administrator preparation.

“Novice” means an individual in an educational position who has no previous experience in the role of that position or who is newly licensed by the board of educational examiners.

“Off-campus program” means a program offered by a unit on sites other than the main campus. Off-campus programs may be offered in the same state, in other states, or in countries other than the United States.

“Practitioner” means a teacher, administrator or other school personnel holding a license issued by the BOEE.

“Practitioner candidates” means individuals who are enrolled in practitioner preparation programs leading to licensure as teachers, as administrators or as other professional school personnel in professions that require a license issued by the board of educational examiners.

“Practitioner preparation programs” means the programs of practitioner preparation leading to licensure of teachers, administrators and other professional school personnel.

“Program” means a specific field of specialization leading to a specific endorsement.

“School district” means a school corporation as defined in Iowa Code chapter 290. A school district is also referred to as a “local education agency” or “LEA.”

“State board” means Iowa state board of education.

“Students” means PK-12 pupils.

“Teacher candidate” means an individual who is enrolled in a practitioner preparation program leading to teacher licensure.

“Teacher intern candidate” means an individual who is enrolled in a teacher intern preparation program leading to teacher intern licensure and who has not yet begun employment as an intern.

“Teacher intern preparation program” means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

EDUCATION DEPARTMENT[281](cont'd)

“Unit” means the organizational entity within an institution with the responsibility of administering and delivering all practitioner preparation programs.

281—79.3(256) Institutions affected. In order to attain the authority to recommend candidates for Iowa licensure, colleges and universities offering practitioner preparation programs in Iowa, as well as other Iowa educational organizations engaged in the preparation of school administrators, teacher interns and holders of other school professional licensure, will meet the standards contained in this chapter to gain or maintain state board approval of their programs.

281—79.4(256) Criteria for practitioner preparation programs. Each institution seeking approval of its practitioner preparation programs by the state board, including those programs offered by distance learning delivery models or at off-campus locations, must be accredited by an institutional accrediting agency recognized by the U.S. Department of Education and file evidence of the extent to which each program meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. The institution will demonstrate such evidence by means of a template developed by the department and through a site visit conducted by the department. After the state board has approved the practitioner preparation programs of an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

281—79.5(256) Approval of programs.

79.5(1) Approval of institutions' practitioner preparation programs by the state board will be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

79.5(2) Approval, if granted, is for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

79.5(3) If approval is not granted, the applying institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution will be given the opportunity to present factual information concerning its programs at a regularly scheduled meeting of the state board, not beyond three months of the board's initial decision. Following a minimum of six months after the board's decision to deny approval, the institution may reapply when it is ready to show what actions have been taken to address the areas of suggested improvement.

79.5(4) Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program will receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for licensure.

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a review team will visit each institution for evaluation of its practitioner preparation program(s). When an institution offers off-campus practitioner preparation programs, the team may elect to include visits to some or all of the sites of the off-campus programs. The membership of the team is selected by the department with the concurrence of the institution being visited. The team may include faculty members of other practitioner preparation institutions; personnel from elementary and secondary schools, to include licensed practitioners; personnel of the state department of education; personnel of the board of educational examiners; and representatives from professional education organizations. Each team member should have appropriate competencies, background and experiences to enable the member to contribute to the evaluation visit. The expenses for the review team will be borne by the institution.

281—79.7(256) Periodic reports. Upon request of the department, approved programs will make periodic reports that provide basic information necessary to keep records of each practitioner preparation program up to date and to carry out research studies relating to practitioner preparation. The department may request that information be disaggregated by attendance center or delivery model or both.

EDUCATION DEPARTMENT[281](cont'd)

281—79.8(256) Reevaluation of practitioner preparation programs. Every seven years or at any time deemed necessary by the director, an institution will conduct a self-evaluation and file a written institutional report with evidence of its practitioner preparation programs to be followed by a review team visit. Any action for continued approval or rescission of approval will be approved by the state board.

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the curricula of an institution's approved practitioner preparation program. When an institution proposes a revision that exceeds the primary scope of its programs, the revisions become operative only after having been approved by the state board. Approval of any institution's application for adding the dyslexia specialist endorsement must include approval by the Iowa reading research center.

DIVISION II
SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

281—79.10(256) Governance and resources standard. Governance and resources adequately support the preparation of practitioner candidates to meet professional, state and institutional standards in accordance with the following provisions.

79.10(1) The professional education unit has primary responsibility for all educator preparation programs offered by the institution through any delivery model.

79.10(2) The unit's conceptual framework and governance structure establishes the shared vision for the unit and provides the foundation for all components of the educator preparation programs.

79.10(3) The unit demonstrates alignment of unit and program standards with current national professional standards for educator preparation; teacher preparation aligns with InTASC standards; and each unit defines unit and program standards and embeds them in courses and field experiences.

79.10(4) The unit provides evidence of ongoing collaboration with appropriate stakeholders. There is an active advisory committee that is involved semiannually in providing input for program evaluation and continuous improvement.

79.10(5) When a unit is a part of a college or university, there is ongoing collaboration with the appropriate departments of the institution, especially regarding content knowledge.

79.10(6) The institution provides resources and support necessary for the delivery of quality preparation program(s). The resources and support include the following:

- a. Financial resources; facilities; appropriate educational materials, equipment and library services; and commitment to a work climate, policies and faculty/staff assignments that promote/support best practices in teaching, scholarship and service;
- b. Resources to support professional development opportunities;
- c. Resources to support technological and instructional needs to enhance candidate learning;
- d. Resources to support quality clinical experiences for all educator candidates;
- e. Commitment of sufficient administrative, clerical and technical staff; and
- f. Equitable resources and access for all program components, regardless of delivery model or location.

281—79.11(256) Diversity standard. The environment and experiences provided for practitioner candidates support candidate growth in knowledge, skills and dispositions to help all students learn in accordance with the following provision: The institution's and unit's plans, policies and practices document their efforts in establishing a supportive environment and maintaining a diverse faculty and student body.

281—79.12(256) Faculty standard. Faculty qualifications and performance will facilitate the professional development of practitioner candidates in accordance with the following provisions.

79.12(1) The unit defines and communicates the roles and requirements for faculty members by position. The unit describes how roles and requirements are determined.

EDUCATION DEPARTMENT[281](cont'd)

79.12(2) The unit documents the alignment of teaching duties for each faculty member with that member's preparation, knowledge, experiences and skills.

79.12(3) The unit holds faculty members accountable for teaching prowess. This accountability includes evaluation and indicators for continuous improvement.

79.12(4) The unit holds faculty members accountable for professional growth to meet the academic needs of the unit.

79.12(5) Faculty members collaborate with:

- a. Colleagues in the unit;
- b. Colleagues across the institution;
- c. Colleagues in PK-12 schools/agencies/learning settings. Faculty members engage in professional education and maintain ongoing involvement in activities in preschool and elementary, middle or secondary schools. For faculty members engaged in teacher preparation, activities include at least 40 hours of teaching or co-teaching at the appropriate grade level(s) during a period not exceeding five years in duration.

281—79.13(256) Assessment system and unit evaluation standard. The unit's system of assessment will appropriately monitor individual candidate performance and use that data in concert with other information to evaluate and improve the unit and its programs in accordance with the following provisions.

79.13(1) The unit has a clearly defined, cohesive system of assessment that includes both individual candidate assessment and comprehensive unit assessment.

79.13(2) The assessment system is based on unit standards.

79.13(3) The unit tracks and communicates the following criteria for candidates:

- a. Entrance into the program.
- b. Continuation in the program with clearly defined checkpoints/gates.
- c. Admission to clinical experiences (for teacher education, this includes specific criteria for admission to student teaching).
- d. Program completion.

79.13(4) Individual candidate assessment includes all of the following:

- a. Measures used for candidate assessment are fair, reliable and valid.
- b. Candidates are assessed on their demonstration/attainment of unit standards.
- c. Multiple measures are used for assessment of the candidate on each unit standard.
- d. Candidates are assessed on unit standards at different developmental stages.
- e. Candidates are provided with formative feedback and opportunities to utilize the feedback to reflect upon and guide their development and growth toward attainment of unit standards.

79.13(5) The unit will document regular reviews, evaluation and revision to the system of assessment.

a. The collection, aggregation, analysis and evaluation of assessment data described in this subrule will take place on a regular cycle.

b. Comprehensive unit assessment includes all of the following:

(1) Individual candidate assessment data on unit standards, as described in subrule 79.13(4), are analyzed.

(2) The aggregated assessment data are analyzed to evaluate programs.

(3) Findings from the evaluation of aggregated assessment data are shared with stakeholders and utilized for program improvement decisions.

79.13(6) The unit shall conduct a survey of graduates and the graduates' employers to ensure that the graduates are well prepared and use the data for program improvement.

EDUCATION DEPARTMENT[281](cont'd)

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO INITIAL PRACTITIONER PREPARATION PROGRAMS FOR
TEACHER CANDIDATES

281—79.14(256) Teacher preparation clinical practice standard. The unit and its school partners shall provide field experiences and student teaching opportunities that assist candidates in becoming successful teachers in accordance with the following provisions.

79.14(1) The unit ensures that clinical experiences occurring in all locations are well sequenced, supervised by appropriately qualified personnel, monitored by the unit and integrated into the unit standards. These expectations are shared with teacher candidates, college/university supervisors and cooperating teachers.

79.14(2) Cooperating teachers and college/university supervisors share responsibility for evaluating the teacher candidates' achievement of unit standards. Clinical experiences are structured to have multiple performance-based assessments at key points within the program.

79.14(3) Teacher candidates experience clinical practices in multiple settings that include diverse groups and diverse learning needs.

79.14(4) Teacher candidates admitted to a teacher preparation program must complete a minimum of 80 hours of pre-student teaching field experiences, with at least 10 hours occurring prior to acceptance into the program.

79.14(5) Pre-student teaching field experiences support learning in context and include all of the following:

a. High-quality instructional programs for students in a state-approved school or educational facility.

b. Opportunities for teacher candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice, planning, instruction and assessment.

79.14(6) The unit is responsible for ensuring that the student teaching experience for initial licensure:

a. Includes a full-time experience for a minimum of 14 weeks in duration during the teacher candidate's final year of the teacher preparation program.

b. Takes place in the classroom of a cooperating teacher who is appropriately licensed in the subject area and grade-level endorsement for which the teacher candidate is being prepared.

c. Includes prescribed minimum expectations and responsibilities, including ethical behavior, for the teacher candidate.

d. Involves the teacher candidate in communication and interaction with parents or guardians of students in the teacher candidate's classroom.

e. Requires the teacher candidate to become knowledgeable about the Iowa teaching standards and to experience a mock evaluation, which shall not be used as an assessment tool by the unit, performed by the cooperating teacher or a person who holds an Iowa evaluator license.

f. Requires collaborative involvement of the teacher candidate, cooperating teacher and college/university supervisor in candidate growth. This collaborative involvement includes biweekly supervisor observations with feedback.

g. Requires the teacher candidate to bear primary responsibility for planning, instruction and assessment within the classroom for a minimum of two weeks (ten school days).

h. Includes a written evaluation procedure, after which the completed evaluation form is included in the teacher candidate's permanent record.

79.14(7) The unit annually offers one or more workshops for cooperating teachers to define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher and provide the cooperating teacher other information and assistance the unit deems necessary. The duration of the workshop will be equivalent to one day.

79.14(8) The institution enters into a written contract with the cooperating school or district providing clinical experiences, including field experiences and student teaching.

281—79.15(256) Teacher candidate knowledge, skills and dispositions standard. Teacher candidates are to demonstrate the content, pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions:

79.15(1) Each teacher candidate demonstrates the acquisition of a core of liberal arts knowledge, including English composition, mathematics, natural sciences, social sciences and humanities.

79.15(2) Each teacher candidate receives dedicated coursework and demonstrates competency related to the study of human relations, cultural competency and diverse learners, such that the candidate is prepared to work with students from diverse groups, as defined in rule 281—79.2(256). The unit shall provide evidence that teacher candidates develop the ability to identify and meet the needs of all learners, including:

- a.* Students from diverse ethnic, racial and socioeconomic backgrounds.
- b.* Students with disabilities. This will include preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement.
- c.* Students who are struggling with literacy, including those with dyslexia.
- d.* Students who are gifted and talented.
- e.* English learners.
- f.* Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors, including behaviors related to substance use disorder.

79.15(3) Each teacher candidate demonstrates competency in literacy, including reading theory, knowledge, strategies and approaches, and integrating literacy instruction into content areas. The teacher candidate demonstrates competency in making appropriate accommodations for students who struggle with literacy. Demonstrated competency shall address the needs of all students, including students with disabilities; students who are at risk of academic failure; students who have been identified as gifted and talented or English learners; and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B. Literacy instruction shall include evidence-based best practices, determined by research, including those practices identified by the Iowa reading research center.

79.15(4) Each teacher candidate demonstrates competency in all of the following professional core curricula:

- a. Learner development.* The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.
- b. Learning differences.* The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.
- c. Learning environments.* The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning and self-motivation.
- d. Content knowledge.* The teacher understands the central concepts, tools of inquiry and structures of the discipline(s) being taught and creates learning experiences directly related to the Iowa core that make the discipline accessible and meaningful for learners to ensure mastery of the content.
- e. Application of content.* The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity and collaborative problem solving related to authentic local and global issues.
- f. Assessment.* The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress and to guide the teacher's and learners' decision-making.

EDUCATION DEPARTMENT[281](cont'd)

g. Planning for instruction. The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills and pedagogy, as well as knowledge of the learners and the community context.

h. Instructional strategies. The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

i. Professional learning and ethical practice. The teacher engages in ongoing professional learning and uses evidence to continually evaluate the teacher's practice, particularly the effects of the teacher's choices and actions on others (learners, families, other professionals and the community) and adapts practice to meet the needs of each learner.

j. Leadership and collaboration. The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals and community members to ensure learner growth, and to advance the profession.

k. Technology. The teacher candidate effectively integrates technology into instruction to support student learning.

l. Methods of teaching. The teacher candidate understands and uses methods of teaching that have an emphasis on the subject and grade-level endorsement desired.

79.15(5) Each teacher candidate must complete a 30-semester-hour teaching major that minimally includes the requirements for at least one of the basic endorsement areas, special education teaching endorsements or secondary level occupational endorsements. Additionally, each elementary teacher candidate must also complete a field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours. Each teacher candidate is to meet all requirements established by the board of educational examiners for any endorsement for which the teacher candidate is recommended.

DIVISION IV

SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS

281—79.16(256) Administrator preparation clinical practice standard. The unit and its school partners shall provide clinical experiences that assist candidates in becoming successful school administrators in accordance with the following provisions.

79.16(1) The unit ensures that:

a. Principal candidates successfully complete clinical experiences that provide candidates with opportunities to synthesize and apply the knowledge and skills identified in subrule 79.17(2) in ways that approximate the full range of responsibilities of building-level leaders and enable them to promote the current and future success and well-being of each student and adult in their school.

b. Superintendent candidates successfully complete clinical experiences that provide candidates opportunities to synthesize and apply the knowledge and skills identified in subrule 79.17(3) in ways that approximate the full range of responsibilities of district-level leaders and enable them to promote the current and future success and well-being of each student and adult in their district.

79.16(2) The unit ensures that clinical experiences occurring in all locations are coherent, authentic, sustained and purposeful opportunities that are monitored by the unit. These expectations are shared with candidates, supervisors and cooperating administrators.

79.16(3) Cooperating administrators and college/university supervisors share responsibility for evaluating the candidate's achievement of unit standards. Clinical experiences are structured to have multiple performance-based assessments at key points within the program to demonstrate candidates' attainment of unit standards.

79.16(4) Clinical experiences include all of the following criteria:

a. A minimum of 400 hours during the candidate's preparation program.

b. Take place with appropriately licensed cooperating administrators in state-approved schools or educational facilities.

c. Take place in multiple high-quality educational settings that include diverse populations and students of different age groups.

EDUCATION DEPARTMENT[281](cont'd)

d. Include documented expectations and responsibilities for cooperating administrators, school districts, accredited nonpublic schools or AEAs and for higher education supervising faculty members.

e. Provide opportunities for candidates to apply and use the knowledge, skills and dispositions identified in subrules 79.17(2) and 79.17(3).

79.16(5) The institution annually delivers one or more professional development opportunities for cooperating administrators to define the objectives of the field experience, review the responsibilities of the cooperating administrator, build skills in coaching and mentoring and provide the cooperating administrator other information and assistance the institution deems necessary.

79.16(6) The institution will enter into a written contract with the cooperating school districts that provide field experiences for administrator candidates.

281—79.17(256) Administrator knowledge, skills and dispositions standard. Administrator candidates will demonstrate the content, pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions:

79.17(1) Each educational administrator program will define program standards (aligned with current NELP standards) and embed them in coursework and clinical experiences at a level appropriate for a novice administrator.

79.17(2) Each principal candidate demonstrates the knowledge, skills and dispositions necessary to:

a. Collaboratively lead, design and implement a school mission, vision and process for continuous improvement that reflects a core set of values and priorities that include data use, technology, equity, diversity, digital citizenship and community. (Mission, Vision and Improvement)

b. Advocate for ethical decisions and cultivate and enact professional norms. (Ethics and Professional Norms)

c. Develop and maintain a supportive, equitable, culturally responsive and inclusive school culture. (Equity, Inclusiveness and Cultural Responsiveness)

d. Evaluate, develop and implement coherent systems of curriculum, instruction, data systems, and supports, including Iowa core implementation and assessment. (Learning and Instruction)

e. Strengthen student learning, support school improvement and advocate for the needs of the school and community. (Community and External Leadership)

f. Improve management, communication, technology, school-level governance and operation systems to develop and improve data-informed and equitable school resource plans and to apply laws, policies and regulations. (Operations and Management)

g. Build the school's professional capacity, engage staff in the development of a collaborative professional culture and improve systems of staff supervision, evaluation, support and professional learning. (Building Professional Capacity)

79.17(3) Each superintendent candidate demonstrates competency in all of the following professional core curricula:

a. Collaboratively lead, design and implement a district mission, vision and process for continuous improvement that reflects a core set of values and priorities that include data use, technology, values, equity, diversity, digital citizenship and community. (District Mission, Vision and Improvement)

b. Advocate for ethical decisions and cultivate professional norms and culture. (Ethics and Professional Norms)

c. Develop and maintain a supportive, equitable, culturally responsive and inclusive district culture. (Equity, Inclusiveness and Cultural Responsiveness)

d. Evaluate, design, cultivate and implement coherent systems of curriculum, instruction, data systems, supports, assessment and instructional leadership. (Learning and Instruction)

e. Understand and engage families, communities and other constituents in the work of schools and the district and to advocate for district, student and community needs. (Community and External Leadership)

f. Develop, monitor, evaluate and manage data-informed and equitable district systems for operations, resources, technology and human capital management. (Operations and Management)

EDUCATION DEPARTMENT[281](cont'd)

g. Cultivate relationships, lead collaborative decision-making and governance and represent and advocate for district needs in broader policy conversations. (Policy, Governance and Advocacy)

79.17(4) Each new administrator candidate successfully completes the appropriate evaluator training provided by a state-approved evaluator trainer.

79.17(5) Each administrator candidate demonstrates, within specific coursework and clinical experiences, the ability to develop and maintain a supportive, equitable, culturally responsive and inclusive district culture with students and staff from diverse groups, as defined in rule 281—79.2(256). The unit shall provide evidence that administrator candidates develop the ability to meet the needs of all learners, as well as ensuring teachers meet the needs of diverse learners, including:

- a.* Students from diverse ethnic, racial and socioeconomic backgrounds.
- b.* Students with disabilities. This will include preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement.
- c.* Students who are struggling with literacy, including those with dyslexia.
- d.* Students who are gifted and talented.
- e.* English learners.
- f.* Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors, including behaviors related to substance use disorder.

DIVISION V

SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO PRACTITIONER PREPARATION PROGRAMS OTHER THAN TEACHER OR ADMINISTRATOR PREPARATION PROGRAMS

281—79.18(256) Purpose. This division addresses preparation of an individual seeking a license based on school-centered preparation for employment as one of the following: school guidance counselor, school audiologist, school psychologist, school social worker, speech-language pathologist or supervisor of special education (282—Chapter 27 contains more information regarding licenses for service other than as a teacher).

281—79.19(256) Clinical practice standard. The unit and its school, AEA and facility partners will provide clinical experiences that assist candidates in becoming successful practitioners in accordance with the following provisions.

79.19(1) The unit ensures that clinical experiences occurring in all locations are well sequenced, purposeful, supervised by appropriately qualified personnel, monitored by the unit and integrated into unit standards. These expectations are shared with candidates, supervisors and cooperating professional educators.

79.19(2) Cooperating professional educators and college/university supervisors share responsibility for evaluating the candidate's achievement of unit standards. Clinical experiences are structured to have multiple performance-based assessments at key points within the program to demonstrate the candidate's attainment of unit standards.

79.19(3) Clinical experiences include all of the following criteria:

- a.* Learning that takes place in the context of providing high-quality instructional programs for students in a state-approved school, agency or educational facility;
- b.* Take place in educational settings that include diverse populations and students of different age groups;
- c.* Provide opportunities for candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice;
- d.* Include minimum expectations and responsibilities for cooperating professional educators, school districts, accredited nonpublic schools or AEAs and for higher education supervising faculty members;

EDUCATION DEPARTMENT[281](cont'd)

e. Include prescribed minimum expectations for involvement of candidates in relevant responsibilities directed toward the work for which they are preparing;

f. Involve candidates in communication and interaction with parents or guardians, community members, faculty and staff and cooperating professional educators in the school.

79.19(4) The institution annually delivers one or more workshop(s) for cooperating professional educators to define the objectives of the field experience, review the responsibilities of the cooperating professional educators, build skills in coaching and mentoring and provide the cooperating professional educators other information and assistance the institution deems necessary. The workshop(s) incorporate feedback from participants and utilize appropriate delivery strategies.

79.19(5) The institution shall enter into a written contract with the cooperating school districts that provide field experiences for candidates.

281—79.20(256) Candidate knowledge, skills and dispositions standard. Candidates will demonstrate the content knowledge and the pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions:

79.20(1) Each professional educator program will define program standards (aligned with current national standards) and embed them in coursework and clinical experiences at a level appropriate for a novice professional educator.

79.20(2) Each candidate demonstrates, within specific coursework and clinical experiences related to the study of human relations, cultural competency and diverse learners, that the candidate is prepared to work with students from diverse groups, as defined in rule 281—79.2(256). The unit shall provide evidence that candidates develop the ability to meet the needs of all learners, including:

a. Students from diverse ethnic, racial and socioeconomic backgrounds.

b. Students with disabilities. This will include preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement.

c. Students who are struggling with literacy, including those with dyslexia.

d. Students who are gifted and talented.

e. English learners.

f. Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors, including behaviors related to substance use disorder.

DIVISION VI

SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO TEACHER INTERN PRACTITIONER PREPARATION PROGRAMS

281—79.21(256) General. Institutions interested in offering a teacher intern license will provide evidence of compliance with standards listed in this division, the faculty standards in rule 281—79.12(256) and the assessment standards in rule 281—79.13(256).

281—79.22(256) Intern license governance and resources standard. Governance and resources adequately support the preparation of teacher intern candidates to meet professional, state and institutional standards. As a component of the program, the institution will work collaboratively with the local school district(s) or AEA.

79.22(1) The institution will have a clearly understandable governance structure that serves as a basis to provide guidance and support for the teacher intern preparation program.

79.22(2) The institution's responsibilities include:

a. Establishing a teacher intern leadership team that will provide oversight of the program; and

b. Providing appropriate resources to ensure a quality program.

79.22(3) The leadership team's responsibilities include:

EDUCATION DEPARTMENT[281](cont'd)

- a.* Establishing the conceptual framework to provide the foundation for all components of the program;
- b.* Screening and selecting teacher intern candidates;
- c.* Establishing an advisory team to provide guidance to the teacher intern preparation program annually for program evaluation and continuous improvement. The advisory team includes institutional personnel, including program faculty, and representatives from LEA 5-12 grade level teachers and administrators; and
- d.* Using program evaluation and continuous improvement to review and monitor the program goals, the program of study, the support system and the assessment system.

79.22(4) The teacher intern preparation program and LEAs will work collaboratively to provide opportunities for teacher intern candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

79.22(5) The LEA will provide the following:

a. An offer of employment to a teacher intern candidate in the program in one of the endorsements identified on the department's website at www.educateiowa.gov/pk-12/educator-quality/practitioner-preparation;

b. A mentoring and induction program with a district-assigned mentor; and

c. An assurance that the LEA will not overload the intern with extracurricular duties.

79.22(6) The institution provides resources and support necessary for the delivery of a quality teacher intern preparation program. The resources and support include the following:

a. Financial resources; facilities; and appropriate educational materials, equipment and library services;

b. Commitment to a work climate; policies; and faculty/staff assignments that promote/support best practices in teaching, scholarship and service;

c. Equitable resources and access for all program components regardless of delivery model or location;

d. Technological support for instructional needs to enhance candidate learning with instructional technology integrated into classroom experiences;

e. Quality clinical experiences and evaluations for all educator candidates; and

f. Sufficient faculty and administrative, clerical and technical staff.

79.22(7) The program has a clearly articulated process regarding candidate and intern performance, aligned with the institutional policy, for decisions impacting progress through the program. Program and school district policies for removal and replacement of interns from their internship assignments are clearly communicated to all candidates, school administrators and faculty.

79.22(8) Candidate assessment for a teacher intern program includes clear criteria for the following:

a. Acceptance requirements include:

(1) Completion of a baccalaureate degree from a regionally accredited institution that meets program-established required grade point criteria for the baccalaureate degree and content area;

(2) Completion of coursework that meets the state minimum requirements for at least one of the BOEE's secondary endorsement areas, unless the endorsement area requirements are embedded in the teacher intern professional core; and

(3) Screening designed to generate information about the prospective candidate's attributes identified as essential for candidates in the program.

b. Continuation in the program with clearly defined checkpoints/gates, including verification of an offer of employment as an intern from a school or district administrator.

c. Program completion and subsequent recommendation by the authorized official of the program for an initial teaching license, including recommendation for an intern license for one or more of the endorsements identified on the department's teacher preparation website at educateiowa.gov/pk-12/educator-quality/practitioner-preparation.

281—79.23(256) Intern license faculty standard. Intern program faculty standards are aligned and may be met through rule 281—79.12(256).

281—79.24(256) Intern license program of study standard. A program's required coursework will include a minimum of 28 semester hours or equivalent designed to ensure that teacher intern candidates develop the dispositions, knowledge, and performance expectations of the InTASC standards embedded at a level appropriate for a beginning teacher.

79.24(1) Teacher intern candidates will develop the dispositions, knowledge and performance expectations of the Iowa teaching standards (aligned with InTASC standards) and the BOEE's Code of Professional Conduct and Ethics at a level appropriate for a beginning teacher.

79.24(2) All components of the program of study may only be initiated and completed after the candidate has completed a baccalaureate degree.

79.24(3) Coursework and competencies to be completed prior to the beginning of the candidate's initial employment as an intern include but are not limited to:

a. Understands how learners grow and develop and implements developmentally appropriate and challenging learning experiences. This aligns with InTASC standard 1.

b. Demonstrates competence in content knowledge appropriate to the teaching position. This aligns with Iowa teaching standard 2 (281—subrule 83.4(2)) and with InTASC standards 4 and 5.

c. Demonstrates competence in classroom management. This aligns with Iowa teaching standard 6 (281—subrule 83.4(6)) and with InTASC standard 3.

d. Demonstrates competence in planning and preparing for instruction. This aligns with Iowa teaching standard 3 (281—subrule 83.4(3)) and with InTASC standard 7.

e. Uses a variety of methods to monitor student learning. This aligns with Iowa teaching standard 5 (281—subrule 83.4(5)) and InTASC standard 6.

79.24(4) Additional coursework and competencies to be completed prior to the recommendation for an initial teaching license includes:

a. Uses strategies to deliver instruction that meets the multiple learning needs of students. This aligns with Iowa teaching standard 4 (281—subrule 83.4(4)) and with InTASC standards 2 and 8.

b. Engages in professional growth. This aligns with Iowa teaching standard 7 (281—subrule 83.4(7)) and with InTASC standard 9.

c. Contributes to efforts to achieve district and building goals. This aligns with Iowa teaching standard 8 (281—subrule 83.4(8)) and with InTASC standard 10.

d. Demonstrates ability to enhance academic performance and support for implementation of the school district student achievement goals. This aligns with Iowa teaching standard 1 (281—subrule 83.4(1)).

79.24(5) Each teacher intern candidate demonstrates knowledge about literacy and receives preparation in literacy. Each candidate also develops and demonstrates the ability to integrate reading strategies into content area coursework.

79.24(6) Each teacher intern candidate effectively demonstrates the ability to integrate technology into instruction to support student learning.

79.24(7) Each teacher intern candidate receives dedicated coursework related to the study of human relations, cultural competency and diverse learners, such that the candidate is prepared to work with students from diverse groups, as defined in rule 281—79.2(256). The unit shall provide evidence that teacher intern candidates develop the ability to meet the needs of all learners, including:

a. Students from diverse ethnic, racial and socioeconomic backgrounds;

b. Students with disabilities. This will include preparation in developing and implementing individualized education programs and behavioral intervention plans, preparation for educating individuals in the least restrictive environment and identifying that environment, and strategies that address difficult and violent student behavior and improve academic engagement and achievement;

c. Students who are gifted and talented;

d. English learners; and

e. Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors, including behaviors related to substance use disorder.

EDUCATION DEPARTMENT[281](cont'd)

79.24(8) Each teacher intern candidate demonstrates knowledge and application of the Iowa core to the teaching and learning process.

79.24(9) Each teacher intern candidate will be engaged in field experiences that include opportunities for both observation of exemplary instruction and involvement in co-planning and co-teaching. Each teacher intern candidate will complete at least 50 hours of field experience prior to the candidate's initial employment as an intern. The institution enters into a written contract with the cooperating school or district providing preinternship field experiences.

79.24(10) The teacher intern preparation program will provide a teacher intern seminar during the teacher internship year to support and extend coursework from the teacher intern content and facilitate teacher intern reflection.

79.24(11) In accordance with 281—Chapter 83, all interns will be provided with a district-level mentor in addition to the program supervisor. The purpose of this district-level mentor is to provide coaching feedback dependent on the intern's classroom experience. This district-level mentor shall not serve in an evaluative role. The district-level mentor shall complete specialized training for serving as a mentor as required in rule 281—83.3(284). The program will coordinate support between the teacher intern candidate's local district mentor and program supervisor.

79.24(12) The program shall provide an orientation for teacher intern candidates. The orientation will include, but not be limited to:

- a. Program goals and expectations;
- b. Licensure and ethics provisions;
- c. Support provided by the program; and
- d. Support provided by the LEA or AEA.

79.24(13) Teacher intern faculty will provide teacher intern candidates with academic advising, feedback about their performance throughout the program and consultation opportunities.

79.24(14) Teacher intern faculty will provide regular supervision in teacher intern candidates' classrooms with additional supervision and assistance provided as needed.

281—79.25(256) Intern license assessment standard. Intern program assessment standards are met through rule 281—79.13(256), except for subrule 79.13(4), which is not applicable.

These rules are intended to implement Iowa Code sections 256.7 and 256.16.

ARC 7167C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to paraeducator preparation programs and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 80, "Standards for Paraeducator Preparation Programs," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(22).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(32).

Purpose and Summary

This proposed rulemaking is in response to Executive Order 10. The existing chapter contains many instances of overly restrictive language and language that duplicates statutory text verbatim.

EDUCATION DEPARTMENT[281](cont'd)

The proposed rulemaking eliminates that language. The Department of Education proposes retaining standards that have the highest relationship to improving student success.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
2 to 2:30 p.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

January 4, 2024
10 to 10:30 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

EDUCATION DEPARTMENT[281](cont'd)

ITEM 1. Rescind 281—Chapter 80 and adopt the following **new** chapter in lieu thereof:

CHAPTER 80
STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS

281—80.1(272) Definitions. The following definitions apply to this chapter:

“Authorized official” means an individual with the authority within the institution and the unit to monitor and ensure compliance with this chapter.

1. If the unit is within a community college, an institution of higher education under the state board of regents, or an accredited private institution of higher education, the official must maintain, oversee, and be responsible for the program within the unit.

2. If the unit is within an Iowa public school district or area education agency, the official must have one or more of the following credentials issued by the board of educational examiners: a teacher license (with the exception of a substitute teaching license), an administrator license, a professional services license, an elementary professional school counselor endorsement, a secondary professional school counselor endorsement, a school nurse endorsement, a special education support personnel authorization, or a statement of professional recognition. Other authorizations or certificates issued by the board of educational examiners do not satisfy the terms of this paragraph.

“Department” means the department of education.

“Director” means the director of the department of education.

“Diverse groups” means one or more groups of individuals possessing certain traits or characteristics, including but not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

“Institution” means an Iowa public school district, area education agency, community college, institution of higher education under the state board of regents or an accredited private institution as defined in Iowa Code section 261.9(1) offering a paraeducator preparation program(s).

“Paraeducator candidate” means an individual who is enrolled in a paraeducator preparation program leading to certification as a generalist, a generalist with area(s) of concentration, or an advanced paraeducator.

“Paraeducator preparation program” means the program of paraeducator preparation leading to certification of paraeducators.

“State board” means Iowa state board of education.

“Unit” means the organizational entity within an institution with the responsibility of administering the paraeducator preparation program(s).

281—80.2(272) Institutions affected. All institutions engaged in preparation of paraeducators and seeking state board approval of the institutions’ paraeducator preparation program(s) shall meet the standards contained in this chapter.

281—80.3(272) Criteria for Iowa paraeducator preparation programs. Each institution seeking approval of its paraeducator preparation program(s) will submit to the state board evidence of the extent to which the program meets the standards contained in this chapter. After the state board has approved an institution’s paraeducator preparation program(s), students who complete the program(s) may be recommended by the authorized official of that institution for issuance of the appropriate certificate.

281—80.4(272) Application; approval of programs. Approval of paraeducator preparation programs by the state board will be based on the recommendation of the director after study of the factual and evaluative evidence of record about each program in terms of the standards contained in this chapter. Approval, if granted, will be for a term of seven years; however, approval for a shorter term may be granted by the state board if it determines conditions so warrant. If approval is not granted, the applicant institution will be advised concerning the areas in which improvement or changes appear to be essential

EDUCATION DEPARTMENT[281](cont'd)

for approval. In this case, the institution will be given the opportunity to present factual information concerning its programs at the next regularly scheduled meeting of the state board. The institution may also reapply at its discretion to provide evidence of the actions taken toward suggested improvement. Any application submitted under this rule is to be submitted by the authorized official.

281—80.5(272) Periodic reports. In addition to reports pursuant to this chapter, the department may ask institutions placed on the approved programs list to make periodic reports necessary to keep records of each paraeducator preparation program up to date, to provide information necessary to carry out research studies relating to paraeducator preparation, and for any other purpose the department deems advisable. Any reports submitted under this rule are to be submitted by the authorized official.

281—80.6(272) Reevaluation of paraeducator preparation programs. Each paraeducator preparation program will be reviewed and reevaluated at least once every seven years, at a shorter interval specified pursuant to rule 281—80.4(272), or at any time deemed necessary by the director. Recommendations as to whether to grant continued approval are governed by rule 281—80.4(272).

281—80.7(272) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved paraeducator preparation program. When an institution proposes revisions that exceed the primary scope of its program, the revisions become operative only after approval by the state board.

281—80.8(272) Organizational and resource standards. Organization and resources adequately support the preparation of paraeducator candidates to enable them to meet state standards in accordance with the provisions of this rule.

80.8(1) The unit provides resources and support necessary for the delivery of a quality certification program, including resources to support a quality hands-on (clinical) experience and resources to support technological and instructional needs to enhance candidate learning.

80.8(2) The unit provides evidence of collaboration with members of the professional community, including the unit's advisory committee comprised of school administrators, classroom teachers, currently employed paraprofessionals and others, to design, deliver, and evaluate programs to prepare paraeducators.

80.8(3) The unit's use of staff in teaching roles is purposeful and managed to ensure integrity, quality, and continuity of the program(s).

80.8(4) The unit ensures that resources are equitable for all program components, regardless of delivery or location.

281—80.9(272) Diversity standards.

80.9(1) The unit will ensure that the paraeducator preparation program meets the following diversity standards:

a. The unit provides an environment and experiences to paraeducator candidates to support candidate growth in knowledge, skills, and dispositions to help diverse groups of PK-12 students learn.

b. The unit's plans, policies, and practices document its efforts in establishing and maintaining a diverse staff, climate, and paraeducator candidate pool that strives to represent the diverse makeup of the community at large.

80.9(2) In addition to the provisions of rule 281—80.11(272), the unit is to gather data about its implementation of this rule, use those data to make program improvements, and share those data and improvements with the schools and communities the unit serves.

281—80.10(272) Faculty standards. Unit staff qualifications and performance facilitate the unit's role in the preparation of a professional paraeducator in accordance with the provisions of this rule.

80.10(1) The unit documents the alignment of teaching duties for each faculty member with that member's preparation, knowledge, experiences, and skills appropriate for training paraeducators to serve in a school setting.

EDUCATION DEPARTMENT[281](cont'd)

80.10(2) The institution holds unit staff accountable for teaching the critical concepts and principles of the discipline.

281—80.11(272) Program assessment and evaluation standards. The unit's assessment system will appropriately monitor individual candidate performance and use that data in concert with other program information to improve the unit and its programs in accordance with the provisions of this rule.

80.11(1) Each paraeducator candidate's knowledge and skills will be measured against state certification standards adopted by the board of educational examiners under Iowa Code section 272.12 and the unit's learning outcomes for any certificate for which the unit may recommend the candidate.

80.11(2) Programs will submit curriculum exhibits for approval by the department.

80.11(3) The unit will establish a standard of satisfactory performance of paraeducator candidates, which will comply with the following paragraphs:

- a.* The unit uses measures for candidate assessment that are fair, reliable, and valid.
- b.* The unit assesses candidates on their demonstration and attainment of unit standards.
- c.* The unit uses a variety of assessment measures for assessment of candidates on each unit standard.
- d.* The unit provides candidates with formative feedback on their progress toward attainment of unit standards.

80.11(4) The unit will conduct a survey of graduates and their employers to ensure that its graduates are well prepared for their assigned roles.

80.11(5) The unit will have a clearly defined, cohesive assessment system and regularly review, analyze, and revise its assessment practices.

80.11(6) The unit will collect and analyze aggregated candidate and program data, use those data to make program improvements, and share those data and improvements with stakeholders on a regular basis.

80.11(7) An annual report including a composite of evaluative data collected by the unit will be submitted to the department by September 30 of each year.

80.11(8) When it publicly reports data, the unit will comply with all applicable privacy laws, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g.

281—80.12(272) Clinical practice standards. The unit and its school partners will provide clinical experience opportunities that assist candidates in becoming successful paraeducators in accordance with the provisions of this rule.

80.12(1) Paraeducator clinical experiences support learning in the context in which paraeducators will practice.

80.12(2) Paraeducator clinical experiences include the following:

- a.* A minimum of ten hours of experience in a state-approved school or educational facility under the supervision of a licensed educator.
- b.* Opportunities for paraeducator candidates to observe and be observed by others in the application of skills and knowledge.

These rules are intended to implement Iowa Code section 256.7(22).

ARC 7168C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to teacher and administrator quality programs
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 83, "Teacher and Administrator Quality Programs," Iowa Administrative Code, and to adopt a new chapter with the same title.

EDUCATION DEPARTMENT[281](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 284.3(3), 284.5(8) and 284.6(6).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 284.

Purpose and Summary

This proposed rulemaking is in response to Executive Order 10. The status quo rules contain many instances of overly restrictive language and language that duplicates statutory text verbatim. The proposed rulemaking eliminates that language. The Department of Education proposes retaining standards that have the highest relationship to improving student success.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 2 to 2:30 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

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

EDUCATION DEPARTMENT[281](cont'd)

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 83 and adopt the following **new** chapter in lieu thereof:

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

281—83.1(284,284A) Definitions. For the purpose of these rules, the following definitions apply:

“*Administrator*” or “*school leader*” means the same as “administrator” as defined in Iowa Code section 284A.2(1).

“*Beginning administrator*” means the same as defined in Iowa Code section 284A.2(2).

“*Beginning teacher*” means the same as defined in Iowa Code section 284.2(1). For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5 or in an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15, “beginning teacher” also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

“*Comprehensive evaluation*” means, with respect to a beginning teacher, the same as defined in Iowa Code section 284.2(2). With respect to a beginning administrator, “comprehensive evaluation” means the same as defined in Iowa Code section 284A.2(3).

“*Department*” means the department of education.

“*Director*” means the director of the department of education.

“*District facilitator*” means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

“*Evaluator*” means the same as defined in Iowa Code section 284.2(5).

“*Intensive assistance*” means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

“*Leadership standards*” means the Iowa standards for school administrators adopted pursuant to Iowa Code section 256.7(27).

“*Mentor*” means, with respect to a beginning teacher, the same as defined in Iowa Code section 284.2(7). With respect to a beginning administrator, “mentor” means the same as defined in Iowa Code section 284A.2(7).

“*Performance review*” means the same as defined in Iowa Code section 284.2(8).

“*School board*” means the same as defined in Iowa Code section 284.2(9).

“*State board*” means the state board of education.

“*Teacher*” means the same as defined in Iowa Code section 284.2(11).

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

281—83.2(284) Mentoring and induction program for beginning teachers.

83.2(1) *Option one: beginning teacher mentoring and induction program.* Completion of a beginning teacher mentoring and induction program is one manner in which a beginning teacher may satisfy Iowa Code section 272.28(1).

a. General.

(1) School districts and area education agencies may provide a beginning teacher mentoring and induction program for all beginning teachers as specified in Iowa Code section 284.5.

(2) A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's or area education agency's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency will notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher will undergo a comprehensive evaluation at the end of the third year. For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation necessary for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria are as described in rule 281—83.3(284). A school district or area education agency will participate in state program evaluations.

b. Plan. Each school district or area education agency that offers a beginning teacher mentoring and induction program shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. A school district or area education agency will have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

- (1) Goals for the program.
- (2) A process for the selection of mentors.
- (3) A mentor training process that:
 1. Is consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.
 2. Addresses mentor needs, indicating a clear understanding of the role of the mentor.
 3. Results in the mentor's understanding of the personal and professional needs of new teachers.
 4. Provides the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.
 5. Facilitates the mentor's ability to provide guidance and support to new teachers.
- (4) A supportive organizational structure for beginning teachers which will include:
 1. Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:
 - Released time for mentors and beginning teachers to plan;
 - The demonstration of classroom practices;
 - The observation of teaching; and
 - Feedback.
 2. A selection process for who will be in the mentor/beginning teacher partnership.
 3. Roles and responsibilities of the mentor.
- (5) An evaluation process for the program, which includes:

EDUCATION DEPARTMENT[281](cont'd)

1. An evaluation of the district and area education agency program goals,
2. An evaluation process that provides for the minor and major program revisions, and
3. A process for how information about the program will be provided to interested stakeholders.
- (6) The process for dissolving mentor and beginning teacher partnerships.
- (7) A plan that reflects the needs of the beginning teacher employed by the district or area education agency.
- (8) Activities designed to support beginning teachers by:
 1. Developing and enhancing competencies for the Iowa teaching standards, and
 2. Providing research-based instructional strategies.
- (9) Funds, if appropriated by the general assembly, received by a school district or area education agency from the beginning teacher mentoring and induction program will be used for any or all of the following purposes: to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency. These funds are miscellaneous funds or are considered encumbered. A school district or area education agency will maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

83.2(2) Option two: teacher leadership and compensation system.

a. General. Two years of successful teaching experience in a school district with an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15 ("framework for beginning teachers" for purposes of this rule) is one manner in which a beginning teacher may satisfy Iowa Code section 272.28(1).

b. Participation. School districts may provide an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15. A beginning teacher, as defined in this chapter, shall be informed by the school district, prior to the beginning teacher's participation in a framework for beginning teachers, of the Iowa teaching standards and criteria upon which the beginning teacher will be evaluated and of the evaluation process utilized by the school district. The beginning teacher will be supported by the teacher leadership and compensation program as defined in part 4 of the submitted plan. The beginning teacher will be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district will recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a framework for beginning teachers leaves the employ of a school district prior to completion of the framework, the school district or area education agency subsequently hiring the beginning teacher will credit the beginning teacher with the time earned in such a framework prior to the subsequent hiring.

(2) A school district may offer a teacher a third year of participation in a framework for beginning teachers if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully meet the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's framework for beginning teachers. The school district shall notify the board of educational examiners that the teacher will participate in a third year of the school district's framework for beginning teachers. The teacher is to undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation necessary for the beginning teacher to progress to career teacher, the

EDUCATION DEPARTMENT[281](cont'd)

Iowa teaching standards and criteria are as described in rule 281—83.3(284). A school district shall participate in state program evaluations.

c. Plan assurances. Each school district that offers a framework under Iowa Code sections 284.15 through 284.17 and uses it for purposes of meeting the school district's obligations to beginning teachers is to provide assurances to the department that the district's framework for beginning teachers satisfies those Iowa Code sections and attends to the Iowa teaching standards and criteria described in rule 281—83.3(284).

d. Inapplicability to area education agencies. This subrule is not applicable to area education agencies. Only subrule 83.2(1) is applicable to area education agencies; however, a teacher employed by an area education agency may be included in a framework or comparable system established by a school district if the area education agency and the school district enter into a contract for such purpose.

281—83.3(284) Iowa teaching standards and criteria. The Iowa teaching standards and supporting criteria provide Iowa school districts and area education agencies with a consistent representation of the complexity and the possibilities of quality teaching. The standards serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with supporting criteria is outlined as follows:

83.3(1) Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

a. The teacher:

(1) Provides multiple forms of evidence of student learning and growth to students, families, and staff.

(2) Implements strategies supporting student, building, and district goals.

(3) Uses student performance data as a guide for decision making.

(4) Accepts and demonstrates responsibility for creating a classroom culture that supports the learning of every student.

(5) Creates an environment of mutual respect, rapport, and fairness.

(6) Participates in and contributes to a school culture that focuses on improved student learning.

(7) Communicates with students, families, colleagues, and communities effectively and accurately.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Uses knowledge and understanding of the area education agency's mission, goals, and strategic priorities to provide services that enhance academic performance.

(2) Understands and uses knowledge of area education agency and district goals and data to provide services that enhance academic performance.

(3) Participates in and contributes to a positive learning culture.

(4) Communicates with students, families, colleagues, and communities effectively and accurately.

(5) Uses area education agency, district, and student data as a guide for decision making.

83.3(2) Demonstrates competence in content knowledge appropriate to the teaching position.

a. The teacher:

(1) Understands and uses key concepts, underlying themes, relationships, and different perspectives related to the content area.

(2) Uses knowledge of student development to make learning experiences in the content area meaningful and accessible for every student.

(3) Relates ideas and information within and across content areas.

(4) Understands and uses instructional strategies that are appropriate to the content area.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Understands, communicates, and uses key concepts and best practice in fulfillment of area education agency roles and responsibilities.

(2) Uses knowledge of child and adolescent development and of adult learning to make interventions and strategies meaningful, relevant, and accessible.

EDUCATION DEPARTMENT[281](cont'd)

(3) Relates professional knowledge and services within and across multiple content and discipline areas.

(4) Understands and supports strategies and interventions that are best practice across content and discipline areas.

83.3(3) Demonstrates competence in planning and preparing for instruction.

a. The teacher:

(1) Uses student achievement data, local standards, and the district curriculum in planning for instruction.

(2) Sets and communicates high expectations for social, behavioral, and academic success of all students.

(3) Uses students' developmental needs, backgrounds, and interests in planning for instruction.

(4) Selects strategies to engage all students in learning.

(5) Uses available resources, including technology, in the development and sequencing of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Demonstrates the ability to organize and prioritize time, resources, and responsibilities.

(2) Demonstrates the ability to individually and collaboratively plan and prepare professional services that address the range of district, teacher, parent, and student needs.

(3) Uses district and student data to develop goals and interventions.

(4) Demonstrates the flexibility to plan for professional services based on changing conditions of the work context and environment.

(5) Uses available resources, including technology, to plan and develop professional services.

83.3(4) Uses strategies to deliver instruction that meets the multiple learning needs of students.

a. The teacher:

(1) Aligns classroom instruction with local standards and district curriculum.

(2) Uses research-based instructional strategies that address the full range of cognitive levels.

(3) Demonstrates flexibility and responsiveness in adjusting instruction to meet student needs.

(4) Engages students in varied experiences that meet diverse needs and promote social, emotional, and academic growth.

(5) Connects students' prior knowledge, life experiences, and interests in the instructional process.

(6) Uses available resources, including technology, in the delivery of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Aligns service delivery to district, teacher, parent, and student needs.

(2) Provides consultation, instruction, interventions, and strategies that align with learner needs.

(3) Demonstrates flexibility and responsiveness in adjusting services to meet diverse learner needs.

(4) Uses and supports research-based and evidence-based practices to meet learner needs.

(5) Uses available resources, including technology, to provide professional services that meet learner needs.

83.3(5) Uses a variety of methods to monitor student learning.

a. The teacher:

(1) Aligns classroom assessment with instruction.

(2) Communicates assessment criteria and standards to all students and parents.

(3) Understands and uses the results of multiple assessments to guide planning and instruction.

(4) Guides students in goal setting and assessing their own learning.

(5) Provides substantive, timely, and constructive feedback to students and parents.

(6) Works with other staff and building and district leadership in analysis of student progress.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Uses appropriate assessment, data collection, and data analysis methods that support alignment of services with learner needs.

EDUCATION DEPARTMENT[281](cont'd)

(2) Works collaboratively within the learning community to establish measurable goals and to identify formative and summative methods to monitor progress and the quality of implementation.

(3) Communicates the rationale and criteria of assessment and monitoring methods.

(4) Elicits and provides timely and quality feedback on assessment and monitoring.

83.3(6) Demonstrates competence in classroom management.

a. The teacher:

(1) Creates a learning community that encourages positive social interaction, active engagement, and self-regulation for every student.

(2) Establishes, communicates, models, and maintains standards of responsible student behavior.

(3) Develops and implements classroom procedures and routines that support high expectations for student learning.

(4) Uses instructional time effectively to maximize student achievement.

(5) Creates a safe and purposeful learning environment.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

(1) Models respectful dialogue and behaviors within and across job responsibilities.

(2) Promotes and maintains a positive, safe, and productive environment.

(3) Works collaboratively and is flexible.

(4) Communicates accurately and effectively.

83.3(7) Engages in professional growth.

a. The teacher:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practice and student learning.

(3) Applies research, knowledge, and skills from professional development opportunities to improve practice.

(4) Establishes and implements professional development plans based upon the teacher’s needs aligned to the Iowa teaching standards and district/building student achievement goals.

(5) Provides an analysis of student learning and growth based on teacher-created tests and authentic measures as well as any standardized and districtwide tests.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practices.

(3) Applies and shares research, knowledge, and skills from professional development.

(4) Establishes and implements professional development plans aligned to area education agency, district, and student learning goals.

83.3(8) Fulfills professional responsibilities established by the school district.

a. The teacher:

(1) Adheres to board policies, district procedures, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and district policy.

(3) Contributes to efforts to achieve district and building goals.

(4) Demonstrates an understanding of and respect for all learners and staff.

(5) Collaborates with students, families, colleagues, and communities to enhance student learning.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

(1) Adheres to board policies, area education agency procedures, federal and state rules, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and area education agency policies.

(3) Contributes to efforts to achieve area education agency goals.

(4) Demonstrates an understanding of and respect for all learners.

(5) Collaborates with all learners.

EDUCATION DEPARTMENT[281](cont'd)

83.3(9) The school board will provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in this rule. The school board, for the purposes of performance reviews for teachers other than beginning teachers, will provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in this rule.

281—83.4(284) Evaluator approval training. The department will approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs are designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews pursuant to Iowa Code chapter 284, and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators is to incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

83.4(1) *Applications for providers of evaluator approval training.* Eligible applications for the provision of evaluator approval training include the following components:

- a.* A curriculum that addresses participant skill development in:
 - (1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;
 - (2) The use of multiple forms of data collection for identifying and supporting performance and development;
 - (3) The understanding and development of conferencing and feedback skills; and
 - (4) The development of skills in data-based decision making.
- b.* Demonstration that the evaluator approval training process design provides training as specified in this rule.
- c.* A description of the process used to deliver the training to participants.
- d.* A description of the procedures developed to certify the skill attainment of the evaluator being trained.
- e.* A budget.
- f.* Staff qualifications.
- g.* Evidence of the provider's expertise in evaluation design and training processes.
- h.* Provisions for leadership to support and implement ongoing professional development focused on student learning.
- i.* A process that evaluates the effectiveness of the implementation of the training process and demonstrates that the trainees have attained the knowledge and skills as described in paragraph 83.4(1) "a." This evaluation will be conducted on an annual basis and submitted to the department.

83.4(2) *Process used for the approval of evaluator approval training program applications.*

a. Eligible providers will apply on forms prescribed by the department. Applications for new providers will be accepted and reviewed by the department by July 1 of each year. A review panel will be convened to review applications for evaluator approval training programs based on subrule 83.4(1). The panel will recommend for approval and the department will approve the evaluator approval training programs that satisfy that subrule. Applicants will be notified of their status within 30 days of the application deadline. An approved list of private providers will be maintained on the department website with an annual notification to school districts and area education agencies of the website address that contains provider information.

b. Eligible providers may be public or private entities, including school districts, consortia, and other public or private entities including professional organizations. Applicants are to meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner

EDUCATION DEPARTMENT[281](cont'd)

preparation institutions are to meet the review process through the state board approval and accreditation process for these institutions.

83.4(3) Local teacher evaluation plans. Local districts and area education agencies will develop and implement a teacher evaluation plan that contains the following components:

- a.* The use of the Iowa teaching standards and criteria;
- b.* Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.3(284) and the use of the comprehensive evaluation instrument developed by the department;
- c.* Provisions for reviews of the performance of teachers other than beginning teachers as follows:
 - (1) Review once every three years by an evaluator to include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.3(284) and additional standards and criteria if established under subrule 83.3(9), a review of the implementation of the teacher's individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; and
 - (2) Review annually, other than the third-year review by an evaluator, by a peer group of teachers in accordance with Iowa Code section 284.8(1);
- d.* Provisions for individual professional development plans for teachers other than beginning teachers;
- e.* Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.3(1) through 83.3(8).
 - (1) If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.3(1) through 83.3(8), the evaluator will, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.
 - (2) A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to paragraph 83.4(3) "*e*" will participate in an intensive assistance program. However, a teacher who has previously participated in an intensive assistance program relating to particular Iowa teaching standards or criteria is not entitled to participate in another intensive assistance program relating to the same standards or criteria and is subject to the provisions of paragraph 83.4(3) "*f*."
- f.* Following a teacher's participation in an intensive assistance program, the teacher will be reevaluated to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the school board may do any of the following:
 - (1) Terminate the teacher's contract immediately pursuant to Iowa Code section 279.27.
 - (2) Terminate the teacher's contract at the end of the school year pursuant to Iowa Code section 279.15.
 - (3) Continue the teacher's contract for a period not to exceed one year. However, the contract will not be renewed and is not subject to Iowa Code section 279.15.

281—83.5(284) Professional development for teachers.

83.5(1) Professional development for school districts, area education agencies, and attendance centers. The following provisions apply to professional development for school districts, area education agencies, and attendance centers:

a. Professional learning standards. Professional learning within an area education agency or local district is aligned with the state standards for teaching and learning and aligned to the following standards for professional development. Professional learning increases educator effectiveness and results for all students when it:

- (1) Occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.

EDUCATION DEPARTMENT[281](cont'd)

(2) Requires skillful leaders to develop capacity, advocate, and create support systems for professional learning.

(3) Prioritizes, monitors, and coordinates resources for educator learning.

(4) Uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate effectiveness of instruction.

(5) Integrates theories, research, and models of human learning to achieve intended outcomes.

(6) Applies research on change and sustains support for implementation of professional learning for long-term change.

(7) Aligns its outcomes with educator performance and student curriculum standards.

b. District or area education agency professional development plan. The district or area education agency professional development plan is to be a long-term plan designed and implemented to increase student achievement and includes all on-site and district or area education agency personnel responsible for instruction. The district or area education agency professional development plan is to contain, but not be limited to, the following:

(1) Implementation of a school district's or area education agency's plan for professional learning.

(2) Documentation that the professional development is based on student data; aligned with district or attendance center student achievement goals; and focused on instruction, curriculum, and assessment.

(3) The study and implementation of research-based instructional strategies that improve teaching and learning.

(4) Collaborative inquiry into the area of greatest student learning need.

(5) Research-based training strategies (e.g., theory, demonstration, observation, practice, coaching, reflection, evaluation) that promote transfer and positive outcomes as needed for learning new practices.

(6) Allocation of time to collectively study content, instruction, and impact so necessary adjustments can be made to ensure student success.

(7) Accountability and an evaluation that documents improvement of practice and the impact on student learning.

c. Attendance center professional development plans. Each attendance center within a school district will develop an attendance center professional development plan as a means of promoting group professional development. An attendance center professional development plan will further the needs of personnel responsible for instruction in the attendance center and enhance the student achievement goals of the attendance center and the goals of the district.

d. Individual professional development plans. The school district and area education agency shall support the development and implementation of the individual teacher professional development plan for each teacher as outlined in subrule 83.5(2). Each individual teacher professional development plan will align to the fullest extent possible with the district professional development plan.

e. Beginning teacher mentoring and induction. A school district will develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.2(1) or a framework for beginning teachers as outlined in subrule 83.2(2). The district's beginning teacher mentoring and induction plan or framework for beginning teachers will align with the district professional development plan described in paragraph 83.5(1) "b." An area education agency will develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.2(1), which will align with the area education agency's professional development plan described in paragraph 83.5(1) "b."

f. Organizational support for professional development. The school district will provide resources and support for the district professional development plan, including opportunities for professional development, time for collaborative work of staff, budgetary support, and policies and procedures that reflect the district's commitment to professional development.

83.5(2) Individual teacher professional development plan. Each school district and area education agency shall support the development and implementation of individual teachers' professional development plans for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective professional development. At a minimum, the goals for an individual teacher professional development plan are based on the needs of the teacher and on the relevant Iowa teaching standards that support the student achievement goals of the teacher's classroom or classrooms,

EDUCATION DEPARTMENT[281](cont'd)

attendance center and school district or area education agency, as appropriate, as outlined in the comprehensive school improvement plan. The goals will go beyond those under the attendance center professional development plan described in paragraph 83.5(1) "c." The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined or area education agency-determined content to the extent possible. The individual plan will be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting will be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

83.5(3) Professional development provider standards.

a. A provider may be a school district; an area education agency; a higher education institution; a public or private entity including a professional organization that provides long-term, ongoing support for the district's or area education agency's professional development plan; or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Providers that are not currently accredited or approved through state accreditation procedures will follow approval procedures identified in the district's or area education agency's professional development plan. The potential provider will submit to the school district or area education agency a written application that provides the following documentation:

- (1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in paragraph 83.5(1) "a."
- (2) How the provider intends to assist the local district or area education agency in designing, implementing, and evaluating professional development that satisfies paragraph 83.5(1) "b."
- (3) A description of the qualifications of the provider.
- (4) Evidence of the provider's expertise in professional development.
- (5) A budget.
- (6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

281—83.6(284) Teacher quality committees. Each school district and area education agency will create a teacher quality committee pursuant to Iowa Code section 284.4. The committee is subject to Iowa Code chapter 21. To the extent possible, committee membership will have balanced representation with regard to gender. The committee will do all of the following:

1. Monitor the implementation of statutes and administrative code provisions relating to this chapter, including those that affect any agreement negotiated pursuant to Iowa Code chapter 20.
2. Monitor the evaluation provisions of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. The committee will develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.
3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in Iowa Code section 284.13(1) "d" based upon school district or agency, attendance center, and individual teacher professional development plans.
4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.
5. Determine the compensation for teachers on the committee for work responsibilities beyond the normal workday.
6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

EDUCATION DEPARTMENT[281](cont'd)

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

281—83.7(284A) Administrator quality program. An administrator quality program is established to promote high student achievement and enhanced educator quality and consists of the following four major components:

1. Adherence to the Iowa school leadership standards and criteria as the minimum basis for evaluations of administrators and as the basis for professional development plans for administrators.
2. Mentoring and induction programs that provide support for administrators in accordance with Iowa Code section 284A.5.
3. Professional development designed to directly support best practice for leadership.
4. Evaluation of administrators against the Iowa standards for school administrators.

281—83.8(284A) Mentoring and induction program for administrators. Each school board will establish a beginning administrator mentoring and induction program as specified in Iowa Code section 284A.5.

281—83.9(284A) Iowa school leadership standards for administrators. The Iowa school leadership standards for administrators provide a framework to guide leadership practice and how leaders are prepared, hired, developed, supervised and evaluated. A local school board may establish additional administrator standards and related criteria but will, at a minimum, utilize the following standards:

83.9(1) *Mission, vision, and core values.* Educational leaders develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student.

83.9(2) *Ethics and professional norms.* Educational leaders act ethically and according to professional norms to promote each student's academic success and well-being.

83.9(3) *Equity and cultural responsiveness.* Educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being.

83.9(4) *Curriculum, instruction, and assessment.* Educational leaders develop and support intellectually rigorous and coherent systems of curriculum, instruction, and assessment to promote each student's academic success and well-being.

83.9(5) *Community of care and support for students.* Educational leaders cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of each student.

83.9(6) *Professional capacity of school personnel.* Educational leaders develop the professional capacity and practice of school personnel to promote each student's academic success and well-being.

83.9(7) *Professional community for teachers and staff.* Educational leaders foster a professional community of teachers and other professional staff to promote each student's academic success and well-being.

83.9(8) *Meaningful engagement of families and communities.* Educational leaders engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being.

83.9(9) *Operations and management.* Educational leaders manage school operations and resources to promote each student's academic success and well-being.

83.9(10) *School improvement.* Educational leaders act as agents of continuous improvement to promote each student's academic success and well-being.

281—83.10(284A) Evaluation. The board of directors of a school district will conduct an annual evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272, as specified in Iowa Code section 284A.7.

EDUCATION DEPARTMENT[281](cont'd)

281—83.11(284A) Professional development of administrators. Each school district is responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school district or area education agency as specified in Iowa Code section 284A.6.

These rules are intended to implement Iowa Code chapters 284 and 284A.

ARC 7187C**EXECUTIVE COUNCIL[361]****Notice of Intended Action****Proposing rulemaking related to group insurance for state employees, deferred compensation program, and health maintenance organizations and providing an opportunity for public comment**

The Executive Council hereby proposes to adopt new Chapter 1, “Group Insurance for State Employees,” and rescind Chapter 5, “Deferred Compensation Program,” and Chapter 6, “Health Maintenance Organizations,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 509A.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 509A.6 and 509A.12.

Purpose and Summary

This proposed rulemaking authorizes the director of the Department of Administrative Services (DAS) to administer the deferred compensation and health benefits programs for state employees.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9A.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Council no later than 4:30 p.m. on January 5, 2024. Comments should be directed to:

Nate Ristow
Governor’s Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

EXECUTIVE COUNCIL[361](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 4, 2024
11:30 a.m. to 12 noon

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

January 5, 2024
11:30 a.m. to 12 noon

Room G9, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 361—Chapter 1:

CHAPTER 1
GROUP INSURANCE FOR STATE EMPLOYEES

361—1.1(509A) Administration. The executive council authorized the director of the department of administrative services or designee to administer the deferred compensation program and the health maintenance organization program for employees of the state of Iowa. The rules for administering the program are as provided for in 11—Chapter 64.

This rule is intended to implement Iowa Code sections 509A.6 and 509A.12.

ITEM 2. Rescind and reserve **361—Chapter 5**.

ITEM 3. Rescind and reserve **361—Chapter 6**.

ARC 7188C

EXECUTIVE COUNCIL[361]

Notice of Intended Action

**Proposing rulemaking related to disaster contingency fund
and providing an opportunity for public comment**

The Executive Council hereby proposes to adopt new Chapter 2, “Contingent Fund—Disaster Fund,” and rescind Chapter 7, “Disaster Contingency Fund,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 29C.20.

State or Federal Law Implemented

EXECUTIVE COUNCIL[361](cont'd)

This rulemaking implements, in whole or in part, Iowa Code section 29C.20.

Purpose and Summary

The purpose of this proposed rulemaking is to enumerate policies, responsibilities, and procedures adopted by the Executive Council of the State of Iowa in order to provide guidance for administering the state Disaster Contingency Fund.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9A.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Council no later than 4:30 p.m. on January 5, 2024. Comments should be directed to:

Nate Ristow
Governor's Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 4, 2024 11:45 a.m. to 12 noon	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa
January 5, 2024 11:45 a.m. to 12 noon	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

EXECUTIVE COUNCIL[361](cont'd)

The following rulemaking action is proposed:

ITEM 1. Adopt the following new 361—Chapter 2:

CHAPTER 2
CONTINGENT FUND—DISASTER AID

361—2.1(29C) Purpose. The purpose of these rules is to enumerate policies, responsibilities, and procedures adopted by the executive council of the state of Iowa in order to provide guidance for administering the state disaster contingency fund as described in Iowa Code section 29C.20.

361—2.2(29C) Definitions. The definitions set forth in Iowa Code chapter 29C are incorporated herein by reference.

361—2.3(29C) Policy. It is the policy of the state of Iowa to maintain an organization and procedures for providing supplemental assistance by the state to governmental subdivisions in the achievement of improved disaster readiness and to recover from the effects of a disaster.

361—2.4(29C) Program responsibilities and procedures.

2.4(1) Governor. The governor may proclaim a state of disaster emergency in accordance with Iowa Code section 29C.6.

2.4(2) Governmental subdivisions. Governmental subdivisions will:

- a. Make every effort to avert and recover from the disaster with their own resources.
- b. Maintain detailed accounts of disaster expenses.
- c. Submit to the department a request for a loan. The initial request constitutes a letter on official agency letterhead briefly describing the effect of the disaster or action on the governmental subdivision and the immediate financial inability to meet the continuing obligations of local government.
- d. Include in the initial letter request Form SDA-1, Form SDA-2, Form SDA-3, and Form SDA-3A as well as the State of Iowa Contingent Fund Loan Contact and Information Sheet.
- e. Initiate action to implement annual emergency levy as authorized by Iowa Code sections 24.6 and 384.8, in order to expedite repayment of loan.

2.4(3) Director. The director will:

- a. Prepare and maintain current rules for issuance by the executive council, providing for the administration of the contingent fund—disaster aid.
- b. Coordinate, as necessary, actions by other departments and agencies necessary to the administration of the contingent fund—disaster aid.
- c. Report each fiscal year to the governor and the executive council on activities in connection with administration of the contingent fund—disaster aid including, but not limited to, a description of each disaster of a magnitude sufficient to warrant recommendations concerning applications for loans to the executive council. Such description is to include the kind and scope of the disaster, the disposition of government subdivision applications for loans, and the total of loan approvals for the fiscal year.
- d. The director, upon receipt of an initial request for assistance supported by all appropriate forms and documentation, will advise the secretary of the executive council of such request and will furnish copies of all accompanying documents.

e. The director will submit a recommendation to the executive council as to eligibility and entitlement of the requesting governmental subdivision on Form SDA-4 and Form SDA-4A.

2.4(4) Executive council. The executive council will:

- a. Decide if the contingent fund—disaster aid is justified by the application and showing, and, if so, the amount of the loan(s) to be made.
- b. Develop and publish the form and procedures for applying for the contingent fund—disaster aid and issue rules describing the administration of the contingent fund—disaster aid.

EXECUTIVE COUNCIL[361](cont'd)

c. Designate and instruct appropriate state departments and agencies to assist the director and the department in the administration of the contingent fund—disaster aid by loan or use of personnel, equipment, and facilities.

d. Consider the information furnished by the governmental subdivisions requesting loans, the report and recommendation of the director and decide which of the governmental subdivisions are eligible, and if so, the amount and terms reflecting approved eligibility.

The aggregate total of the loans cannot exceed \$1 million during a fiscal year.

2.4(5) *Department of management.* The department of management will execute loans in the amounts, and as scheduled, to government subdivisions as approved by the executive council and maintain appropriate accounts.

2.4(6) *State auditor actions.* The auditor will audit the accounts of government subdivisions to ensure that loans have been applied in accordance with determined eligibility and will make an audit report to the executive council.

361—2.5(29C) Eligibility for contingent fund—disaster aid loans.

2.5(1) To be eligible for contingent fund—disaster aid loans, a governmental subdivision will demonstrate an immediate financial inability to meet the continuing obligations of local government through a showing of obligations and expenditures necessitated by an actual or potential disaster proclaimed a state of disaster emergency by the governor.

2.5(2) The loan, if made, may only be up to a limit of 75 percent of the showing of obligations and expenditures. The loan, without interest, may be repaid by the maximum annual emergency levy as authorized by Iowa Code sections 24.6 and 384.8. The loan shall be repaid within 20 years.

361—2.6(29C) Forms and documents.

2.6(1) SDA forms.

a. Form SDA-1 “Certified True Copy of Resolution of Governing Body.”

b. Form SDA-2 “Certificate by Authorized Requesting Official to Accompany Application for State Disaster Aid.”

c. Form SDA-3 “Application for Financial State Disaster Aid.”

d. Form SDA-3A “Resolution.”

e. Form SDA-4 “Report and Recommendation of the Director, Iowa Department of Homeland Security and Emergency Management on Application for State Disaster Aid.”

f. Form SDA-4A “Review of Application for State Disaster Aid.”

2.6(2) “Request from Applicant” as described in paragraph 2.4(2) “*c.*”

2.6(3) “State of Iowa Contingent Fund Loan Contact and Information Sheet.”

These rules are intended to implement Iowa Code section 29C.20.

ITEM 2. Rescind and reserve **361—Chapter 7.**

ARC 7189C

EXECUTIVE COUNCIL[361]

Notice of Intended Action

**Proposing rulemaking related to inheritance tax payments
and providing an opportunity for public comment**

The Executive Council hereby proposes to adopt new Chapter 3, “Inheritance Tax Payments,” and rescind Chapter 11, “Inheritance Tax Payments,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 450.6.

EXECUTIVE COUNCIL[361](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 450.6.

Purpose and Summary

This proposed rulemaking provides the criteria by which the Council will approve an inheritance tax credit for transfer of property to a public entity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9A.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Council no later than 4:30 p.m. on January 5, 2024. Comments should be directed to:

Nate Ristow
Governor's Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 4, 2024 12 noon to 12:15 p.m.	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa
January 5, 2024 12 noon to 12:15 p.m.	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

EXECUTIVE COUNCIL[361](cont'd)

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 361—Chapter 3:

CHAPTER 3
INHERITANCE TAX PAYMENTS

361—3.1(450) Prior tax payment. If the inheritance tax has been paid and the payment is not excessive and, therefore, not subject to refund under Iowa Code section 450.94(3), the council will not approve, as a tax credit, any property transfer as a substitute for the prior tax payment.

361—3.2(450) Real property and tangible personal property. The tax credit is applicable for transfers of real property or of tangible personal property located in Iowa. Transfers of intangible property or of property located outside of Iowa will never qualify for the tax credit.

3.2(1) *Real property.* The executive council will not approve a credit for a transfer of a joint interest in real property or for property that is encumbered by liens. However, the council may approve a credit for an interest in real property that is less than full legal and equitable title if the interest is an easement for public access, a conservation or preservation easement, dedication for preserves or for other public use, or other similar interest, which by virtue of the location and nature of the property is of significant, unique value to the public or to the environment. Property encumbered by liens of creditors will not qualify for the tax credit. Proposals to transfer a partial interest will not qualify for the tax credit.

3.2(2) *Tangible personal property.* Tangible personal property is tangible property that can be touched or handled. It is corporeal and is contrasted with intangible property. Intangible property includes but is not limited to cash, choses in action, copyrights, patents, stocks, bonds, trademarks, or annuities. *Ramco, Inc. v. Director, Department of Revenue*, 248 N.W.2d 122 (Iowa 1976).

361—3.3(450) Type, use, and purpose of transfers. The transferred property for which tax credit will be claimed should be useful to the public generally. Thus, for example, transfers of real property to be dedicated and used as a park or wildlife area will generally be approved by the council for the tax credit. In addition, at the time of the transfer, the governmental entity receiving the property should intend to own and use it for a public purpose for an indefinite period of time. The council will not approve a tax credit if the property transferred is to be sold or otherwise transferred again. However, mere retention of authority to dispose of or transfer property does not preclude the council from granting the credit if the donee has rules or policies to ensure that the property may only be transferred to a similar entity or affiliated organization for a similar purpose or sold in a reasonable manner with the proceeds pledged to the same purpose as the original gift. The property transferred should have real significance to the public and should be permanently used for the public's benefit. Personal property transferred should have significant historical or cultural value or be transferred and used in association with any real property transferred for which the council will approve the tax credit.

361—3.4(450) Political subdivisions. A political subdivision of the state of Iowa is a geographic or territorial portion of the state in which local governmental functions are performed. An agency or instrumentality of a political subdivision is part of the political subdivision. 1976 Op. Att'y Gen. 823.

361—3.5(450) Eligible taxes. The tax credit provisions in Iowa Code section 450.6 are applicable to the Iowa inheritance tax imposed by Iowa Code chapter 450.

361—3.6(450) Partial payment. If the value of the property to be transferred is less than the inheritance tax liability of the beneficiary, heir, surviving joint tenant or other transferee who proposes such transfer and if the council approves the transfer, the remaining portion of the liability shall be paid to the department of revenue before the tax credit will be granted.

EXECUTIVE COUNCIL[361](cont'd)

361—3.7(450) Timeliness of application. An application for approval of a proposed transfer shall be filed with the council within eight months of the death of the decedent, unless, for good cause, the council extends the period for filing such application. In no case will such extension be granted beyond the due date for the filing of the inheritance tax return and due date for payment of the tax or, if applicable, an extended date obtained pursuant to 701—subrule 900.2(9).

361—3.8(450) Notice of donee agencies. Any state agency that is the transferee of the property in question will receive notice of any pending application on the agenda of the executive council.

361—3.9(450) Scope of rules. These rules do not foreclose any transfers of property of any kind to the state or its political subdivisions. These rules are only concerned with whether such transfers will qualify for the tax credit authorized by Iowa Code section 450.6. The council's intent is to demonstrate that its discretion to approve the tax credit will not be broadly exercised.

361—3.10(450) Forms. The application to pay inheritance tax by a transfer of property and the certifications necessary under these rules is made on forms available from the department of revenue.

361—3.11(88GA,SF619) Sunset. This chapter shall cease to be operative on January 1, 2026.

These rules are intended to implement Iowa Code sections 17A.3 and 450.6.

ITEM 2. Rescind and reserve **361—Chapter 11.**

ARC 7190C

EXECUTIVE COUNCIL[361]

Notice of Intended Action

Proposing rulemaking related to disbursement of money from civil reparations trust fund and providing an opportunity for public comment

The Executive Council hereby proposes to adopt new Chapter 4, “Disbursement of Money From Civil Reparations Trust Fund,” and rescind Chapter 12, “Disbursement of Money From Civil Reparations Trust Fund,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 7D, 17A and 668A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 668A.

Purpose and Summary

These proposed rules explain the process for applying for grants from the civil reparations trust fund and the criteria the Council will use to consider disbursement for the purposes of indigent civil litigation programs or insurance assistance programs.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

EXECUTIVE COUNCIL[361](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9A.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Council no later than 4:30 p.m. on January 5, 2024. Comments should be directed to:

Nate Ristow
Governor's Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 4, 2024 12:15 to 12:30 p.m.	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa
January 5, 2024 12:15 to 12:30 p.m.	Room G9, Iowa State Capitol 1007 East Grand Avenue Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 361—Chapter 4:

CHAPTER 4

DISBURSEMENT OF MONEY FROM CIVIL REPARATIONS TRUST FUND

361—4.1(68A) Notice of funds. The executive council provides notice of availability of money in the civil reparations trust fund in the following ways:

4.1(1) Iowa Administrative Bulletin. The executive council publishes notice of the balance in the fund in the Iowa Administrative Bulletin semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding \$10,000. If the deposit of an amount exceeding \$10,000 would cause notice within 30 days of the deposit to be published in January or July, no additional publication is necessary.

EXECUTIVE COUNCIL[361](cont'd)

4.1(2) *First-class mail.* The executive council maintains a mailing list of those persons who wish to receive notice of the balance in the fund. Notice is sent semiannually in January and July of each year and within 30 days of the deposit of any amount into the fund exceeding \$10,000 by first-class mail to all persons on the mailing list. If the deposit of an amount exceeding \$10,000 would cause notice within 30 days of the deposit to be mailed in January or July, no additional mailing is necessary. Any person may be added to the mailing list on request.

In the event that there is no money in the fund in January or July, no notice will be published or mailed.

361—4.2(668A) Applications.

4.2(1) The executive council will accept applications for money from the fund for a period of 30 days after notice has been published in the Iowa Administrative Bulletin or sent by first-class mail. Applications will not be accepted in advance of this time period.

4.2(2) Application forms are available from and filed with the office of the state treasurer.

4.2(3) An application is timely if it is postmarked on the thirtieth day after the date of publication in the Iowa Administrative Bulletin or on the thirtieth day after the date affixed to the notice sent by first-class mail, whichever is later. The executive council may accept applications submitted after this deadline only for good cause upon motion in writing.

361—4.3(668A) Criteria. In determining whether to grant an application for money from the fund, the executive council considers the following factors:

4.3(1) The purpose for which the money will be utilized;

4.3(2) The number of people who will be served by the money;

4.3(3) The availability to the applicant of alternative sources of money;

4.3(4) The degree to which the applicant legally used the money under any prior applications.

361—4.4(668A) Disposition of applications. The executive council determines the disposition of all pending applications and notifies all applicants of the decision by first-class mail. Notice of disposition is sent to all applicants on the same date.

361—4.5(668A) Motion for reconsideration. Any applicant who is aggrieved or adversely affected by the disposition of the applicant's application may, within 15 days of the date affixed to the notice of disposition, file a motion for reconsideration in the office of the state treasurer. The motion is deemed filed when received and date-stamped by the treasurer.

361—4.6(668A) Grounds. The motion for reconsideration has to delineate the specific grounds for reconsideration. An applicant may request a contested case hearing; however, any request for a contested case hearing specifically delineates the facts in dispute to be contested and determined at the hearing.

361—4.7(668A) Procedure. The executive council rules on any pending motion for reconsideration, including a request for a contested case hearing. In the event that a request for a contested case hearing is granted, the proceeding is conducted as provided in X.5 of the Uniform Rules on Agency Procedure related to contested cases, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website. The burden of proof by a preponderance of the evidence rests with the requester to establish grounds for reconsideration. The office of the attorney general will defend the decision of the executive council.

361—4.8(668A) Disbursement of money. No money will be disbursed from the fund after disposition of all applications until the time period for filing a motion for reconsideration has expired. After the time period for filing a motion for reconsideration has expired but while a motion for reconsideration by any applicant is pending, the executive council in its discretion may disburse money from the fund to applicants who have not filed a motion for reconsideration. Money may be disbursed to applicants while

EXECUTIVE COUNCIL[361](cont'd)

a motion for reconsideration is pending only to the extent that resolution of any pending motion could not affect the disbursement of money to other applicants.

361—4.9(668A) Administrative costs. The costs of administering this fund, including any costs associated with the conduct of any contested case proceeding challenging the disbursement of money from the fund and costs for postage and copying, are billed to the fund after approval by the executive council.

These rules are intended to implement Iowa Code chapters 17A, 7D, and 668A.

ITEM 2. Rescind and reserve **361—Chapter 12.**

ARC 7191C

EXECUTIVE COUNCIL[361]

Notice of Intended Action

**Proposing rulemaking related to agency realignment
and providing an opportunity for public comment**

The Executive Council hereby proposes to rescind Chapter 8, “Executive Branch Lobbyist Registration,” Chapter 9, “Executive Branch Personal Financial Disclosure Statement,” and Chapter 10, “Executive Branch Ethics Complaint Procedure,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This proposed rulemaking rescinds chapters for which the underlying statutory rulemaking authority no longer exists.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9A.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Council no later than 4:30 p.m. on January 5, 2024. Comments should be directed to:

EXECUTIVE COUNCIL[361](cont'd)

Nate Ristow
Governor's Office, Iowa State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.314.2998
Email: nate.ristow@governor.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **361—Chapter 8.**
- ITEM 2. Rescind and reserve **361—Chapter 9.**
- ITEM 3. Rescind and reserve **361—Chapter 10.**

ARC 7157C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action****Proposing rulemaking related to home food processing establishments
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to rescind Chapter 34, “Home Food Processing Establishments,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 137D.2(8).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 137D and 2023 Iowa Acts, House File 661 and Senate File 514.

Purpose and Summary

This rulemaking proposing promulgation of new Chapter 34, “Home Food Processing Establishments,” implements Iowa Code chapter 137D and 2023 Iowa Acts, House File 661, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). The proposed rulemaking administers Iowa Code section 137D.2 by establishing an application process and standards for payments, refunds, and reporting of gross sales. It also establishes basic standards to protect food from contamination and to protect the health of consumers, including standards related to:

- The physical structure of the home food processing establishment, pest control, equipment, water supply, waste disposal and handling of toxic material;

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

- Food handlers, including food safety hazard control, training, hygiene, and communicable disease prevention;
- Food received by the establishment, storage of food in the establishment, and distribution of foods from the establishment;
- Food protection, including temperature control, pH control, and water activity control;
- Food labeling;
- Sanitation of food contact surfaces and food processing areas; and
- Record requirements intended to trace, identify, and remove from the market foods that pose an immediate public health risk.

The rules also set forth the administrative process for enforcing Iowa Code chapter 137D and Chapter 34, including the process for inspections and the denial, suspension, or revocation of a license. The rules also revise the current definition of “homemade food item” to accommodate the change effected by 2023 Iowa Acts, House File 661.

Fiscal Impact

This rulemaking does not have a fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

After analysis and review of this rulemaking, the proposed chapter is believed to have either no impact or a positive impact on jobs through increased opportunity for self-employment. This rulemaking, in conjunction with the legislation being implemented (Iowa Code chapter 137D and 2023 Iowa Acts, House File 661), expands opportunities for sales of homemade food items through the home food processing establishment license.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 8, 2024. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9:30 to 10 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa
January 8, 2024 10 to 10:30 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 481—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
HOME FOOD PROCESSING ESTABLISHMENTS

481—34.1(137D) Definitions. As used in this chapter, unless the context otherwise requires:

“Acidified foods” means low-acid foods to which an acid or high-acid food is added. Acidified foods have a water activity (a_w) greater than 0.85 and have a finished equilibrium pH of 4.60 or below. These foods may be called or may purport to be “pickles” or “pickled.”

“Active water” or *“water activity”* or *“(a_w)”* means the measured free moisture in a food. The quotient of the water vapor pressure of the food divided by the vapor pressure of pure water at the same temperature provides the measured free moisture in the food.

“Adulterated” means the same as stated 21 U.S.C. Section 342 as amended to January 3, 2022.

“Allergen cross contact” means the unintentional incorporation of a food allergen into a food.

“Contractor” means a municipal corporation, county, or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137D.

“Cross contamination” means the inadvertent transfer of bacteria or other contaminants from one surface, substance, etc., to another, especially because of unsanitary handling procedures.

“Demonstrate control” means the ability to provide clear and convincing evidence that a home food processing establishment has implemented written standard processes and practices that are intended to control food safety hazards including but not limited to standardized recipes, standard operating procedures, personal hygiene standards, temperature monitoring records, equipment calibration records, production or batch records, sanitation records, predefined corrective actions, training documents, distribution records, and receiving records.

“Department” means the same as defined in Iowa Code section 137D.1.

“Equilibrium pH” means the final pH measured in a food after all the components of the food have achieved the same acidity.

“Fermentation” means a metabolic process in which an organism converts a carbohydrate, such as starch or a sugar, into an alcohol or an acid. For example, yeast performs fermentation by converting sugar into alcohol. Bacteria perform fermentation by converting carbohydrates into lactic acid.

“Fish” means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

“Food” means the same as defined in Iowa Code section 137D.1.

“Food contact surface” means a surface of equipment or utensil with which food normally comes into contact; or a surface of equipment or utensil from which food may drip, drain, or splash into a food or onto a surface normally in contact with food.

“Game animal” means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 or as poultry or fish.

1. “Game animal” includes mammals, such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles, such as land snakes.

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

2. “Game animal” does not include ratites.

“*HACCP plan*” means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

“*High-acid food*” means a food that has an equilibrium pH of 4.60 or lower without the addition of an acid.

“*Home food processing establishment*” or “*establishment*” means the same as “home food processing establishment” as defined in Iowa Code section 137D.1.

“*Homemade food item*” means the same as defined in Iowa Code section 137D.1. Homemade food items do not include the following:

1. Unpasteurized fruit or vegetable juice;
2. Raw sprout seeds;
3. Foods containing game animals;
4. Fish or shellfish;
5. Alcoholic beverages;
6. Bottled water;
7. Packaged ice;
8. Consumable hemp products;
9. Food that will be further processed by a food processing plant or another home food processing establishment;
10. Time/temperature control for safety food packaged using a reduced oxygen packaging method;
11. Milk or milk products regulated under Iowa Code chapters 192 and 194;
12. Meat or meat food products, and poultry or poultry products regulated under Iowa Code chapter 189A, except for any of the following products when sold directly to the end consumer:
 - Poultry, poultry byproduct, or poultry food product if the producer raised the poultry pursuant to the exemption set forth in 9 CFR 381.10(c)(1) limiting the producer to slaughtering not more than one thousand poultry during the calendar year;
 - Poultry, poultry byproduct, or poultry food product if the poultry is from an inspected source exempted pursuant to 9 CFR 381.10(d); or
 - Meat, meat byproduct, or meat food product if the meat is from an inspected source exempted pursuant to 9 CFR 303.1(d); or
13. A raw agricultural commodity. Other than raw bean or seed sprouts, raw agricultural commodities do not require a license issued by the department to sell and may be sold by home food processing establishments, although they are not homemade food items.

“*Low-acid canned food*” means a thermally processed low-acid food packaged in a hermetically sealed container.

“*Low-acid food*” means any food, other than alcoholic beverages, with a pH greater than 4.60 and (a_w) greater than 0.85.

“*Major food allergen*” means milk, egg, fish, crustacean shellfish (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or a food ingredient that contains protein derived from these foods.

“*Packaged*” means bottled, canned, cartoned, bagged, or wrapped. “Packaged” does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

“*pH*” means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity, and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

“*Produce*” means the same as defined in Iowa Code section 137D.1.

“*Raw agricultural commodity*” means the same as defined in 21 U.S.C. Section 321 as amended to April 1, 2023.

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

“Ready-to-eat food” means any food that is normally eaten in its raw state or any other food, including a processed food, for which it is reasonably foreseeable that the food will be eaten without further processing that would significantly minimize biological hazards.

“Recall” means an action taken when a food producer takes a product off the market because there is reason to believe the product may cause consumers to become ill.

“Reduced oxygen packaging” means reducing the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21 percent at sea level). Reduced oxygen packaging includes vacuum packaging, modified atmosphere packaging, controlled atmosphere packaging, cook chill packaging, and sous vide packaging.

“Shellfish”

1. “Crustacean shellfish” means crab, lobster and shrimp.
2. “Molluscan shellfish” means any edible species of oysters, clams, mussels, or scallops.

“Special dietary use food” includes a food that contains an artificial sweetener, except when specifically and solely used for achieving a physical characteristic in the food that cannot be achieved with sugar or other nutritive sweetener or a food that is used for the following:

1. Supplying particular dietary needs that exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of diseases, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight;
2. Supplying particular dietary needs that exist by reason of age including but not limited to infancy and childhood; or
3. Supplementing or fortifying the ordinary or usual diet with any vitamin, mineral, or other dietary property. Any such particular use of a food is a special dietary use, regardless of whether such food also purports to be or is represented for general use.

“Sprouts” means seeds or beans used to grow sprouts that are harvested with their seed or root intact.

“Standardized recipe” means a recipe that has been tried, adapted, and retried several times for use by a given food service operation and has been found to produce the same good results and yield every time when the exact procedures are followed with the same type of equipment and same quantity and quality of ingredients. At a minimum, a standardized recipe includes the recipe name, listing of each ingredient, a measurement of each ingredient, equipment and utensils used, preparation instructions, and procedures to ensure the safety of the food.

“Time/temperature control for safety” or *“TCS”* means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation. TCS food does not include foods that have an equilibrium pH less than 4.60 or (a_w) content below 0.85. Examples of TCS foods include:

1. Animal food that is raw or heat-treated.
2. Plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or garlic-in-oil mixtures.

“Traceback” means to determine and document the distribution and production chain and the source(s) of a product that has been implicated in a foodborne illness investigation.

481—34.2(137D) Licensing.

34.2(1) Application for license. A person shall not operate a home food processing establishment until a license has been obtained from the department or a contractor. Application for a license shall be made on a form furnished by the department containing the name of the business, name of the owner, physical address of the business, and list of all homemade food items the home food processing establishment intends to prepare. Applications for a license shall be completed using the department’s online application system at least 30 days prior to the anticipated opening of the home food processing establishment. If extenuating circumstances exist that prevent the applicant from completing the online application, paper applications are available from the department or a contractor.

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

34.2(2) *Homemade food item disclosure.* Homemade food items not listed on the application shall not be sold or distributed. New homemade food items may be added to an application at any time using the online application system or by submission of a paper form to the department or a contractor.

34.2(3) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license.

34.2(4) *Refunds.* License fees are refundable only if the license is surrendered to the department or a contractor prior to the effective date of the license. License fees are not refundable for a new home food processing establishment if a record review has occurred.

34.2(5) *Expiration and renewal.* A home food processing establishment license, unless sooner suspended or revoked, expires one year after the application for license is approved by the department or a contractor. A renewal should be submitted through the department's online registration system with the required fee prior to expiration.

34.2(6) *Renewal 60 days or more after expiration.* A delinquent license will only be renewed if application for renewal is made within 60 days of expiration. If a delinquent license is not renewed within 60 days, an establishment shall apply for a new license and meet all of the requirements for an initial license. An establishment that has not renewed the license within 60 days of expiration will be closed by the department or a contractor.

34.2(7) *Documentation of gross sales.* The license holder shall maintain documentation of annual gross sales of homemade food items and provide it to the regulatory authority upon request. Documentation of gross sales includes at least one of the following and will be kept confidential:

- a. A copy of the establishment's business tax return;
- b. Four quarters of gross sales of homemade food items;
- c. A letter from an independent tax preparer; or
- d. Other records documenting annual gross sales of homemade food items.

34.2(8) *Returned payments.* The department or a contractor will attempt to redeem a payment submitted for an establishment that is not honored by the bank on which it is drafted and will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 will be assessed for each dishonored payment. If the department or a contractor does not receive payment, the establishment will be operating without a valid license.

481—34.3(137D) Physical facilities and equipment.

34.3(1) The floors, walls, ceilings, utensils, equipment, and supplies in the food processing and storage areas, and all vehicles used in the transportation of homemade food items, shall be maintained clean and in good repair.

34.3(2) Outer openings shall be protected by tight-fitting doors, windows, or screens.

34.3(3) Dogs, cats, or other pets and animals shall be excluded from entering food preparation areas when food is being processed or packaged.

34.3(4) Persons unnecessary to the production of homemade food items are not allowed in food processing areas while homemade food items are exposed or being produced.

34.3(5) Adequate lighting and ventilation shall be available in all areas where food is processed or stored.

34.3(6) An establishment shall have an adequate supply of hot and cold potable water under pressure from an approved and safe source. In addition:

- a. There shall be no direct or indirect connection of safe and unsafe water;
- b. If the residence is not served by a public water system, the water shall be tested at least annually for nitrates and coliforms;
- c. In the event a water test shows coliforms are present or nitrates are at an unsafe level, the establishment shall cease operations and notify the regulatory authority. The establishment will not resume operations until approved by the regulatory authority; and
- d. If the establishment's water source is under a water advisory indicating the water may be unsafe to consume, it shall not produce homemade food items until the advisory is lifted.

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

34.3(7) There shall be a conveniently located sink in each food processing area that is maintained clean and accessible for handwashing during production and packaging and supplied with hot and cold running water, hand soap, and sanitary towels.

34.3(8) An establishment shall have adequate equipment, such as a sink or dishwasher, to wash, rinse, and sanitize utensils.

34.3(9) There shall be conveniently located toilet facilities, equipped with a handwashing sink supplied with hot and cold running water, hand soap and sanitary towels or a hand-drying device.

34.3(10) All waste and wastewater produced by the establishment shall be disposed of in a sanitary manner in compliance with applicable laws. If the home food processing establishment has a waste backup, it shall cease operation and notify the regulatory authority. It will not resume preparation of homemade food items until approved by the regulatory authority.

34.3(11) All garbage and refuse shall be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or other health hazards. Garbage and refuse containers shall be durable, easy to clean, insect- and rodent-resistant, and of material that neither leaks nor absorbs liquid.

34.3(12) Food processing and storage areas shall be free of pests. Pesticides, if used, shall be approved for use in commercial food establishments, clearly labeled, and used as directed by the manufacturer.

34.3(13) Hazardous chemicals or other toxic materials shall be stored, applied and used as directed by the manufacturer in a manner that protects food, equipment, and food contact surfaces from contamination.

34.3(14) Refrigeration and hot holding equipment design and capacity shall be adequate to maintain safe temperature control, including safe cooling temperatures, to prevent cross contamination and allergen cross contact and protect food from other sources of contamination. Dedicated refrigeration or hot holding equipment may be required if shared equipment is inadequate to maintain food safety.

34.3(15) All refrigeration and hot holding units shall be equipped with an accurate thermometer.

34.3(16) Appropriate thermometers shall be used to accurately measure the internal temperature of food during processing, holding, and storage.

34.3(17) All food contact surfaces shall be intended for use with food, made of safe materials, easy to clean, smooth, durable, nonabsorbent, and noncorrosive.

481—34.4(137D) Management and personnel.

34.4(1) *Person in charge.* There shall be a person in charge of operations during all hours of food processing who has a thorough understanding of food safety principles and is able to demonstrate control over food safety hazards, including:

- a. Time/temperature controls for cooking, hot holding, cooling, cold holding, and reheating foods;
- b. Cross contamination during storage and preparation;
- c. Major food allergens and allergen cross contact;
- d. Sanitation of food contact surfaces;
- e. Food handling, hygienic practices, and communicable diseases;
- f. Receiving and distribution; and
- g. If applicable, pH and (a_w).

34.4(2) *Food safety training.* The person in charge shall attend a food safety training course approved by the department and provide proof of attendance prior to the issuance of a home food processing establishment license.

34.4(3) *Exclusions from handling food.* A food handler shall be excluded from handling food, utensils, or packaging materials if the food handler:

- a. Is diagnosed with a communicable or contagious disease that can be transmitted through food;
- b. Has experienced diarrhea or vomiting in the past 24 hours;
- c. Is jaundiced;
- d. Has a sore throat with a fever; or
- e. Has exposed sores or infected wounds on the food handler's hands or arms.

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

34.4(4) Hygienic practices.

- a. A food handler must keep the food handler's person and clothing clean and hair effectively restrained and wash the food handler's hands as often as necessary to protect food and food contact surfaces from contamination.
- b. Ready-to-eat foods must not be handled with bare hands.
- c. Eating, drinking, and use of tobacco is not permitted in food processing areas while homemade food items are exposed or being produced.

481—34.5(137D) Receiving, storage, and distribution.

34.5(1) Receiving. All foods and ingredients shall be obtained from an approved source and have been produced in compliance with applicable law. Honey from an unlicensed establishment and eggs from the establishment's own flock may be used in the preparation of homemade food items. All food shall be received in sound condition; at safe temperatures; free from spoilage, filth, or other contamination; unadulterated; and safe for human consumption.

34.5(2) Storage. Food storage areas shall be clean and located in an area that protects the food from contamination at all times. All food products shall be stored off of the floor. If removed from the original container, foods shall be stored in labeled and closed containers that are of a material that will not cause the food to become adulterated.

34.5(3) Distribution.

- a. Foods containing raw or undercooked foods of animal origin will not be sold or distributed in a ready-to-eat form.
- b. Foods produced in a home food processing establishment shall not be distributed for further processing by a food processing plant or another home food processing establishment.
- c. Time/temperature control for safety homemade food items shall be maintained at safe temperatures during shipping and transportation to an end consumer, a mobile food unit, a farmers market food establishment, or a temporary food establishment operated by the same owner as the home food processing establishment.
- d. Time/temperature control for safety homemade food items sold or distributed to other businesses for resale shall be maintained at or below 41°F during shipping and transportation.
- e. No one may produce, distribute, offer for sale, or provide adulterated food to the public. Adulterated food shall be disposed of in a reasonable manner approved by the department.

481—34.6(137D) Food preparation and protection.

34.6(1) Food protection. Foods shall be processed, stored, and distributed in a manner that protects food from contamination, including cross contamination from the environment, and allergen cross contact.

34.6(2) Cooking. All animal foods or foods containing animal products, if cooked, shall be cooked to an internal temperature sufficient to destroy organisms that are injurious to health. Homemade food items shall not contain raw or undercooked animal foods except for packaged raw meat or poultry items labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

34.6(3) Holding. All time/temperature control for safety foods shall be held at an internal temperature of 41°F or less or 135°F or higher to control bacterial growth or toxin formation.

34.6(4) Cooling.

- a. Time/temperature control for safety foods that have been heat-treated shall be cooled from 135°F to 70°F within two hours and from 70°F to 41°F within an additional four hours. Total cooling time shall not exceed six hours.
- b. Time/temperature control for safety foods prepared with ingredients above 41°F shall be cooled to 41°F or below within four hours from the beginning of preparation.

34.6(5) Reheating.

- a. Homemade food items that are time/temperature control for safety and have been previously heated and cooled shall be reheated to an internal temperature of 165°F within two hours or less.

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

b. Commercially processed time/temperature control for safety foods shall be reheated to 135°F within two hours or less.

34.6(6) Preparation methods.

a. High-acid foods that are produced and sold by the establishment and that are controlled by pH, such as barbeque sauce, condiments, and dressings, may be produced as homemade food items if:

- (1) The product has been produced following a standardized recipe;
- (2) The product does not contain more than 10 percent low-acid food ingredients by weight;
- (3) The product recipe, including the name and weight of each ingredient, is submitted and approved by the regulatory authority;
- (4) The product's equilibrium pH of each batch is tested with a calibrated pH tester designed for use with food. The pH shall be below 4.60, and the pH value shall be recorded on a production or batch record; and
- (5) The product is adequately heated to destroy spoilage organisms.

b. Dried foods that are produced and sold under the home food processing establishment license that are controlled by (a_w), such as dehydrated or freeze-dried food may be produced as a homemade food item if:

- (1) The products have been produced following a standardized recipe;
- (2) The homemade food items do not contain raw or undercooked foods of animal origin; and
- (3) Each batch is tested for (a_w) or the standardized written procedure for each homemade food item has been validated to ensure the final product is at or below 0.85 (a_w).

c. Jams, jellies, preserves, and fruit butters that are produced and sold under the home food processing establishment license shall meet the standard of identity specified in 21 CFR Part 150 as amended to April 1, 2023, and be produced following a standardized recipe. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets the standard of identity when requested by the regulatory authority.

d. Nonstandardized fruit jellies shall be produced following a standardized recipe and made with 45 parts of fruit to 55 parts of sugar and concentrated to 65 percent soluble solids. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

e. Nonstandardized nonfruit jellies shall be produced following a standardized recipe and shall have a soluble solids content of 65 percent. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

f. Standardized sweeteners and table syrups shall meet the standard of identity specified in 21 CFR Part 168 as amended to April 1, 2023. The home food processing establishment shall provide documentation that a product meets this requirement when requested by the regulatory authority.

g. A home food processing establishment that wishes to prepare foods using fermentation shall submit an HACCP plan to the department that has been validated by a recognized process authority, such as those provided on the department's website. A home food processing establishment shall not ferment food until the department has approved the HACCP plan.

h. A home food processing establishment shall not engage in the following processes to produce homemade food items:

- (1) Low-acid canning (e.g., canned vegetables);
- (2) Acidification to produce shelf-stable acidified foods (e.g., salsa, pickled vegetables, hot sauce);
- (3) Curing (e.g., bacon, jerky, meat sticks); or
- (4) Smoking food for preservation rather than flavor enhancement.

481—34.7(137D) Packaging and labeling requirements.

34.7(1) Legible labels. All required labeling information shall be legible and in a location that is easily identifiable by the consumer.

34.7(2) Labels and packaging on homemade food items, exception. A homemade food item shall be packaged in the home food processing establishment, and all required labeling shall be affixed to the

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

homemade food item before it is delivered to the consumer, with the exception of a homemade food item picked up by the consumer in person at the home food processing establishment. In the case of the exception, the homemade food item shall still be protected from contamination and all required labeling information shall be provided to the consumer.

34.7(3) *Raw meat and poultry products.* Packaged homemade food items that contain raw meat or poultry shall be labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

34.7(4) *Expiration date.* Refrigerated time/temperature control for safety homemade food items that are ready-to-eat foods shall be labeled with an expiration date not to exceed seven days from the date of preparation, and the date of preparation is counted as day one. Time/temperature control for safety homemade food items may be labeled with an expiration date that exceeds seven days if the expiration date has been determined to be safe by an accredited food science institution and documentation is provided to the regulatory authority upon request.

34.7(5) *Contents.*

a. Homemade food items will be identified as required by Iowa Code section 137D.2(7).
b. Labels or other marketing materials associated with homemade food items must be truthful and not misleading.

c. Claims on labels or other marketing materials associated with homemade food items that are related to the following must conform to the United States Food and Drug Administration's (FDA's) Food Labeling Guide (January 2013). A link to the labeling guide may be found on the department's website or on the FDA's website.

- (1) Health claims;
- (2) Qualified health claims;
- (3) Nutrient content claims (e.g., low sodium, high fiber, low fat, sugar free); or
- (4) Structure/function claims.

d. Homemade food items labeled or marketed as a special dietary use food will conform to 21 CFR Part 105 as amended to April 1, 2023. The home food processing establishment shall provide documentation, such as a nutritional analysis by an accredited food laboratory, to the regulatory authority upon request.

e. Labels or other marketing materials shall not contain any claims that the homemade food item can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease.

481—34.8(137D) Sanitation.

34.8(1) There shall be sufficient means to clean, rinse, and sanitize all multi-use food contact surfaces. Cleaners and sanitizers used for these purposes shall be intended and approved for use in a commercial food establishment.

34.8(2) All food contact surfaces shall be clean to sight and touch when not in use.

34.8(3) All food contact surfaces shall be cleaned and sanitized:

- a.* Between each use;
- b.* At least every four hours if under continuous use to control microbial growth;
- c.* At a frequency necessary to prevent cross contamination; and
- d.* At a frequency necessary to prevent allergen cross contact.

34.8(4) If chemical sanitizers are used, they shall be used according to the manufacturer directions for use, and a means shall be provided for testing the proper level of chemical concentration, such as test strips designed specifically for the chemical being used.

34.8(5) Food processing, handling, and storage areas shall be neat; clean; and free from excessive accumulation of product, dust, trash, and unnecessary articles.

481—34.9(137D) Maintenance of records by licensee.

34.9(1) An establishment shall maintain standardized recipes for each homemade food item.

34.9(2) An establishment shall maintain production or batch records, including, at a minimum, product name, date of production, and date of packaging, with the exception of made-to-order food.

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

34.9(3) An establishment shall maintain records of foods received as ingredients, including, at a minimum, the name and address of the supplier, name of the ingredient, and date received. A receipt of purchase is a sufficient record if it contains all of the required information.

34.9(4) An establishment shall maintain distribution records of all homemade food items that are distributed for resale, including the product name, the name and address of the business where the homemade food items were distributed, the date distributed, the quantity distributed, and the date the homemade food item was produced.

34.9(5) An establishment not served by a public water system shall maintain records of annual water tests.

34.9(6) An establishment, if it produces homemade food items that require food safety parameters to be monitored throughout production, such as temperature, pH, or (a_w), shall use testing instruments as directed by the manufacturer and calibrated for accuracy according to the manufacturer's instructions. Monitoring results shall be documented as part of the batch record.

34.9(7) An establishment shall maintain all required records for a minimum of six months. All required records shall be made available for official review or copying upon request by the regulatory authority.

481—34.10(137D) Violations and enforcement.

34.10(1) All violations shall be corrected within a time frame not to exceed 90 days. The license holder shall make a written report to the regulatory authority, stating the action taken to correct the violation, within five days of correction.

34.10(2) An establishment that violates this chapter or Iowa Code chapter 137D is subject to a civil penalty as set forth in Iowa Code chapter 137D.

34.10(3) The department may employ various remedies in response to violations, including but not limited to civil penalty; suspending or revoking the license; injunction; or embargo, stop-sale, or recall orders.

481—34.11(137D) Denial, suspension, or revocation of license.

34.11(1) *Denial, suspension, or revocation of a license.* Denial, suspension, or revocation of a license is effective 30 days after mailing or personal service of the notice. The department may suspend or revoke a license as set forth in Iowa Code section 137D.8. A certified copy of a final order or judgment of conviction or plea of guilty is conclusive evidence of a conviction.

A deferred judgment, until discharged, is a conviction for purposes of this rule.

34.11(2) *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A and 137D and rules adopted pursuant to those chapters, the department or a contractor may immediately suspend a license in cases of an imminent health hazard, as defined by chapter 8 of the 2017 FDA Food Code (the "food code"). The procedures of Iowa Code section 17A.18A and chapter 8 of the food code shall be followed in cases of an imminent health hazard.

481—34.12(137D) Inspection and access to records.

34.12(1) Home food processing establishments will be periodically inspected based on a risk assessment basis, either in person or virtually using video technology.

34.12(2) The regulatory authority may enter a food processing establishment at any reasonable hour to make an inspection. The regulatory authority will inspect only those areas related to preparing or storing food for sale. The manager or person in charge of the establishment shall afford free access to records and every part of the premises where homemade food items and ingredients are stored or prepared and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection.

481—34.13(137D) Public examination of records.

34.13(1) *Public information.* Information collected by the department and contractors is public information unless otherwise provided for by law. Records are stored in computer files and are

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

not matched with any other data system. Inspection reports are available for public viewing at iowa.safefoodinspection.com.

34.13(2) Confidential information.

a. The following are examples of confidential records:

- (1) Trade secrets and proprietary information, including items such as formulations, standardized recipes, processes, policies and procedures, and customer lists;
- (2) Health information related to foodborne illness complaints and outbreaks;
- (3) The name or any identifying information of a person who files a complaint with the department; and
- (4) Other state or federal agencies' records.

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

34.13(3) Other agencies' records. Requests for records of other state or federal agencies will be referred to the appropriate agency.

481—34.14(137D) Appeals. An establishment may contest adverse action taken pursuant to this chapter by submitting a request for hearing to the department within 30 days of the mailing or service of the department's action. Appeals and hearings are governed by 481—Chapter 9. For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—9.3(10A,17A).

These rules are intended to implement Iowa Code chapter 137D.

ARC 7142C**LABOR SERVICES DIVISION[875]****Notice of Intended Action****Proposing rulemaking related to child labor
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 32, "Child Labor," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 92.21 as enacted by 2023 Iowa Acts, Senate File 542.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 542.

Purpose and Summary

This proposed rulemaking amends Chapter 32 to conform with 2023 Iowa Acts, Senate File 542, which was effective July 1, 2023, and codified in Iowa Code chapter 92, and to conform with 2023 Iowa Acts, Senate File 514, which was effective July 1, 2023.

The proposed amendments:

1. Eliminate rules related to work permits.
2. Change work hours allowed.
3. Eliminate rules related to hazardous activities such as motor vehicle driver and helper, industrial laundering, loading balers, working in explosives plants, working in freezers, and preparing meats for sale.

LABOR SERVICES DIVISION[875](cont'd)

4. Add allowed tasks, including activities for 15-year-olds that previously did not exist (using hazardous chemicals, loading balers, and selling fireworks).
5. Add a safety provision for new allowed tasks, including conditions for using hazardous chemicals and conditions for doing industrial laundering.
6. Add definitions and waiver procedures for new allowed work for 15-year-olds.
7. Amend the rules to forbid activities rather than occupations.
8. Replace references to the Division of Labor and its Commissioner with references to the Department of Inspections, Appeals, and Licensing and its Director.
9. Eliminate categories that no longer exist, such as street trades.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Mitchell Mahan
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

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

January 3, 2024
9 to 9:30 a.m.

Room 126
6200 Park Avenue
Des Moines, Iowa
Dial: 312.626.6799
Meeting ID number: 813 6327 9319
Passcode: 590253

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

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

Review by Administrative Rules Review Committee

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

LABOR SERVICES DIVISION[875](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following new definition of “Director” in rule **875—32.1(92)**:

“*Director*” means the director of the department of inspections, appeals, and licensing or the director’s designee.

ITEM 2. Amend rule **875—32.1(92)**, definitions of “Filing date” and “Occupation or business operated by the child’s parents,” as follows:

“*Filing date*” means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, “filing date” means the date the document is transmitted. For any other document, “filing date” means the date the document is received by the ~~labor commissioner~~ director.

~~“*Occupation or business operated* *Operated by the child’s parents*,”~~ as used in Iowa Code section 92.17(4) 92.17(3), means a business operated by the child’s parent ~~where the parent~~ or licensed foster parent who has control of the day-to-day operation of the business and is on the premises during the hours of the child’s employment.

ITEM 3. Rescind the definitions of “Migrant labor permit,” “Other work,” “Part-time,” “Street trade,” “Street trades permit” and “Work permit” in rule **875—32.1(92)**.

ITEM 4. Amend rule **875—32.1(92)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 92 as ~~amended by 2019 Iowa Acts, Senate File 337~~.

ITEM 5. Rescind and reserve rule **875—32.2(92)**.

ITEM 6. Adopt the following new rule 875—32.5(92):

875—32.5(92) Terms. The terms used in Iowa Code section 92.5 are defined and applied as specified in this rule.

32.5(1) *Cleaning products that require personal protective equipment.* Prior to allowing a 14- or 15-year-old to use cleaning products that require personal protective equipment, the employer shall submit to the director the following:

- a. The safety data sheets of all such chemicals the minor will use.
- b. What personal protective equipment the minor will be using with each chemical that requires it.
- c. Proof of training the minor on the use of the required personal protective equipment.

32.5(2) *Definitions.*

“*Car cleaning, washing, and polishing*” as used in Iowa Code section 92.5(9) does not include using chemicals that recommend personal protective equipment.

“*Laundering*” as used in Iowa Code section 92.5(12) as enacted by 2023 Iowa Acts, Senate File 542, section 3, includes laundering with residential-style machines and includes laundromats. It includes industrial laundering on the following conditions:

1. A parent or guardian gives written permission for the minor to do industrial laundering, to be kept on file by the employer.
2. The minor is not exposed to any chemicals that recommend personal protective equipment.
3. The employer shall provide nonslip shoes.
4. The employer shall provide training on bloodborne pathogens.
5. The minor shall lift loads of no more than 30 pounds.

“*Light tools*” as used in Iowa Code section 92.5(11) as enacted by 2023 Iowa Acts, Senate File 542, section 3, includes the listed tools that are up to 30 pounds.

This rule is intended to implement Iowa Code section 92.5.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 7. Adopt the following new rule 875—32.6(92):

875—32.6(92) Terms. The terms used in Iowa Code section 92.6A as enacted by 2023 Iowa Acts, Senate File 542, section 5, are defined and applied as specified in this rule.

“*Light assembly work*” means assembling with nonpower hand tools and does not include welding.

“*Properly licensed*” means a minor who holds a current license from the National Pool and Waterpark Lifeguard Training program in one of the following programs:

1. National Pool and Waterpark Pool Lifeguard.
2. National Pool and Waterpark Lifeguard Training.
3. National Pool and Waterpark Deep Water Lifeguard.

If there is a question whether a specific training course meets the requirements of these rules, information about the course should be submitted to the director for evaluation.

32.6(1) Waiver of weight limitation. An employer may submit an application for waiver to allow a 15-year-old person to load, unload, or lift up to 50 pounds for work allowed under Iowa Code section 92.6A(1) as enacted by 2023 Iowa Acts, Senate File 542, section 5. The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor employee, and a parent or guardian. The application shall include documentation from a physician or physician’s assistant that the minor is physically capable of this work activity.

32.6(2) Waiver to unload lawn machines. An employer may submit an application for waiver to allow a 15-year-old person to unload lawn machines under Iowa Code section 92.6A(3) as enacted by 2023 Iowa Acts, Senate File 542, section 5. The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor, and a parent or guardian. The application shall include documentation from a physician or physician’s assistant that the minor is physically capable of this work activity.

This rule is intended to implement Iowa Code section 92.6A as enacted by 2023 Iowa Acts, Senate File 542, section 5.

ITEM 8. Amend subrule 32.8(1) as follows:

32.8(1) “~~Occupations~~ Work activities in or about plants or establishments manufacturing or storing explosives or articles containing explosive components” means:

a. All ~~occupations~~ activities in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in ~~subrule paragraph “b:”~~ manufacturing or storing explosives or articles containing explosive components except where the ~~occupation is~~ activities are performed in a “nonexplosive area.”

b. The following ~~occupations~~ activities in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All ~~occupations~~ activities involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other ~~occupations~~ activities requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(2) All ~~occupations~~ activities involved in the manufacturing, transporting, or handling of primers and all other ~~occupations~~ activities requiring the performance of any duties in the same building in which primers are manufactured.

(3) All ~~occupations~~ activities involved in the priming of cartridges and all other ~~occupations~~ activities requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All ~~occupations~~ activities involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All ~~occupations~~ activities involved in the loading, inspecting, packing, shipping and storage of blasting caps.

c. No change.

LABOR SERVICES DIVISION[875](cont'd)

Nothing in this subrule shall be construed to prohibit light assembly work that is away from machines, and nothing in this subrule shall be construed to prohibit selling or assisting in the sale of consumer fireworks in accordance with Iowa Code section 100.19.

ITEM 9. Rescind subrule **32.8(2)**.

ITEM 10. Renumber subrules **32.8(3)** to **32.8(21)** as **32.8(2)** to **32.8(20)**.

ITEM 11. Amend renumbered subrule 32.8(2) as follows:

32.8(2) ~~“Occupations involved in logging occupations and occupations in~~ Logging and the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill” means all ~~occupations~~ related activities with the following exceptions:

a. Exceptions applying to logging:

(1) to (3) No change.

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging ~~occupations~~ activities prohibited by this subrule.

(5) No change.

b. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill:

(1) to (9) No change.

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury. The exceptions in paragraph “b,” subparagraphs (1) to (10), do not apply to a portable sawmill the lumberyard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained and work which entails entering the sawmill building.

Definitions.

~~“All occupations in logging~~ Logging” means all work performed in connection with the felling of timbers; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of these products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency firefighting.

~~“All occupations activities in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill”~~ means all work performed in or about any mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of the mills and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

This subrule is intended to implement Iowa Code section ~~92.8(3)~~ 92.8(2).

ITEM 12. Amend renumbered subrule 32.8(3), introductory paragraph, as follows:

32.8(3) ~~“Occupations involved in the operation~~ Operation of power-driven woodworking machines” means operating power-driven woodworking machines including supervision or controlling the operation of the machines, feeding material into the machines, and helping the operator to feed material into the machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding. Also included are ~~occupations~~ activities of setting up, adjusting, repairing, oiling or cleaning power-driven woodworking machines and the operations of off-bearing from circular saws and from guillotine-action veneer clippers.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 13. Amend renumbered subrule **32.8(3)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(4)~~ 92.8(3).

ITEM 14. Amend renumbered subrule 32.8(4), introductory paragraph, as follows:

32.8(4) "~~Occupations~~ *Work activities involving exposure to radioactive substances and to ionizing radiations*" means ~~occupation~~ activity in any workroom in which radium is stored or used in the manufacture of self-luminous compound; self-luminous compound is made, processed or packaged; self-luminous compound is stored, used or worked upon; incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959.

ITEM 15. Amend renumbered subrule **32.8(4)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(5)~~ 92.8(4).

ITEM 16. Amend renumbered subrule 32.8(5) as follows:

32.8(5) "~~Occupations involved in the operation~~ Operation of elevators and other power-driven hoisting apparatus" means:

a. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one-ton capacity.

b. Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

c. Work of assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like ~~occupations~~ activities.

d. Exception. Iowa Code section ~~92.8(6)~~ 92.8(5) shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over-travel by the car.

e. Definitions.

"Automatic elevator" means any passenger elevator, a freight elevator or a combination passenger-freight elevator, the operation of which is controlled by push buttons in a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

"Automatic signal operation elevator" means an elevator which is started in response to the operation of a switch (such as a lever or push button) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

"Crane" means any power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

LABOR SERVICES DIVISION[875](cont'd)

“*Derrick*” means any power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

“*Elevator*” means any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines), but shall not include dumbwaiters.

“*High-lift truck*” means any power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

“*Hoist*” means any power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

“*Manlift*” means any device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; the belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

This subrule is intended to implement Iowa Code section ~~92.8(6)~~ 92.8(5).

ITEM 17. Amend renumbered subrule 32.8(6), introductory paragraph, as follows:

32.8(6) “~~*Occupations involved in the operation*~~ *Operation of power-driven metal forming, punching and shearing machines*” means ~~occupations of being the~~ operator of or helper on the following power-driven metal forming, punching, and shearing machines.

ITEM 18. Amend renumbered subrule **32.8(6)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(7)~~ 92.8(6).

ITEM 19. Amend renumbered subrule 32.8(7) as follows:

32.8(7) “~~*Occupations in connection with mining*~~ *Mining*” means all work performed underground in mines and quarries; underground working, open-pit, or surface part of any coal-mining plant that contribute to the extraction, grading, cleaning, or other handling of coal; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where the operations are performed as a part of a manufacturing process.

The term “~~occupations in connection with~~ mining” shall not include:

a. to h. No change.

Nothing in this subrule shall be construed to permit any employment of minors in any other ~~occupation~~ activity otherwise prohibited by Iowa Code chapter 92.

This subrule is intended to implement Iowa Code section ~~92.8(8)~~ 92.8(7).

ITEM 20. Amend renumbered subrule 32.8(8) as follows:

32.8(8) “~~*Occupations*~~ *Work activities in or about slaughtering and meat packing establishments and rendering plants*” means:

a. All ~~occupations~~ activities on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand truckers and similar ~~occupations~~ activities which require entering workrooms or workplaces infrequently and for short periods of time.

LABOR SERVICES DIVISION[875](cont'd)

b. All ~~occupations~~ activities involved in the recovery of lard and oils, except packaging and shipping of the products and the operation of lard-roll machines.

c. All ~~occupations~~ activities involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

d. All ~~occupations~~ activities involved in the operation or feeding of the following power-driven meat processing machines, including ~~the occupations of setting up~~ setting up, adjusting, repairing, oiling, or cleaning the machines regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.):

1. Meat patty forming machines, meat and bone cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters;

2. Snout pullers and jaw pullers;

3. Skinning machines;

4. Horizontal rotary washing machines;

5. Casing-cleaning machines such as crushing, stripping, and finishing machines;

6. Grinding, mixing, chopping, and hashing machines; and

7. Presses (except belly-rolling machines).

e. All boning ~~occupations~~ activities.

f. All ~~occupations~~ activities involving the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

g. All ~~occupations~~ activities involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions.

"Boning ~~occupation~~" means the removal of bones from meat cuts. It does not include cutting, scraping or trimming meat from cuts containing bones.

"Curing cellar" means the workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include the workroom or workplace where meats are smoked.

"Hide cellar" means the workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

"Killing floor" means the workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

"Rendering plants" means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

"Slaughtering and meat packing establishments" means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses, poultry, rabbits or small game are killed, processed or butchered and establishments which manufacture or process meat products or sausage casings from these animals.

This subrule is intended to implement Iowa Code section ~~92.8(9)~~ 92.8(8).

ITEM 21. Amend renumbered subrule 32.8(9) as follows:

32.8(9) *"~~Occupations involved in the operation~~ Operation of certain power-driven bakery machines"* means ~~the occupations of~~ operating, assisting to operate or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machines; or cake cutting band saw and ~~the occupations of~~ setting up or adjusting a cookie or cracker machine. However, this definition does not apply to the operation of pizza dough rollers that are a type of dough sheeter that have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers, that have gears that are completely enclosed, and that have microswitches that disengage the machinery if the backs or sides of

LABOR SERVICES DIVISION[875](cont'd)

the rollers are removed, only when all the safeguards detailed in Iowa Code section ~~92.8(10)~~ 92.8(9) are present on the machinery, are operational, and have not been overridden.

This subrule is intended to implement Iowa Code section ~~92.8(10)~~ 92.8(9).

ITEM 22. Amend renumbered subrule 32.8(10) as follows:

32.8(10) ~~“Occupations involved in the operations~~ *Operation of paper-products machines*” means operating or assisting to operate any of the following power-driven paper-products machines and includes:

a. Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

c. The ~~occupations~~ activities of setting up, adjusting, repairing, oiling, or cleaning the machines in paragraphs “a” and “b” of this subrule including those which do not involve hand feeding.

d. Loading material into paper/cardboard balers except when the machine is powered off and the key is stored in a separate area from the machine.

Definitions.

“Operating or assisting to operate” means all work which involves starting or stopping a machine covered by this subrule, placing materials into or removing them from the machine, or any other work directly involved in operating the machine except loading material into balers when the machine is powered off and the key is stored in a separate area from the machine.

“Paper-products machine” means power-driven machines used in:

1. The remanufacture or conversion of paper or pulp into a finished product, including the preparation of materials for recycling.

2. The preparation of materials for disposal. The term applies to the machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishments.

This subrule is intended to implement Iowa Code section ~~92.8(11)~~ 92.8(10).

ITEM 23. Amend renumbered subrule 32.8(11) as follows:

32.8(11) ~~“Occupations involved in the manufacture of~~ *Manufacturing brick, tile and related products*” means the manufacture of brick, tile and related products and includes the manufacture of clay construction products and of silica refractory products and includes:

a. All work in or about establishments in which clay construction products are manufactured, except work in storage and shippings; work in offices, laboratories, and storerooms; and work in the drying departments of plants manufacturing sewer pipe.

b. All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

c. Nothing in this subrule shall be construed to permit any employment of minors in any other ~~occupation~~ activities otherwise prohibited by Iowa Code chapter 92.

Definitions.

“Clay construction products” means brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. It does not include nonstructural-bearing clay products such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

“Silica brick or other silica refractories” means refractory products produced from raw materials containing free silica as its main constituent.

This subrule is intended to implement Iowa Code section ~~92.8(12)~~ 92.8(11).

LABOR SERVICES DIVISION[875](cont'd)

ITEM 24. Amend renumbered subrule 32.8(12) as follows:

32.8(12) *~~"Occupations involved in the operation"~~ Operation of circular saws, band saws, and guillotine shears* means:

a. ~~Occupations of operator~~ Operator of or helper on power-driven fixed or portable circular saws, band saws, and guillotine shears except machines equipped with full automatic feed and ejection.

b. ~~The occupations of setting up~~ Setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, or guillotine shears.

Definitions.

"Band saw" means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

"Circular saw" means a machine equipped with an endless steel disc and having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

"Guillotine shear" means a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

"Helper" means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

"Machines equipped with full automatic feed and ejection" means machines covered by this subrule which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any body part in the point-of-operation area.

"Operator" means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other function directly involved in the operation of the machine.

This subrule is intended to implement Iowa Code section ~~92.8(13)~~ 92.8(12).

ITEM 25. Amend renumbered subrule 32.8(13) as follows:

32.8(13) *"Wrecking, demolition and shipbreaking operations"* means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

This subrule is intended to implement Iowa Code section ~~92.8(14)~~ 92.8(13).

ITEM 26. Amend renumbered subrule **32.8(14)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(15)~~ 92.8(14).

ITEM 27. Amend renumbered subrule 32.8(15) as follows:

32.8(15) *"Excavation ~~occupations~~"* means all ~~occupations~~ activities involved with:

a. to c. No change.

d. Working within shafts prior to the completion of all sinking and shoring operations.

This subrule is intended to implement Iowa Code section ~~92.8(16)~~ 92.8(15).

ITEM 28. Amend renumbered subrule 32.8(20) as follows:

32.8(20) ~~Hazardous occupations~~ Work activities prohibited by the ~~labor commissioner~~ director include the following:

a. ~~Occupations~~ Activities involved in the operation of power cutters on corn detasseling machines.

b. ~~Occupations~~ Activities involved in the driving of power-driven detasseling machines unless the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section ~~92.8(21)~~ 92.8(20).

ITEM 29. Adopt the following new rule 875—32.9(92):

875—32.9(92) Terms. The terms used in Iowa Code section 92.8A are defined and applied as specified in this rule.

"Incidental" means not a primary activity of the minor.

LABOR SERVICES DIVISION[875](cont'd)

“Intermittent and for short periods of time” may vary depending on the degree and type of hazard. The frequency and duration of an activity shall make it clear the employee is a learner rather than a production worker. The burden is on the employer to justify more than one hour per day or 20 percent of a shift.

“Written permission” shall include a description of the activity that would otherwise be unlawful under Iowa Code section 92.8, including the expected frequency and duration of that activity.

This rule is intended to implement Iowa Code section 92.8A as enacted by 2023 Iowa Acts, Senate File 542, section 9.

ITEM 30. Amend rule 875—32.11(92), introductory paragraph, as follows:

875—32.11(92) Civil penalty calculation. An employer who violates this chapter or Iowa Code chapter 92 is subject to a civil penalty of not more than \$10,000 per violation as set forth in this rule. ~~The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.~~

ITEM 31. Amend subrules 32.11(1) and 32.11(2) as follows:

32.11(1) Counting the number of violations.

a. Violations shall be counted as follows: each day that a child works too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.

~~*a.* Each item of inaccurate information on each Iowa Child Labor Application/Work Permit shall be a separate violation.~~

~~*b.* Each day that a child works without a permit, works too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.~~

~~*c.* If an employer completes the Iowa Child Labor Application/Work Permit but fails to file it by the deadline, each day that the minor works after the deadline shall be a separate violation.~~

b. The director may waive or reduce the penalty if this method of counting the violations would result in a penalty that is disproportionate to the harm done to the minor(s), the size of the employer, or both.

32.11(2) Determining whether a violation is a repeat violation. The higher penalty amounts outlined in subrules ~~32.11(3) through 32.11(4)~~ and 32.11(5) for repeat instances may be assessed by the ~~labor commissioner~~ director if citations regarding the earlier instance or instances are final action and occurred less than five years before.

ITEM 32. Rescind and reserve subrule **32.11(3)**.

ITEM 33. Amend subrule 32.11(6) as follows:

32.11(6) Penalty reduction factors. Except for violations related to the death of a child while working, the ~~labor commissioner~~ director shall reduce the penalty calculated pursuant to subrules 32.11(1) ~~through 32.11(2), 32.11(4) and 32.11(5)~~ by the appropriate penalty reduction percentages set forth in this subrule. However, if the ~~labor commissioner~~ director requests information relevant to the penalty assessment and the employer does not provide responsive information, the ~~labor commissioner~~ director shall not reduce the penalty.

a. Penalty reduction for size of business. The ~~labor commissioner~~ director shall reduce a penalty by 25 percent if the employer has 25 or fewer employees. The ~~labor commissioner~~ director shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The ~~labor commissioner~~ director shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. Penalty reduction for good faith. The ~~labor commissioner~~ director may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the ~~labor commissioner~~ director warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the ~~labor commissioner~~ director shall not reduce the penalty based on good faith.

c. Penalty reduction for history. The ~~labor commissioner~~ director shall reduce a penalty by 10 percent if the ~~labor commissioner~~ director has not assessed a civil penalty under this chapter within the past five years. If the ~~labor commissioner~~ director has assessed a civil penalty under this chapter in the

LABOR SERVICES DIVISION[875](cont'd)

past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

ITEM 34. Amend rule 875—32.12(92) as follows:

875—32.12(92) Civil penalty procedures.

32.12(1) Notice of civil penalty. The ~~commissioner~~ director shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. There shall be a 15-day grace period before issuing the notice. The notice shall include the following:

- a. A statement that the notice proposes a civil penalty assessment for violation of child labor laws.
- b. Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.
- c. A statement that the employer has the right to request a hearing by filing a notice of contest with the ~~labor commissioner~~ director within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.
- d. A reference to the applicable procedural provisions.

32.12(2) Notice of contest. The civil penalty proposed by the ~~labor commissioner~~ director shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the ~~labor commissioner~~ director.

32.12(3) No change.

This rule is intended to implement Iowa Code section 92.22.

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LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rulemaking related to requests for extended inspection interval
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 89.14(11) as enacted by 2023 Iowa Acts, House File 461.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 461.

Purpose and Summary

This proposed rulemaking implements House File 461 regarding extensions of internal boiler and pressure vessel internal inspections. The proposed subrule clarifies what qualifies for an extension and how to get approval for the extension. The subrule facilitates granting the extension along with safety assurances.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

LABOR SERVICES DIVISION[875](cont'd)

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Mitchell Mahan
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: mitchell.mahan@dia.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** subrule 90.6(10):

90.6(10) Request for extended inspection interval.

a. Owners of objects covered under Iowa Code section 89.3(4)“a” may apply for an extended internal inspection interval of up to seven years.

b. The application for an extended internal inspection interval shall include the following information submitted to the director:

- (1) The name and contact information of the requestor.
- (2) The state identification number of the object.
- (3) The interval requested with supporting reasons.
- (4) An affidavit affirming the following:
 1. Compliance with the process safety management standard contained in 29 CFR §1910.119.
 2. The object is included as process safety management process equipment in the owner's process safety management program.
 3. The object meets the requirements contained in the National Board Inspection Code.
 4. The object is fit for service based on the year of fabrication and the estimated service life of the object as determined by Part 2 of the National Board Inspection Code.
 5. Practices have been implemented for managing consumable items and ancillary equipment of the object.

LABOR SERVICES DIVISION[875](cont'd)

- (5) The following supporting records:
 1. Inspection records of the boiler and ancillary equipment for the prior five years.
 2. The most recent Report of Fitness for Service Assessment.
 3. Every Form R-1 Report of Repair and Form R-2 Report of Alterations for the prior five years.
- (6) A request for an informal conference, if desired.
 - c. The director will consider, among other things, whether the object meets the requirements contained in the National Board Inspection Code, whether the object is fit for service based on the year of fabrication, the estimated service life of the object as determined by Part 2 of the National Board Inspection Code, and whether the owner has implemented practices for managing consumable items and ancillary equipment of the object.
 - d. The director may grant an extended inspection interval.
 - (1) An extended inspection interval lasts until the next inspection, at which time the owner of the object may again apply for an extension.
 - (2) The owner shall promptly report to the department's boiler and pressure vessel unit any unscheduled shutdowns, significant incidents, near misses, and any other occurrences that might reasonably require reinspection before the extended date. Should the occurrence reasonably require it, or if any such event is not reported within ten days of occurrence, the director may revoke the extended inspection interval.
 - e. If the director does not intend to grant the extension, the director will give the applicant a Notice of Intent to Deny Extended Inspection Interval, granting ten days for the applicant to provide additional reasons and evidence why the interval should be extended.

ARC 7170C**MEDICINE BOARD[653]****Notice of Intended Action****Proposing rulemaking related to standards of practice for physicians who perform or induce abortions and providing an opportunity for public comment**

The Board of Medicine hereby proposes to amend Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2023 Iowa Acts, House File 732.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 732.

Purpose and Summary

The proposed rule is directed by 2023 Iowa Acts, House File 732, to outline the standards of practice for physicians who perform or induce abortions, including the detection of a fetal heartbeat, exceptions, and discipline.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

MEDICINE BOARD[653](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board under 653—Chapter 3 for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Chrissy Greco
Iowa Board of Medicine
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.242.6039
Fax: 515.242.5908
Email: chrissy.greco@iowa.gov

Public Hearing

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

January 4, 2024
10 a.m. to 12 noon

6200 Park Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** rule 653—13.17(135L,146A,146E,147,148,272C):

653—13.17(135L,146A,146E,147,148,272C) Standards of practice for physicians who perform or induce abortions—definitions—detection of fetal heartbeat—fetal heartbeat exceptions—discipline.

13.17(1) Standards of practice. This rule sets forth the standards of practice for physicians who perform or induce abortions. More information is contained in Iowa Code section 146E.2(5) as enacted by 2023 Iowa Acts, House File 732.

13.17(2) Definitions. As used in this rule:

“Private health agency” means any establishment, facility, organization, or other entity that is not owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or

MEDICINE BOARD[653](cont'd)

4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

“*Public health agency*” means any establishment; facility; organization; administrative division; or entity that is owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, administrative divisions, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or
4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

“*Standard medical practice*” means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, and this rule, “standard medical practice” includes employing the appropriate means of detection depending on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

“*The pregnancy is the result of a rape*” means a circumstance in which the pregnancy is the result of conduct perpetrated against a female that would be a prosecutable offense under Iowa Code section 709.2, 709.3, 709.4, or 709.4A.

“*The pregnancy is the result of incest*” means a circumstance in which a sex act occurs between closely related persons that involves a vaginal penetration that causes a pregnancy. The closely related persons must be related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew. For purposes of this rule, a closely related person includes a stepparent, stepchild, or stepsibling, including siblings through adoption.

13.17(3) *Detection of fetal heartbeat.* A physician who intends to perform or induce an abortion must determine via abdominal ultrasound whether the woman is carrying an unborn child with a detectable fetal heartbeat.

a. Obligation. The obligation under this rule requires a bona fide effort to detect a fetal heartbeat in the unborn child. This effort must be made in good faith and according to standard medical practice and reasonable medical judgment.

b. Method. Consistent with standard medical practice and reasonable medical judgment, the physician shall perform an exterior abdominal ultrasound on the woman to determine whether the unborn child has a detectable fetal heartbeat. This exterior abdominal ultrasound shall be performed with real-time ultrasound equipment with a transducer of appropriate frequency. The equipment must be properly maintained and in proper functioning order. At minimum, the exterior abdominal ultrasound shall examine the full region of the woman’s body between the chest and pelvis, including the side flanks between the rib cage and hips.

13.17(4) *Fetal heartbeat exceptions.* The following applies to a physician who intends to perform or induce an abortion under a fetal heartbeat exception as defined in Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, and this rule:

a. Incest or rape. If a pregnancy is the result of incest or a rape, the woman seeking an abortion may report the incest or the rape within the appropriate time frame to a licensed physician whose services are retained for an abortion procedure.

(1) To determine whether the pregnancy is the result of incest, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

1. Did a sex act occur between the woman and a closely related person, meaning, related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, nephew, stepparent, stepchild, stepsibling, or an adopted sibling?
2. On what date did the sex act that caused the pregnancy occur?

MEDICINE BOARD[653](cont'd)

3. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, on what date was the act reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for incest applies. This information shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information provided by the woman seeking an abortion upon a good-faith assessment that the woman is being truthful. The physician who intends to perform or induce an abortion may require the woman to sign a certification form attesting that the information she gave was true and accurate to the best of the woman's understanding.

(2) To determine whether the pregnancy is the result of a rape, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

1. On what date did the sex act that caused the pregnancy occur?
2. What was the age of the woman seeking an abortion at the time of that sex act?
3. Did the sex act constitute a rape?
4. Was the rape perpetrated against the woman seeking an abortion?
5. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, on what date was the rape reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for rape applies. This information shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information as provided by the woman seeking an abortion upon a good-faith assessment that the woman is being truthful. The physician who intends to perform or induce an abortion may require the woman to sign a certification form attesting that the information she gave was true and accurate to the best of the woman's understanding.

b. Fetal abnormality. A certification from an attending physician that a fetus has a fetal abnormality that in the attending physician's reasonable medical judgment is incompatible with life must contain the following information:

- (1) The diagnosis of the abnormality;
- (2) The basis for the diagnosis, including the tests and procedures performed, the results of those tests and procedures, and why those results support the diagnosis; and
- (3) A description of why the abnormality is incompatible with life.

The diagnosis and the attending physician's conclusion must be reached in good faith following a bona fide effort, consistent with standard medical practice and reasonable medical judgment, to determine the health of the fetus. The certification must be signed by the attending physician. A physician who intends to perform or induce an abortion may rely in good faith on a certification from an attending physician if the physician who intends to perform or induce an abortion has a copy of the certification. The certification must be included in the woman's medical records by the physician who intends to perform or induce an abortion.

13.17(5) Discipline. Failure to comply with this rule or the requirements of Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, may constitute grounds for discipline.

This rule is intended to implement Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732.

ARC 7175C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rulemaking related to licensure of podiatrists
and providing an opportunity for public comment**

The Board of Podiatry hereby proposes to rescind Chapter 220, “Licensure of Podiatrists,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 149 and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 149 and 272C.

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the podiatry profession. Iowa residents, licensees, and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure as a podiatrist in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

January 30, 2024
10 to 10:20 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/jji-jaoj-uqy
Or dial: 1.402.921.2210
PIN: 744 558 427#

January 31, 2024
10 to 10:20 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/jji-jaoj-uqy
Or dial: 1.402.921.2210
PIN: 744 558 427#

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 220 and adopt the following **new** chapter in lieu thereof:

PODIATRISTS

CHAPTER 220	LICENSURE OF PODIATRISTS
CHAPTER 221	LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS
CHAPTER 222	CONTINUING EDUCATION FOR PODIATRISTS
CHAPTER 223	PRACTICE OF PODIATRY
CHAPTER 224	DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PEDORTHISTS, AND PROSTHETISTS
CHAPTER 225	CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

CHAPTER 220
LICENSURE OF PODIATRISTS

645—220.1(149) Definitions.

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

“Board” means the board of podiatry.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Licensee” means any person licensed to practice as a podiatrist in the state of Iowa.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“License expiration date” means June 30 of even-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice podiatry to an applicant who is or has been licensed in another state.

“NBPME” means National Board of Podiatric Medical Examiners.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—220.15(17A,147,272C) by which an inactive license is restored to active status.

“Reciprocal license” means the issuance of an Iowa license to practice podiatry to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

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

645—220.2(149) Requirements for licensure.

220.2(1) The applicant will submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.2(2) No application will be considered complete until official copies of academic transcripts are received, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the college to the board.

220.2(3) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

220.2(4) Incomplete applications that have been on file in the board office for more than two years will be:

- a. Considered invalid and destroyed; or
- b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

220.2(5) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant’s credentials and the discretion of the board.

220.2(6) An applicant who graduated from a podiatric college on or after January 1, 1995, but before January 1, 2013, shall present documentation of successful completion of a residency approved by the CPME of the American Podiatric Medical Association.

220.2(7) An applicant who graduated from a podiatric college on or after January 1, 2013, shall present documentation of successful completion of two years of a residency approved by the CPME of the American Podiatric Medical Association.

220.2(8) Passing score reports for Part I, Part II, and Part III of the NBPME examination shall be sent directly from the examination service to the board.

645—220.3(149) Written examinations.

220.3(1) The examinations required by the board shall be Part I, Part II, and Part III of the NBPME.

220.3(2) The applicant has responsibility for:

- a. Making arrangements to take the examinations; and
- b. Arranging to have the examination score reports sent directly to the board from the NBPME.

220.3(3) A passing score as recommended by the administrators of the NBPME examinations shall be required.

645—220.4(149) Educational qualifications.

220.4(1) A new applicant for permanent or temporary licensure to practice as a podiatrist shall present official copies of academic transcripts, verifying graduation from a college of podiatric medicine

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the college to the board of podiatry.

220.4(2) Foreign-trained podiatrists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone 310.258.9451, website www.ierf.org, or email at info@ierf.org; or International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone 727.549.8555. The professional curriculum must be equivalent to that stated in these rules. The candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a podiatry program in the country in which the applicant was educated.

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

645—220.5(149) Title designations. A podiatrist may use the prefix “Doctor” but shall add after the person’s name the word “Podiatrist” or “DPM.”

645—220.6(147,149) Temporary license.

220.6(1) A temporary license may be issued for up to one year and may be annually renewed at the discretion of the board. Temporary licenses will expire on June 30.

220.6(2) Each applicant shall:

a. Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Have official copies of academic transcripts sent directly to the board of podiatry from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

c. Request that passing score reports of the NBPME examination Part I and Part II be sent directly to the board of podiatry from the National Board of Podiatric Medical Examiners;

d. Furnish an affidavit by the institution director or dean of an approved podiatric college attesting that the applicant has been accepted into a residency program in this state that is approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

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

- (1) Licensee’s name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.6(3) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant’s credentials and the discretion of the board.

220.6(4) The ultimate decision to issue a temporary license resides with the board, and a temporary license shall be surrendered if the reason for issuance ceases to exist.

645—220.7(149) Licensure by endorsement. An applicant who has been a licensed podiatrist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

220.7(1) The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

a. Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);

b. Shows evidence of licensure requirements that are similar to those required in Iowa;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Provides the board with official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry; and

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

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.7(2) An applicant shall submit the passing score reports for Part I and Part II of the NBPME examination. An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.7(3) An applicant shall submit passing score reports for Part III of the NBPME examination. An applicant who passed the Part III NBPME examination more than three years prior to the date of application in Iowa must submit proof of podiatry practice for one of the last three years.

220.7(4) An applicant who graduated from a podiatric college on or after January 1, 1995, must present documentation of successful completion of a residency approved by the CPME of the American Podiatric Medical Association.

220.7(5) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—220.8(149) License renewal.

220.8(1) The biennial license renewal period for a license to practice podiatry begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

220.8(2) An individual who was issued a license within six months of the license renewal date does not need to renew the individual's license until the subsequent renewal two years later.

220.8(3) An applicant who graduated from a podiatric college on or after January 1, 2013, and who is seeking renewal for the first time shall present documentation of successful completion of a residency program approved by the CPME of the American Podiatric Medical Association.

220.8(4) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

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

220.8(5) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children and dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 220.8(5) "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall complete the applicable department of health and human services training related to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b." The requirement for mandatory training for identifying and reporting child and dependent

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

- (1) Is engaged in active duty in the military service of this state or the United States.
- (2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

c. The board may select licensees for audit of compliance with the requirements in paragraphs 220.8(5) “a” and “b.”

220.8(6) Upon receiving the information required by this rule and the required fee, board staff will administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

220.8(7) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

220.8(8) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.15(3). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

220.8(9) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a podiatrist in Iowa until the license is reactivated. A licensee who practices as a podiatrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—220.9(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, an applicant will:

220.9(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

220.9(2) Provide verification of current competence to practice as a podiatrist by satisfying one of the following criteria:

- a. If the license has been on inactive status for five years or less, provide the following:
 - (1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:
 1. Licensee’s name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
 - (2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.
- b. If the license has been on inactive status for more than five years, provide the following:
 - (1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:
 1. Licensee’s name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

645—220.10(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—220.15(17A,147,272C) prior to practicing as a podiatrist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 149, and 272C.

ARC 7176C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action****Proposing rulemaking related to licensure of orthotists, prosthetists, and pedorthists and providing an opportunity for public comment**

The Board of Podiatry hereby proposes to rescind Chapter 221, “Licensure of Orthotists, Prosthetists, and Pedorthists,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 148F and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148F and 272C.

Purpose and Summary

This proposed rulemaking sets minimum standards for entry into the professions of orthotists, prosthetists, and pedorthists. Iowa residents, licensees, and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024
10 to 10:20 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/jji-jaoj-uqy
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Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221

LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—221.1(148F) Definitions.

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

“Board” means the board of podiatry.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Licensee” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“License expiration date” means June 30 of even-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

“Reciprocal license” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

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

645—221.2(148F) Requirements for licensure.

221.2(1) The applicant will submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

221.2(2) No application will be considered complete until official copies of academic transcripts are received.

a. Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

b. Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

221.2(3) Transcripts must be sent directly from the program to the board.

221.2(4) Licensees who were issued their licenses within six months prior to the renewal date do not need to renew their licenses until the renewal date two years later.

221.2(5) Incomplete applications that have been on file in the board office for more than two years will be:

a. Considered invalid and destroyed; or

b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

221.2(6) The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

221.2(7) Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

221.2(8) Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

645—221.3(148F) Written examinations.

221.3(1) Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

221.3(2) Orthotists must have completed and passed the BOC or ABC examination for orthotists.

221.3(3) Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

221.3(4) The applicant has responsibility for:

a. Making arrangements to take the examination; and

b. Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

221.3(5) A passing score as recommended by the administrators of the ABC or BOC examination shall be required.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—221.4(148F) Educational qualifications.

221.4(1) An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

- a.* A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the college or university to the board of podiatry; and
- b.* Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the program to the board of podiatry.

221.4(2) An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

- a.* A high school diploma or its equivalent; and
- b.* Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the program to the board of podiatry.

221.4(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

645—221.5(148F) Licensure by endorsement.

221.5(1) An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, or another state, territory, province or foreign country who:

- a.* Submits a completed online application for licensure and pays the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149);
- b.* Shows evidence of licensure requirements that are similar to those required in Iowa;
- c.* For prosthetic or orthotic licensure, provides:
 - (1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the college or university to the board of podiatry; and
 - (2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the program to the board of podiatry;
- d.* For pedorthic licensure, provides:
 - (1) A high school diploma or its equivalent; and
 - (2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the program to the board of podiatry;
- e.* Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:
 - (1) Licensee's name;
 - (2) Date of initial licensure;
 - (3) Current licensure status; and
 - (4) Any disciplinary action taken against the license;
- f.* Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

221.5(2) Individuals who were issued their licenses by endorsement within six months of the license renewal date do not need to renew their licenses until the next renewal date two years later.

221.5(3) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—221.6(148F) License renewal.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

221.6(1) The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics begins on July 1 of an even-numbered year and ends on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration.

221.6(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

221.6(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—225.2(148F,272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

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

221.6(4) Upon receipt of the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board will issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

221.6(5) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

221.6(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

221.6(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice as an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—221.7(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

221.7(1) Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.15(147,148F,149).

221.7(2) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

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

(2) Verification of completion of:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

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

(2) Verification of completion of:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.
2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

645—221.8(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

ARC 7177C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rulemaking related to continuing education for podiatrists
and providing an opportunity for public comment**

The Board of Podiatry hereby proposes to rescind Chapter 222, "Continuing Education for Podiatrists," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 149 and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 149 and 272C.

Purpose and Summary

This proposed rulemaking sets forth continuing education requirements for podiatrists. The rulemaking includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rulemaking, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that podiatrists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 10 to 10:20 a.m.	6200 Park Avenue Des Moines, Iowa Via video/conference call: meet.google.com/jji-jaoj-uqy Or dial: 1.402.921.2210 PIN: 744 558 427#
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Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 222 and adopt the following **new** chapter in lieu thereof:

CHAPTER 222
CONTINUING EDUCATION FOR PODIATRISTS

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—222.1(149,272C) Definitions.

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

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

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

“Board” means the board of podiatry.

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

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

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“License” means license to practice.

“Licensee” means any person licensed to practice as a podiatrist in the state of Iowa.

645—222.2(149,272C) Continuing education requirements.

222.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a podiatrist in this state shall be required to complete a minimum of 40 hours of continuing education.

222.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

222.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

222.2(4) No hours of continuing education will be carried over into the next biennium.

222.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—222.3(149,272C) Standards.

222.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

222.3(2) *Specific criteria.*

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Licensees may obtain continuing education hours of credit by teaching in a college, university, or graduate school that is recognized by the U.S. Department of Education. The licensee may receive credit on a one-time basis for the first offering of a course.

b. Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences; and

(2) Scientifically oriented material or risk management activities.

c. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics.

d. A licensee who has prescribed opioids to a patient during a renewal cycle shall have obtained a minimum of one hour of continuing education regarding the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options.

e. Combined maximum per biennium of 20 hours for the following continuing education source areas will not exceed:

(1) Presenting professional programs that meet the criteria listed in this subrule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

4. The program meets all the criteria in rule 645—222.3(149,272C).

(3) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;

2. Title of course/program;

3. Number of course/program contact hours; and

4. Official signature or verification of course/program sponsor.

(4) Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.

f. No office management courses will be accepted by the board.

g. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

h. Credit is given only for actual hours attended.

These rules are intended to implement Iowa Code section 272C.2 and chapter 149.

ARC 7178C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rulemaking related to practice of podiatry
and providing an opportunity for public comment**

The Board of Podiatry hereby proposes to rescind Chapter 223, “Practice of Podiatry,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 149 and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 149 and 272C.

Purpose and Summary

This proposed rulemaking provides Iowans, licensees, and their employers with definitions relevant to the practice of podiatrists and requirements for administering conscious sedation, for preventing human immunodeficiency virus and hepatitis B virus transmission, for unlicensed graduates of a podiatric college working as assistants, and for prescribing opioids. This rulemaking articulates practice standards and provides a scope of practice for the profession.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

January 30, 2024
10 to 10:20 a.m.

6200 Park Avenue
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Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 223 and adopt the following **new** chapter in lieu thereof:

CHAPTER 223
PRACTICE OF PODIATRY

645—223.1(149) Definitions.

“*Ambulatory surgical center*” or “*ASC*” means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416 as amended to November 22, 2023.

“*Conscious sedation*” means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

645—223.2(149) Requirements for administering conscious sedation. A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board.

223.2(1) The attestation shall include:

a. Evidence of successful completion within the past five years of a formal anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME); or

b. For a podiatrist who does not meet the requirements of paragraph 223.2(1) “*a.*,” an attestation with evidence that the podiatrist is authorized by the governing body of a hospital or ASC to use conscious sedation. This attestation must be received by the board prior to January 1, 2005.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

223.2(2) The podiatrist will provide verification of current certification in Basic Cardiac Life Support (BCLS) or Advanced Cardiac Life Support (ACLS).

223.2(3) A podiatrist who has an attestation on file and continues to use conscious sedation will meet the requirements of 645—Chapter 222 at the time of license renewal. A minimum of one hour of continuing education in the area of conscious sedation or related topics is required beginning with the renewal cycle of July 1, 2004, to June 30, 2006. Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license. In addition, the podiatrist will maintain current certification in BCLS or ACLS.

223.2(4) A podiatrist will only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

223.2(5) It is a violation of the standard of care for a podiatrist to use conscious sedation agents that result in a deep sedation or general anesthetic state.

223.2(6) Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. Included in the report will be the following:

- a. Description of podiatric procedures;
- b. Description of preoperative physical condition of patient;
- c. List of drugs and dosage administered;
- d. Description, in detail, of techniques utilized in administering the drugs;
- e. Description of adverse occurrence, including:
 - (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
 - (2) Treatment instituted;
 - (3) Response of the patient to treatment;
- f. Description of the patient's condition on termination of any procedures undertaken;
- g. If a patient is transferred, a statement providing where and to whom; and
- h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(7) Failure to report. Failure to comply with subrule 223.2(6) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist's loss of authorization to administer conscious sedation or in other sanctions provided by law.

223.2(8) Record keeping. The patient's chart must include:

- a. Preoperative and postoperative vital signs;
- b. Drugs administered;
- c. Dosage administered;
- d. Anesthesia time in minutes;
- e. Monitors used;
- f. Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs;
- g. Name of the person to whom the patient was discharged; and
- h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(9) Failure to comply with these rules is grounds for discipline.

645—223.3(139A) Preventing HIV and HBV transmission. Podiatrists will comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139A.22(3) and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

applicable hospital protocols established pursuant to Iowa Code section 139A.22(1). Failure to comply will be grounds for disciplinary action.

645—223.4(149) Unlicensed graduate of a podiatric college. An unlicensed graduate of a podiatric college may function in the licensed podiatrist's office only as a podiatric assistant. The licensed podiatrist has full responsibility and liability for the unlicensed person.

223.4(1) Treatments, charting, and notations completed by the unlicensed graduate must be initialed by that person and countersigned by the licensed podiatrist.

223.4(2) An unlicensed graduate will not:

- a. Be referred to as "doctor" during professional contact with patients.
- b. Treat patients in the office without a licensed podiatrist present.
- c. Perform surgical work without direct supervision of a licensed podiatrist.
- d. Diagnose or prescribe medicine.
- e. Take independent actions regarding diagnosis, treatment or prescriptions.
- f. Visit nursing homes or make house calls without the presence of the licensed podiatrist.
- g. Bill for any services.

645—223.5(149) Prescribing opioids. Podiatrists will review a patient's information contained in the prescription monitoring program database for each opioid prescription prior to prescribing, unless the patient is receiving inpatient hospice care or long-term residential facility care.

These rules are intended to implement Iowa Code chapters 139A, 149 and 514F.

ARC 7179C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rulemaking related to discipline for podiatrists, orthotists, prosthetists, and pedorthists and providing an opportunity for public comment

The Board of Podiatry hereby proposes to rescind Chapter 224, "Discipline for Podiatrists, Orthotists, Prosthetists, and Pedorthists," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 148F, 149 and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148F, 149 and 272C.

Purpose and Summary

This proposed rulemaking provides protection to Iowans because it publicly defines disciplinary options when a podiatrist, orthotist, pedorthist, or prosthetist fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board and are therefore excluded from the general disciplinary chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.4401
Email: tony.alden@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024
10 to 10:20 a.m.

6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
meet.google.com/jji-jaoj-uqy
Or dial: 1.402.921.2210
PIN: 744 558 427#

January 31, 2024
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Via video/conference call:
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Or dial: 1.402.921.2210
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Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 224 and adopt the following new chapter in lieu thereof:

CHAPTER 224

DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—224.1(148F,149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

224.1(1) Prescribing opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent prescribing practitioner engaged in the same practice.

224.1(2) Reserved.

645—224.2(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that the licensee is guilty of any of the following acts or offenses:

224.2(1) Self-prescribing or self-dispensing controlled substances.

224.2(2) Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

a. Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

b. Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

224.2(3) Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

These rules are intended to implement Iowa Code chapters 147, 148F, 149, and 272C.

ARC 7180C

PROFESSIONAL LICENSURE DIVISION[645]**Notice of Intended Action****Proposing rulemaking related to continuing education for orthotists, prosthetists, and pedorthists and providing an opportunity for public comment**

The Board of Podiatry hereby proposes to rescind Chapter 225, "Continuing Education for Orthotists, Prosthetists, and Pedorthists," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A, 147, 148F and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 148F and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Purpose and Summary

These proposed rules set forth continuing education requirements for orthotists, prosthetists, and pedorthists. The rules include definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that orthotists, prosthetists, and pedorthists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Tony Alden
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
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Email: tony.alden@dia.iowa.gov

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Public hearings at which persons may present their views orally or in writing will be held as follows:

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Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225

CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—225.1(148F) Definitions.

“ABC” means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

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

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

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

“Board” means the board of podiatry.

“BOC” means the Board of Certification/Accreditation, International.

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

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

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period.

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“License” means license to practice.

“Licensee” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

645—225.2(148F,272C) Continuing education requirements.

225.2(1) The biennial continuing education compliance period extends for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

a. Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

b. Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

c. Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

225.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

a. The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

b. The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

c. The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

225.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

225.2(4) No hours of continuing education will be carried over into the next biennium.

225.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—225.3(148F,272C) Standards.

225.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of that said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, and presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

225.3(2) *Specific criteria for licensees.*

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses that relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs that meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee will receive five hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

4. The program meets all the criteria specified in this rule.
- (4) Participating in home study courses that have a certificate of completion and a postcourse test.
- (5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.
- (6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.
- (7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

645—225.4(148F,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist will be accepted in lieu of individual certificates of completion for an audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2023 by each taxpayer to determine the tax due for each taxpayer in the 2024-2025 fiscal year.

2023 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00005016
3201	Algona Municipal Utilities	0.00025144
3205	Alta Municipal Power Plant	0.00008290
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000094
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00010389
3209	Atlantic Municipal Utilities	0.00015621
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00007365
3211	Bancroft Municipal Utilities	0.00090449
3213	Bellevue Municipal Utilities	0.00007880
3228	Bigelow Municipal Electric Utility	0.00034167
3229	Bloomfield Municipal Electric Utility	0.00003607
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00132929
3216	Buffalo Municipal Electric System	0.00000225

REVENUE DEPARTMENT[701]

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3217	Burt Municipal Electric Utility	0.00000203
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00139918
3221	Cedar Falls Municipal Elec. Utility	0.00030357
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000764
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00007414
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004374
3237	Coon Rapids Municipal Utilities	0.00052157
3242	Corning Municipal Utilities	0.00031761
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001027
3245	Denver Municipal Electric Utility	0.00005928
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00137177
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00033407
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000214
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028010
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000542
3095	Greenfield Municipal Utilities	0.00106593
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873

REVENUE DEPARTMENT[701]

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3263	Harlan Municipal Utilities	0.00139596
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00006822
3267	Hopkinton Municipal Utilities	0.00000717
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000742
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00140260
3276	LaPorte City Utilities	0.00000998
3277	Laurens Municipal Utilities	0.00029015
3109	Lenox Mun. Light & Power	0.00054456
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00011607
3112	Manning Municipal Electric	0.00025217
3284	Mapleton Municipal Utilities	0.00008732
3285	Maquoketa Municipal Electric	0.00004721
3288	McGregor Municipal Utilities	0.00000695
3291	Milford Municipal Utilities	0.00018034
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00009555
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00009487
3298	New London Municipal Utility	0.00052973
3304	Ogden Municipal Utilities	0.00006019
3234	Onawa Municipal Utilities	0.00009815
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3307	Osage Municipal Utilities	0.00004946
3309	Panora Municipal Electric Utility	0.00006300
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00001643
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000

REVENUE DEPARTMENT[701]

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3318	Rock Rapids Municipal Utilities	0.00000479
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light Plant	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000087
3323	Southern Minnesota Mun. Power	0.00000000
3324	Spencer Municipal Utilities	0.00012945
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00027766
3327	Story City Municipal Electric Utility	0.00010916
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00121418
3328	Sumner Municipal Light Plant	0.00020357
3330	Tipton Municipal Utilities	0.00143611
3332	Traer Municipal Utilities	0.00057746
3337	Villisca Municipal Power Plant	0.00022186
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3338	Waverly Light & Power	0.00072786
3342	Webster City Municipal Utilities	0.00042187
3345	West Bend Municipal Power Plant	0.00082391
3346	West Liberty Municipal Electric Util.	0.00000626
3347	West Point Municipal Utility System	0.00012777
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00133211
3142	Woodbine Municipal Utilities	0.00000000

REVENUE DEPARTMENT[701]

CO. #	IOUs — ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00065694
7248	Eldridge Electric & Water Utilities	0.00054889
7354	Geneseo Municipal Utilities	0.00000000
7270	IES Utilities	0.00237888
7272	Interstate Power	0.00103630
7289	MidAmerican Energy	0.00242614
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Corporation	0.00000000
7305	Omaha Public Power District	0.00123835
7334	Union Electric	0.00000000

CO. #	RECs	DELIVERY TAX RATE
4319	Access Energy Coop	0.00047950
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00085628
4214	Boone Valley Electric Coop	0.00085075
4218	Butler County REC	0.00065438
4219	Calhoun County Electric Coop	0.00109354
4220	Cass Electric Coop	0.00004596
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00102029
4235	Clarke Electric Coop	0.00234795
4287	Consumers Energy	0.00116672
4240	Corn Belt Power Coop	0.00000000
4246	East-Central Iowa REC	0.00193233
4247	Eastern Iowa Light & Power	0.00068026
4250	Farmers Electric Coop - Greenfield	0.00258206
4249	Farmers Electric Coop - Kalona	0.00047680
4251	Federated Rural Electric	0.00032814
4253	Franklin Rural Electric Coop	0.00081291
4254	Freeborn-Mower Cooperative	0.00215769
4255	Glidden Rural Electric Coop	0.00072443
4259	Grundy County REC	0.00053059
4260	Grundy Electric Cooperative	0.00052083
4261	Guthrie County REC	0.00121604
4262	Hancock Co. REC	0.00097751
4265	Harrison County REC	0.00059147
4266	Hawkeye REC	0.00051726
4223	Heartland Power Coop	0.00033885
4268	Humboldt County REC	0.00096090
4273	Iowa Lakes Electric Coop	0.00068661
4279	Linn County REC	0.00133993

REVENUE DEPARTMENT[701]

CO. #	RECs	DELIVERY TAX RATE
4280	Lyon Rural Electric Coop	0.00051847
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00094536
4299	Nishnabotna Valley REC	0.00059726
4300	North West Rural Electric Coop	0.00034671
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00034141
4310	Pella Cooperative Electric	0.00182080
4313	Pleasant Hill Community Line	0.00022723
4316	Rideta Electric Coop	0.00263826
4320	Sac County Rural Electric Coop	0.00064621
4322	Southern Iowa Electric Coop	0.00134566
4379	Southwest Iowa Service Coop	0.00284449
4329	T.I.P. Rural Electric Coop	0.00203782
4333	Tri-County Electric Coop	0.00081969
4336	United Electric Coop	0.00123613
4348	Western Iowa Power Coop	0.00108160
4352	Woodbury County REC	0.00104762
4353	Wright County REC	0.00040495

2023 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00673745
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00003655
5241	Corning Municipal Gas	0.00000765
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000

REVENUE DEPARTMENT[701]

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5275	Lamoni Municipal Gas	0.00079773
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00390071
5283	Manning Municipal Gas	0.00011037
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00002201
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00011148
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00019619
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00002771
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00079637
5066	Woodbine Gas	0.00000000

CO. #	IOUs — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02238996
5270	IES Utilities-Gas	0.00677129
5272	Interstate Power-Gas	0.00250175
5289	MidAmerican Energy-Gas	0.00641133
5312	Peoples Natural Gas	0.00640722
5335	United Cities Gas	0.00501690

REVENUE DEPARTMENT[701]

2023 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	*
3201	Algona Municipal Utilities	*
3205	Alta Municipal Power Plant	0.00296268
3069	Alta Vista Municipal Utilities	*
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	*
3071	Anita Municipal Utilities	0.00407881
3227	Anthon Municipal Electric Utility	0.00000000
3209	Atlantic Municipal Utilities	0.00228304
3073	Auburn Municipal Utility	0.00631174
3074	Aurelia Municipal Electric Utility	*
3211	Bancroft Municipal Utilities	*
3213	Bellevue Municipal Utilities	0.02337958
3228	Bigelow Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	0.02401383
3075	Breda Municipal Electric System	*
3076	Brooklyn Municipal Utilities	*
3216	Buffalo Municipal Electric System	0.00000000
3217	Burt Municipal Electric Utility	*
3077	Callender Electric	*
3078	Carlisle Municipal Utilities	*
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Mun. Electric Utility	0.00632766
3068	City of Afton	0.00086277
3072	City of Aplington	0.00468028
3082	City of Dike	*
3088	City of Estherville	0.02065437
3089	City of Fairbank	*
3090	City of Farnhamville	*
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	*
3113	City of Marathon	*
3311	City of Pella	0.00402531
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	*
3236	Coggon Municipal Light Plant	0.00000000
3237	Coon Rapids Municipal Utilities	0.00526593
3242	Corning Municipal Utilities	*

REVENUE DEPARTMENT[701]

CO. #	COMPANY	REPLACEMENT TAX RATE
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	*
3081	Dayton Light & Power	*
3244	Denison Municipal Utilities	0.00184867
3245	Denver Municipal Electric Utility	*
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.02122672
3085	Earlville Municipal Utilities	*
3086	Eldridge Electric & Water Utility	*
3087	Ellsworth Municipal Utilities	0.00145500
3091	Fonda Municipal Electric	*
3252	Fontanelle Municipal Utilities	0.00000000
3092	Forest City Municipal Utilities	*
3231	Glidden Municipal Electric Utility	0.00718643
3093	Gowrie Municipal Utilities	*
3256	Graettinger Municipal Light Plant	0.47716932
3094	Grafton Municipal Utilities	0.02031205
3258	Grand Junction Municipal Utilities	0.00259203
3095	Greenfield Municipal Utilities	0.00270029
3096	Grundy Center Light & Power	0.01337871
3232	Guttenberg Municipal Electric	0.01045000
3263	Harlan Municipal Utilities	*
3097	Hartley Municipal Utilities	0.02419638
3098	Hawarden Municipal Utility	*
3099	Hinton Municipal Electric/Water	*
3267	Hopkinton Municipal Utilities	*
3100	Hudson Municipal Utilities	*
3101	Independence Light & Power	0.00206666
3271	Indianola Municipal Utilities	0.00643343
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	0.00764834
3105	Lake Park Municipal Utilities	0.00415465
3233	Lake View Municipal Utilities	*
3274	Lamoni Municipal Utilities	0.00262313
3276	LaPorte City Utilities	0.00232608
3277	Laurens Municipal Utilities	0.00334015
3109	Lenox Municipal Light & Power	0.00000000
3110	Livermore Municipal Utilities	0.00372507
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	*
3112	Manning Municipal Electric	*
3284	Mapleton Municipal Utilities	0.00415412
3285	Maquoketa Municipal Electric	0.00234077

REVENUE DEPARTMENT[701]

CO. #	COMPANY	REPLACEMENT TAX RATE
3288	McGregor Municipal Utilities	*
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	0.00095711
3115	Mount Pleasant Municipal Utilities	0.00138434
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	*
3297	New Hampton Municipal Light Plant	0.00323641
3298	New London Municipal Utility	0.00450729
3304	Ogden Municipal Utilities	0.00269968
3234	Onawa Municipal Utilities	0.00459177
3117	Orange City Municipal Utilities	*
3118	Orient Municipal Utilities	*
3307	Osage Municipal Utilities	0.00278843
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	*
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00487988
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00000000
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	*
3318	Rock Rapids Municipal Utilities	0.00397214
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	*
3128	Sanborn Municipal Light Plant	*
3130	Shelby Municipal Utilities	*
3131	Sibley Municipal Utilities	0.00104697
3321	Sioux Center Municipal Utilities	0.00397007
3324	Spencer Municipal Utilities	0.00444141
3132	Stanhope Municipal Utilities	*
3360	Stanton Municipal Utilities	0.00405017
3326	State Center Municipal Light Plant	0.00461200
3327	Story City Municipal Electric Utility	0.00000000
3134	Stratford Municipal Utilities	0.00321910
3135	Strawberry Point Electric Utility	*
3136	Stuart Municipal Utilities	*
3328	Sumner Municipal Light Plant	0.00244201
3330	Tipton Municipal Utilities	*
3332	Traer Municipal Utilities	0.00829233
3337	Villisca Municipal Power Plant	0.00000000
3137	Vinton Municipal Utilities	*
3138	Wall Lake Municipal Utilities	*
3338	Waverly Light & Power	0.00542513
3342	Webster City Municipal Utilities	*

REVENUE DEPARTMENT[701]

CO. #	COMPANY	REPLACEMENT TAX RATE
3345	West Bend Municipal Power Plant	0.00214353
3346	West Liberty Municipal Electric Util.	*
3347	West Point Municipal Utility System	*
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	*
3142	Woodbine Municipal Utilities	0.00310720
3143	Woolstock Municipal Utilities	*

*No rate provided to the Department by the Municipal

2023 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5401	Alton Municipal Gas	0.00223829
5021	Bedford Municipal Gas	0.70873565
5215	Brighton Gas	*
5023	Brooklyn Municipal Gas	*
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	*
5022	City of Bloomfield	0.00027008
5026	City of Clearfield	*
5028	City of Everly	*
5029	City of Fairbank	*
5238	Coon Rapids Municipal Gas	0.00241396
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	*
5030	Gilmore City Municipal Gas	*
5031	Graettinger Municipal Gas	0.00232071
5032	Guthrie Center Municipal Gas	*
5033	Harlan Municipal Gas	*
5034	Hartley Municipal Gas	0.08212752
5035	Hawarden Municipal Gas	*
5036	Lake Park Municipal Gas	0.00696322
5275	Lamoni Municipal Gas	0.02281350
5037	Lenox Municipal Gas	*
5038	Lineville City Natural Gas	*
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	*
5283	Manning Municipal Gas	*
5402	Mapleton Municipal Gas	0.00000000
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	*
5042	Moulton Municipal Gas	*
5369	Orange City Municipal Gas	*

REVENUE DEPARTMENT[701](cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
5306	Osage Municipal Gas	0.00485962
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	*
5055	Remsen Municipal Gas	*
5317	Rock Rapids Municipal Gas	0.00996208
5056	Rolfe Municipal Gas	*
5057	Sabula Municipal Gas	*
5058	Sac City Municipal Gas	*
5059	Sanborn Municipal Gas	*
5060	Sioux Center Municipal Gas	0.00932838
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	*
5063	Waukee Municipal Gas	*
5340	Wayland Municipal Gas	0.02968585
5064	Wellman Municipal Gas	*
5344	West Bend Municipal Gas	0.03873805
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	0.00000000
5066	Woodbine Gas	*

*No rate provided to the Department by the Municipal

Notice of Rate-Regulated Water Utilities Delivery Tax Rate

Pursuant to the authority of Iowa Code section 437B.3, the Director of Revenue hereby gives notice of the rate-regulated water utility delivery tax rate. This rate will be used in conjunction with the total gallons of water delivered to consumers in calendar year 2023 by each taxpayer to determine replacement taxes payable in the 2024-2025 fiscal year.

2023 RATE-REGULATED WATER UTILITIES DELIVERY TAX RATE BY SERVICE AREA

CO. #	RATE-REGULATED WATER	DELIVERY TAX RATE
6020	Iowa American Water	0.00057387

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to collection of tax debt and debt owed to other state agencies and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 20, "Filing and Extension of Tax Liens and Charging Off Uncollectible Tax Accounts," and adopt a new Chapter 20 with the same title; rescind Chapter 21, "Federal Offset for Iowa Income Tax Obligations," and adopt a new Chapter 21 with the same title; rescind Chapter 22, "Collection of Debts Owed the State of Iowa or a State Agency," and adopt a new Chapter 22 with the same title; rescind Chapter 23, "Debt Collection and Selling of Property to Collect Delinquent Debts," and adopt a new Chapter 23 with the same title; rescind Chapter 24, "License

REVENUE DEPARTMENT[701](cont'd)

Sanctions for Collection of Debts Owed the State of Iowa or a State Agency,” and adopt a new Chapter 24 with the same title; rescind Chapter 25, “Challenges to Administrative Levies and Publication of Names of Debtors,” and adopt a new Chapter 25, “Challenges to Administrative Levies”; and adopt Chapter 27, “Subpoena of Records from Utility Companies and Publication of Names of Debtors,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 272D and 453B and section 421.17.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 626 and 642 and sections 272D.2, 272D.5 to 272D.7, 272D.9, 421.17, 421.17A, 422.20, 422.26 and 422.72.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt several chapters related to the collection of tax debt and debt owed to other state agencies and to adopt one new chapter on related topics. The proposed chapters were revised to remove unnecessary or obsolete language and language that is duplicative of statute and to clarify readopted rules.

Chapter 20 provides practices and procedures the Department will follow in filing liens on property to establish a priority interest in assets of the taxpayer for unpaid debt. Chapter 21 provides when and how the Department may offset a taxpayer’s federal refund via the Treasury Offset Program to satisfy state income tax obligations. Chapter 22 contains requirements for other state agencies and local government entities to place their debt with the Department for collection. Chapter 23 contains a rule implementing the Department’s authority to seize and sell property to collect tax debt and other delinquent liabilities collected by or owed to the State of Iowa. Chapter 24 provides requirements of the Department for sanctioning a professional or other license and the procedure for challenging. Chapter 25 contains the procedure for a debtor to challenge a wage or bank levy issued by the Department. Chapter 27 is a newly created chapter that contains rules on the subpoena of utility companies and the Director’s power to release the names of debtors. The rules in this newly created chapter were previously located in other chapters, but were moved to Chapter 27 for more intuitive organization.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
FILING AND EXTENSION OF TAX LIENS
AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

701—20.1(422,423) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

“*Assessment issued*” means the same as defined in Iowa Code section 422.26(10).

“*Charge off*” means moving an unpaid account to inactive status. “Charge off” does not mean the account is deleted from the department’s records or that the account is not due and owed. Charge off does not prevent the department from recovering all or part of the account through actions including but not limited to bankruptcy, probate, or setoff or through voluntary payment.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the department or the director’s authorized representative.

“*Lien*” means the legal right or interest against personal or real property provided by Iowa Code section 422.26 or other Iowa Code sections making reference to Iowa Code section 422.26.

“*Recorder*” means the county recorder of any county in the state of Iowa.

“*Taxes*” means all taxes or charges administered by the department and any tax or charge to which Iowa Code section 422.26 applies.

REVENUE DEPARTMENT[701](cont'd)

701—20.2(422,423) Place of filing.

20.2(1) A notice of lien may be filed in the office of the recorder in any county.

20.2(2) The director may charge off any account before the lien has lapsed if the taxpayer meets one or more of the following criteria:

a. The taxpayer is deceased, and there are no assets in the estate or there are no assets available for the payment of taxes under Iowa Code section 633.425.

b. The taxpayer is a corporation that has dissolved or ceased to exist with no assets remaining.

c. The taxpayer is retired because of age or total disability (as described in rule 701—104.12(425)) with income and assets such that it would cause the taxpayer undue financial hardship if the department enforced collection of past due taxes. The director may require other evidence to determine when collection of tax would be a hardship on a taxpayer.

d. The taxpayer has unpaid tax amounting to less than \$50.

e. The taxpayer cannot be found, after diligent inquiry, and has no property upon which the lien can attach.

f. The taxpayer is insolvent with no property, real or personal, upon which the lien can attach.

These rules are intended to implement Iowa Code section 422.26.

ITEM 2. Rescind 701—Chapter 21 and adopt the following new chapter in lieu thereof:

CHAPTER 21

FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

701—21.1(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

“Assessment” means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

“Department,” “state of Iowa,” “Iowa” or “the state” means the Iowa department of revenue.

“Director” means the director of the Iowa department of revenue or the director’s authorized representative.

“Overpayment” means a federal tax refund due and owing to a person or persons.

“Past due legally enforceable Iowa income tax obligation” means a debt defined in 26 U.S.C. 6402(e)(5).

“Resident of Iowa” means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person’s federal return for the tax period of overpayment.

“Secretary” means the Secretary of the Treasury for the federal government.

“State income tax obligation” or “Iowa income tax obligation” is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue or determined to be a “state income tax” under Iowa law. Such taxes may include but are not limited to individual income tax, income surtax, fiduciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

“Tax refund offset” means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This chapter only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

“Tax refund payment” means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer’s overpayment to the taxpayer’s past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 301.6402-3(a)(6).

REVENUE DEPARTMENT[701](cont'd)

701—21.2(421,26USC6402) Prerequisites for requesting a federal offset. The following requirements must be met before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

21.2(1) The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

21.2(2) Pre-offset notice. At least 60 days prior to requesting the offset of a taxpayer's federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail, return receipt requested, to the person owing the Iowa income tax liability. This notice must include information as required by 26 U.S.C. 6402 and 31 CFR 285.8.

21.2(3) The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

21.2(4) Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new assessment. However, a new pre-offset notice is not required if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

21.2(5) Before offset of the federal refund can be requested by the state of Iowa, the person's Iowa income tax liability must be at least \$25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

21.2(6) Only residents of Iowa are subject to offsets under these rules.

701—21.3(421,26USC6402) Submission of evidence. A taxpayer may challenge the offset by submitting evidence that all or part of the debt is not past due or not legally enforceable. The challenge must be postmarked or received within 60 days of the date of the pre-offset notice in the manner described in the pre-offset notice.

701—21.4(421,26USC6402) Procedure after submission of evidence. Following timely receipt of evidence by the department from the taxpayer, the department will notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer's record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer of the decision.

The challenge of an offset under these rules is subject to judicial review under Iowa Code section 17A.19 as other agency action.

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member's reservation and derives all of that member's income from that reservation, the taxpayer may refer to 31 CFR 285.8(c)(3)(ii) for additional information.

These rules are intended to implement Iowa Code chapter 421 and 26 U.S.C. 6402(e) et seq.

ITEM 3. Rescind 701—Chapter 22 and adopt the following new chapter in lieu thereof:

CHAPTER 22
COLLECTION OF DEBTS OWED THE STATE
OF IOWA OR A STATE AGENCY

701—22.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

“*Centralized collections unit*” means the unit within the department charged with collecting debt for the department and other entities pursuant to Iowa Code section 421.17(27) or any other Iowa statute.

REVENUE DEPARTMENT[701](cont'd)

“Debtor” means any person having a delinquent account, charge, fee, loan, or other indebtedness due the state of Iowa or any state agency.

“Department” means the Iowa department of revenue.

“Director” means the director of revenue or the director’s authorized representative.

“Liability” or *“debt”* means any liquidated sum due and owing to the state of Iowa or any state agency that has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

“Person” or *“entity”* means individual, corporation, business trust, estate, trust, partnership or association, limited liability company, or any other legal entity, but does not include a state agency.

“State agency” or *“agency”* includes but is not limited to entities listed in Iowa Code section 421.17(27)“a.”

701—22.2(421) Participation guidelines. The department may collect on behalf of a public agency at the department’s sole discretion. The department may require that a public agency enter into an agreement for collection with the department prior to collecting for the public agency. Agreements will be signed by the director or another staff member of the department designated by the director.

701—22.3(421) Duties of the agency. A public agency seeking the use of the centralized collections unit shall have the following duties regarding the department and debtors.

22.3(1) Notification to the department. The public agency must provide a list of debtors to the department of revenue. This list must be in a format and type prescribed by the department and include information relevant to the identification of the debtor and the source and amount of the debt. The public agency shall terminate all collection activities once notification is given to the department.

22.3(2) Change in status of debt. A public agency that has provided liability information to the department of revenue must notify the department immediately of any change in the status of a debt. This notification shall be made no later than ten calendar days from the occurrence of the change. Change in status may come from payment of the debt or liability, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

These rules are intended to implement Iowa Code sections 421.17, 422.20, and 422.72.

ITEM 4. Rescind 701—Chapter 23 and adopt the following new chapter in lieu thereof:

CHAPTER 23
DEBT COLLECTION AND SELLING OF PROPERTY
TO COLLECT DELINQUENT DEBTS

701—23.1(421,422,626,642) Definitions.

“Delinquent debtor” means an individual, corporation, limited liability company, business trust, estate, trust, partnership, or any other legal entity that owes a delinquent liability, or unpaid taxes to the state or a liability that is collectible by the state.

“Department” means the Iowa department of revenue.

“Director” means the director of revenue or the director’s authorized representative.

“Property” means any property, including but not limited to real property, tangible property, and intangible property. “Property” includes but is not limited to a homestead.

“State” means the state of Iowa.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

701—23.2(421,422,626,642) Sale of property. Property may be seized and sold to satisfy unpaid taxes, delinquent liabilities owed to the state, and liabilities collected by the state. A homestead may be sold to satisfy delinquent taxes collected under Iowa Code section 422.26 and any other similar section.

REVENUE DEPARTMENT[701](cont'd)

However, a homestead may not be sold for collection of any other liability owed to or collected by the state other than taxes unless specifically authorized by statute.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

ITEM 5. Rescind 701—Chapter 24 and adopt the following new chapter in lieu thereof:

CHAPTER 24

LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED THE STATE OF IOWA OR
A STATE AGENCY

701—24.1(272D) Definitions. For purposes of this chapter, the following terms shall have the same definitions as Iowa Code section 272D.1:

1. Certificate of noncompliance.
2. Liability.
3. License.
4. Licensee.
5. Licensing authority.
6. Obligor.
7. Person.
8. Unit.
9. Withdrawal of a certificate of noncompliance.

701—24.2(272D) Notice to person of potential sanction of license. Before issuing a certificate of noncompliance, the unit must send a notice to a person in accordance with Iowa Code section 272D.3.

701—24.3(272D) Challenges. A person may challenge the unit's issuance of a certificate of noncompliance by requesting a conference. Upon receiving a timely written request for a conference, the unit shall grant the person a stay of the issuance of a certificate of noncompliance. The stay shall remain in effect pending the decision of the unit under Iowa Code section 272D.6(1).

24.3(1) Conference. The person may request a conference with the unit to challenge the unit's issuance of a certificate of noncompliance following the mailing of the notice of potential license sanction or at any time after a licensing authority serves notice of suspension, revocation, denial of issuance, or nonrenewal of a license. The request for a conference shall be made in writing to the unit. If the conference is requested pursuant to and after the unit's mailing of a notice of potential license sanction under rule 701—24.2(272D), the request must be received by the unit within 20 days following the mailing or service of that notice.

24.3(2) Notification. The unit shall notify the person of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following the unit's issuance of the notice of the conference. If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance.

24.3(3) Location. The conference will be conducted by telephone unless otherwise indicated in the written notification by the department.

701—24.4(272D) Issuance of certificate of noncompliance.

24.4(1) If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance. If the person does not timely request a conference or pay the amount of liability owed within 20 days of the date the notice was postmarked, the unit shall issue a certificate of noncompliance.

24.4(2) However, the unit will not issue a certificate of noncompliance if:

- a. The unit finds a mistake in the identity of the person;
- b. The unit finds a mistake in determining the amount of the liability;
- c. The unit determines the amount of the liability is less than \$1,000;
- d. The obligor pays the amount due or enters into an acceptable payment plan;

REVENUE DEPARTMENT[701](cont'd)

- e.* The obligor is in bankruptcy; or
- f.* The unit finds additional time is required for the person to comply.

701—24.5(272D) Written agreements. The obligor and the unit may enter into a written agreement for payment of the liability owed pursuant to Iowa Code section 272D.5.

701—24.6(272D) Decision of the unit.

24.6(1) If the unit mails a notice to a person and the person requests a conference, the unit shall issue a written decision if any of the conditions in Iowa Code section 272D.6(1) exist.

24.6(2) Mailing of decision. The unit shall send a copy of the written decision as described in Iowa Code section 272D.6(2).

701—24.7(272D) Certificate of noncompliance to licensing authority.

24.7(1) The unit shall issue a certificate of noncompliance to any appropriate licensing authority as required by Iowa Code section 272D.7.

24.7(2) The suspension, revocation, or denial shall be effective no sooner than 30 days following the date of notice to the person.

701—24.8(272D) Requirements of the licensing authority. Licensing authorities shall observe the requirements and procedures of Iowa Code section 272D.8.

701—24.9(272D) District court hearing. A person may file an application for review of the decision by the unit or following issuance of notice by the licensing authority with the district court as described in Iowa Code section 272D.9. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A, and any resulting court hearing shall be an original hearing before the district court.

These rules are intended to implement Iowa Code sections 272D.2, 272D.5, and 272D.9.

ITEM 6. Rescind 701—Chapter 25 and adopt the following new chapter in lieu thereof:

CHAPTER 25
CHALLENGES TO ADMINISTRATIVE LEVIES

701—25.1(421) Challenges to administrative levies. A challenge to an administrative levy can only be made by an obligor or an account holder of interest. A challenge to an administrative levy will be reviewed by the centralized collections unit of the department. This review is not subject to the provisions of Iowa Code chapter 17A. An account holder of interest means a person named on the account.

701—25.2(421) Form and time of challenge. The obligor or an account holder of interest must submit a written challenge to an administrative levy within ten days of the date of the notice. Challenges must be submitted to the department in the manner described on the notice furnished by the department to the obligor or account holder of interest.

701—25.3(421) Issues that may be raised. The issues raised by the challenging party, which are limited to a mistake of fact, may include but are not limited to:

1. The challenging party has the same name as the obligor but is not the obligor.
2. The challenging party does not have an interest in the account that is being seized.
3. The amount listed in the notice to the obligor is greater than the amount actually owed.

These rules are intended to implement Iowa Code sections 421.17 and 421.17A.

REVENUE DEPARTMENT[701](cont'd)

ITEM 7. Adopt the following **new** 701—Chapter 27:

CHAPTER 27
SUBPOENA OF RECORDS FROM UTILITY COMPANIES
AND PUBLICATION OF NAMES OF DEBTORS

701—27.1(421) Subpoena of records from public or private utility company. The director may subpoena records of a public or private utility company to the extent permitted by Iowa Code section 421.17(32).

27.1(1) Definitions.

“*Reasonable efforts*,” for purposes of Iowa Code section 421.17(32), will be considered complete when the department has attempted to reach the individual using the individual’s last-known address as determined pursuant to subrule 7.33(2).

“*Utility*” means the same as “public or private utility company” as defined in Iowa Code section 421.17(32) “f.”

27.1(2) Procedure for issuing a subpoena; data transfer.

a. The department shall submit the subpoena to the utility’s designated recipient on or before the date a secure data file is submitted for processing. The subpoena will include the director’s authority to make the request, the name of the file submitted for processing, the information to be provided for each individual, the expected response date, and the department’s contact information. The subpoena must be signed by the director. The data file provided to the utility by the department will include social security numbers, names, and last-known addresses in the mutually agreed-upon format.

b. Within 30 days of receiving the department’s data file, the utility will process and return the data file to the department.

27.1(3) Confidentiality. The utility must keep confidential all records received from the department. After the department has received the requested information from the utility, the utility must delete the data files the utility received in a secure manner. The department must keep confidential all records received from the utility in compliance with all applicable state and federal laws regarding individual privacy and the privacy rights of public and private utility companies.

This rule is intended to implement Iowa Code sections 421.17(32), 422.20, and 422.72.

701—27.2(421) List for publication.

27.2(1) The director may compile and make available for publication a list of names, with last-known addresses and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in Iowa Code section 421.17(27) and 421.17(34). The director may determine when to compile the list.

27.2(2) Names selected for release for publication shall be based on the records of the centralized collections unit. The director will not include the names of persons who owe less than \$100 or the threshold amounts determined by the director. The threshold amounts may vary by the debt types being collected by the centralized collections unit. The director may withhold names from publication if, in the director’s opinion, publication would not assist in the collection of the debt.

27.2(3) The director will not release for publication names of persons who have entered into a payment agreement with the centralized collections unit to pay the outstanding debt and are current in liquidating the debt based on the payment agreement. Upon entering a payment agreement with the centralized collections unit, the name of the party will be removed from publication within 60 days if the person is current in paying on the payment plan. This rule does not prevent the department from disclosing information under a provision of law other than Iowa Code section 421.17(27) “i.”

701—27.3(421) Release of information. The director may release the information, as the director deems necessary, as follows:

REVENUE DEPARTMENT[701](cont'd)

1. The director may issue an announcement describing the manner in which a copy of the list of names for publication may be obtained. The director will make the list available in an electronic medium of the director's choice.

2. The director may release to credit reporting agencies the names selected for release for publication upon request. The names are to be released in the same electronic medium as the names are released for publication.

These rules are intended to implement Iowa Code section 421.17.

ARC 7144C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to definitions
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 200, "Definitions," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3, 423.6 and 423.45.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 200, which consists solely of rule 701—200.1(423) and provides definitions that apply across other sales tax rules chapters. These terms are used throughout other Iowa Administrative Code chapters, but are not defined in statute. The Department proposes revisions to the rule to remove portions of the rule that the Department determined are unnecessary and duplicative of statutory language.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

REVENUE DEPARTMENT[701](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 200 and adopt the following **new** chapter in lieu thereof:

TITLE III
SALES, USE, AND EXCISE TAX
CHAPTER 200
DEFINITIONS

701—200.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

“*Agricultural production*” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the

REVENUE DEPARTMENT[701](cont'd)

raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. "Agricultural production" also includes any kind of aquaculture, silviculture, commercial greenhouses, and raising catfish. Beekeeping and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term "agricultural production." The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive. "Agricultural products" includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

"Aquaculture" means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

"Chemical" means a substance that is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

"Domesticated fowl" means any domesticated bird raised as a source of food, either eggs or meat. "Domesticated fowl" includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus that are raised for meat rather than for racing or as pets. Excluded from the meaning of "domesticated fowl" are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

"Livestock" means domestic animals that are raised on a farm as a source of food or clothing. "Livestock" includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. "Farm deer" means the same as defined in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, "farm deer" does not include unmarked free-ranging elk. Fish and any other animals that are products of aquaculture are considered to be "livestock" as well.

Excluded from the term "livestock" are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term "livestock" are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from "livestock" is any animal raised for racing.

"Plants" means fungi such as mushrooms and crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term "plants" are flowers, shrubs, and fruit trees. Excluded from the meaning of the term "plants" are products of silviculture, such as trees raised for Christmas trees and any trees raised to be harvested for wood.

"Reagent" means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purposes of the exemption, a substance must be primarily used as a reagent.

"Silviculture" means the establishment, growth, care, and cultivation of trees. "Silvicultural activities" includes logging. "Silvicultural products" includes trees raised and offered for sale for Christmas trees and any trees raised to be harvested for wood.

"Solvent" means a substance in which another substance can be dissolved and that is primarily used for that purpose.

"Sorbent" means a solid material, often in a powder or granular form, that acts to retain another substance, usually on the sorbent's surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

"Tax" means the tax imposed upon retail sales or use of tangible personal property, specified digital products, or taxable services.

This rule is intended to implement Iowa Code chapter 423.

ARC 7171C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to sales and use tax permits
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 201, “Sales and Use Tax Permits,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 423.25, 423.36 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 252J.7, 421.17, 423.2, 423.36 and 423.40.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 201 and adopt a new Chapter 201 related to sales and use tax permits. Chapter 201 describes the requirements surrounding sales and use tax permits. The rules in this chapter are intended to help the public understand how to obtain a permit and what is required to obtain one. The citation in subrule 201.2(3) to 701—Chapter 19 refers to a chapter that was recently adopted in a separate rulemaking, **ARC 7101C**.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

REVENUE DEPARTMENT[701](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
SALES AND USE TAX PERMITS

701—201.1(423) Permit required.

201.1(1) *Permit requirement.* A person shall not make taxable sales of tangible property, specified digital products, or services until the person has received a permit from the department.

201.1(2) *Purchases subject to use tax.* A person liable for use tax under Iowa Code section 423.34 is required to file a sales and use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the tax period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected sales or use tax on the purchase.

201.1(3) *Sales subject to use tax.* A remote seller as defined in rule 701—207.1(423) making sales into Iowa or sales of tangible personal property, specified digital products, or taxable services without meeting or exceeding the sales threshold as defined in rule 701—207.1(423) may register for a sales and use tax permit to collect use tax on such sales. The person collecting use tax on these sales shall report these sales as sales subject to use tax on the sales and use tax return. Rule 701—207.6(423) contains additional information about sales tax collection obligations for out-of-state persons.

201.1(4) *Infrequent purchases.* A person who does not regularly make purchases subject to use tax but needs to remit tax may use the Iowa non-permit use tax return available via GovConnectIowa or by other means as prescribed by the department. If a person owes less than \$1,200 per year in use tax, the person does not need to obtain a permit and may file the Iowa non-permit use tax return.

This rule is intended to implement Iowa Code section 423.36.

701—201.2(423) Application for permit.

201.2(1) *Permit application.*

REVENUE DEPARTMENT[701](cont'd)

a. An application for a sales and use tax permit shall be made via GovConnectIowa or by other means prescribed by the department, and the applicant shall furnish all information requested on such form. An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole proprietorship by an individual, or the trade name and the name of all partners in the case of a partnership. The application shall state the date when the applicant will begin making taxable sales from the location for which the application is made.

b. There is no charge for a sales and use tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property, specified digital products, or services will occur shall be required to hold a permit.

201.2(2) Signatures required.

a. Applications. The application shall be signed by the owner in the case of a sole proprietorship or a single-member LLC, or otherwise by an individual authorized to act on behalf of the business under rule 701—7.6(17A,22,421,422).

b. Electronic applications. For electronically transmitted applications, the signature must comply with rule 701—8.2(17A,421) unless more specified requirements are described on the form.

201.2(3) Retroactive permits and returns for prior periods. A person may indicate on a permit application that the effective date of the permit is in a prior tax period. Returns must be filed for all prior tax periods dating back to the effective date of the permit. Penalty and interest applies pursuant to Iowa Code sections 421.27 and 423.40. Submission of a retroactive permit application makes a person ineligible for a voluntary disclosure agreement for those prior tax periods and does not prohibit the department from enforcing provisions of Iowa Code section 423.40 if applicable. 701—Chapter 19 contains more information about the voluntary disclosure program.

201.2(4) Address only required for retail sales locations. If a person is subject to sales tax and has physical presence or economic presence and is not making sales exclusively through a marketplace facilitator, the person shall provide a location for its sales and use tax permit.

201.2(5) Seasonal filers. A seasonal business retailer with sales in up to four months during the calendar year may register to file a return and remit tax as a seasonal filer. The retailer will be expected to only file returns for the specific months in which the retailer conducts business as indicated by the retailer upon registration. The retailer will not be expected to file a return or remit tax for the other months of the year. Like any other retailer, the seasonal retailer must still notify the department when it ceases operation permanently; if it does not, it will receive a nonfiler notice from the department.

EXAMPLE: Retailer A plans to start selling Christmas trees annually starting in 2022. Retailer A only plans to sell trees in November and December each year. Retailer A may request to be designated as a seasonal filer such that it only is required to file returns for November and December each year. Retailer A fails to file a sales and use tax return for November 2029. Retailer A will receive a notice from the department even if Retailer A stopped selling trees after 2028.

This rule is intended to implement Iowa Code section 423.36.

701—201.3(423) Retailers selling nontaxable goods and services. Persons regularly engaged in selling tangible personal property or a specified digital product that is exempt from tax, making nontaxable transactions, or performing a service that is not enumerated in Iowa Code section 423.2 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this chapter and Iowa Code section 423.36.

This rule is intended to implement Iowa Code section 423.36.

701—201.4(423) Obtaining a new permit after voluntarily canceling a prior permit. A person who previously held and canceled a permit who wishes to re-engage in business shall apply to the department for a new permit and file any previously unfiled tax returns. Upon receipt of the proper clearance for previous tax returns, a new permit may be issued if the relevant persons described in Iowa Code section 423.36 are not substantially delinquent in paying any tax due that is administered by the department.

This rule is intended to implement Iowa Code section 423.36.

REVENUE DEPARTMENT[701](cont'd)

701—201.5(423) Permit not transferable—sale of business. If a permit is held by a single-member LLC or a sole proprietor, the permit is not transferable. An entity that is not a single-member LLC or a sole proprietorship may, upon the sale of the business, transfer its permit to a new owner that is not a single-member LLC or a sole proprietorship.

This rule is intended to implement Iowa Code section 423.36.

701—201.6(423) Change of location. A business changing its location shall cancel its original permit and apply for a new permit. If a business does not have a stationary location, the business shall report its mailing address as its location.

This rule is intended to implement Iowa Code section 423.36.

701—201.7(423) Change of ownership or business organization.

201.7(1) *Change of business entity.* A retailer changing its business entity shall apply for a new permit under the name of the new entity. This includes but is not limited to such entity changes as proprietorship to partnership, partnership to corporation, or any combination thereof.

201.7(2) *Change of ownership.* A business that changes ownership shall cancel its permit and reapply with the new federal employer identification number (FEIN).

This rule is intended to implement Iowa Code section 423.36.

701—201.8(423) Change of legal or operating name of a business.

201.8(1) *Change to legal name.* A retailer changing its legal name but maintaining its ownership may continue to use its existing sales and use tax permit. The retailer shall notify the department of the change in legal name and shall provide any form of documentation requested by the department proving the change in name before the department will change the legal name for the permit.

201.8(2) *Change to operating name.* A retailer changing its operating, or “doing business as,” name may continue using its existing sales and use tax permit. The retailer shall notify the department of the change in operating name. The department may require any documentation to update the operating name associated with the permit.

This rule is intended to implement Iowa Code section 423.36.

701—201.9(423) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property, specified digital products, or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and non-inventory items. A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust or receivership.

This rule is intended to implement Iowa Code section 423.36.

701—201.10(423) Substantially delinquent tax—denial of permit.

201.10(1) *Substantial delinquency factors.* For purposes of Iowa Code section 423.36, the department will consider the following nonexclusive factors when considering whether an applicant is substantially delinquent in paying a tax such that a permit application will be denied:

1. The amount of tax delinquent.
2. The number of filing periods for which a tax remains due and unpaid.
3. The length of time a tax has been unpaid.
4. The amount of tax, interest, or penalty owed in relation to the applicant’s total financial resources.
5. Additional factors, which may be considered based on the specific facts and circumstances of each application.

REVENUE DEPARTMENT[701](cont'd)

201.10(2) *Child support noncompliance.* The department will deny a permit to any applicant or permittee who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code section 252J.7 and 423.36.

701—201.11(423) Substantially delinquent tax—revocation of permit.

201.11(1) *Substantial delinquency of tax.* The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax that is administered by the department or the interest or penalty on the tax. The department will consider the nonexclusive factors set forth in subrule 201.10(1) to determine whether there is a substantial delinquency.

201.11(2) *Child support noncompliance.* The holder of a revoked permit will not be permitted to obtain a new permit if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not revoke a permit from an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code section 423.36.

701—201.12(423) Obtaining a new permit after revocation.

201.12(1) If a taxpayer's permit is revoked, the taxpayer may apply for a new permit. The new permit application will be granted or denied based on terms and conditions set forth by the department. Terms and conditions include payment of any tax liability that may be due to the department.

201.12(2) Upon revocation of a sales and use tax permit, the taxpayer will be required to pay all delinquent tax liabilities, to file returns, and to refrain from taxable occurrences under Iowa Code section 423.2 prior to the issuance of a new sales tax permit, and the director may require the taxpayer to post a bond.

201.12(3) The director may impose a waiting period during which the person must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 423.40, not to exceed 90 days, to issue a new permit after a revocation. The department may require a sworn affidavit, under penalty of perjury, stating that the person has fulfilled all requirements of said order of revocation and stating the dates on which the person refrained from taxable occurrences.

201.12(4) Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation, unless otherwise noted:

- a. Failure to post a bond as required.
- b. Failure to file a return timely.
- c. Failure to pay tax timely (including dishonored checks, failure to pay, and late payments).
- d. Failure to file a return and pay tax shown on the return timely (counts as two offenses).

201.12(5) The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

- a. Five days for one through five offenses.
- b. Seven days for six through seven offenses.
- c. Ten days for eight through nine offenses.
- d. Thirty days for ten offenses or more.

201.12(6) The administrative law judge or director of revenue may order a waiting period not to exceed:

- a. Forty-five days if the second revocation occurs within 24 months of the first revocation.
- b. Sixty days if the second revocation occurs within 18 months of the first revocation.
- c. Ninety days if the second revocation occurs within 12 months of the first revocation.

REVENUE DEPARTMENT[701](cont'd)

d. Ninety days if the third revocation occurs within 36 months of the second revocation.

201.12(7) A new permit will not be issued following revocation if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code sections 423.2, 423.36, and 423.40.

701—201.13(423) Administrative cancellation of permit. The department may cancel a permit upon verification by the department that the permit is no longer in use.

This rule is intended to implement Iowa Code section 421.17(37).

ARC 7145C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to elements included in and excluded from a taxable sale and sales price and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 203, “Elements Included in and Excluded From a Taxable Sale and Sales Price,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3 and 423.24.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 203. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statutes to help the public understand elements included in and excluded from a taxable sale. These rules reduce uncertainty about what constitutes sales price.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

REVENUE DEPARTMENT[701](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 203 and adopt the following new chapter in lieu thereof:

CHAPTER 203
ELEMENTS INCLUDED IN AND EXCLUDED
FROM A TAXABLE SALE AND SALES PRICE

701—203.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE: The advertised or marked price is \$1. When a sale is made, the purchaser must pay tax in addition to the \$1 sales price or agree to pay \$1.07, which represents the purchase price plus state sales tax of 6 percent plus local option sales tax of 1 percent, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

“This dress—\$10 plus tax” or “This dress—\$10.70 including tax.”

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price “includes tax,” the retailer will be allowed to determine sales price by dividing the total of such retailer’s price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax rate of 6 percent plus a 1 percent local option tax would use a factor of 107 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer’s price or it must be stated on each invoice that tax is included in the retailer’s price. If the invoice states “tax included,” the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer’s price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.

701—203.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer’s price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. More information is contained in rule 701—213.3(423), relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.3(423) Retailers’ discounts, trade discounts, rebates and coupons.

203.3(1) Retailers’ discounts. A retailer’s discount reduces the retailer’s price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer’s price as a debt, the debt being the sales price after the agreed discount has been deducted. The word “discount” means “to buy at a reduction.”

Any discount a retailer allows that reduces a retailer’s price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the retailer’s price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer’s failure to take the action, which allows the discount to be taken.

203.3(2) Rebates. A “rebate” is a return of part of an amount paid for a product. Manufacturers’ rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer’s price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser.

REVENUE DEPARTMENT[701](cont'd)

203.3(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by the retailer that actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 203.3(1).

EXAMPLE 1: Customer C acquires a 30¢ off coupon issued by the manufacturer of A-B Bandages for A-B Bandages. The coupon can be redeemed at a store that sells the product. Customer C goes to Store D and purchases a box of A-B Bandages, which shows a price of \$1.50. C pays \$1.20 plus the 30¢ coupon. Store D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the \$1.50 because Store D's total sales price is \$1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2: Restaurant E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for \$2. The coupon can only be redeemed at Restaurant E's retail store. Customer F acquires the coupon and redeems it at Restaurant E's store. The purchase price for Customer F was \$2 for both hamburgers. The tax is due on the \$2 because this amount is the sales price for Restaurant E, even though the value of the two hamburgers would normally be \$4. In this situation, the sales price for the two hamburgers is \$2.

203.3(4) Trade discounts. A "trade discount" is a discount from a seller's list price that is offered to a class or category of customer, e.g., retailers or wholesalers. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of a manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; more information is contained in subrule 203.3(3).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.4(423) Excise tax included in and excluded from sales price.

203.4(1) An excise tax that is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price that measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity that precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) contains a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document that embodies a record of the sale.

EXAMPLE 1: The federal government imposes an excise tax upon the act of manufacturing certain tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs 203.4(1) "b" and "c" above, it is not excludable because it does not meet the requirements of paragraph 203.4(1) "a." The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2: The federal government imposes an excise tax of 4 percent on a retailer's sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale

REVENUE DEPARTMENT[701](cont'd)

has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser and the tax would not meet the requirements of paragraph 203.4(1) “b” above.

203.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

203.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies, truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.5(423) Trade-ins.**203.5(1) Trade-ins.**

a. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price that is payable in money to the retailer if the conditions in paragraph 203.5(1) “b” are met.

b. The tangible personal property is traded to a retailer, the property traded is the type normally sold in the regular course of the retailer’s business and either subparagraph 203.5(1) “b”(1) or 203.5(1) “b”(2) is true.

(1) The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

(2) The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1: Customer A owns a car valued at \$5,000. Customer A trades a used car to XY Car Dealer for a used car valued at \$12,000. XY Car Dealer normally sells used cars. Use tax would be due on the \$7,000 in money that Customer A paid to XY Car Dealer, as both conditions in paragraph 203.5(1) “b” and subparagraph 203.5(1) “b”(1) have been met.

EXAMPLE 2: John Doe has a pickup truck with a value of \$2,000. John wants a boat, so he offers to trade his \$2,000 pickup to ABC Boat Dealer for the purchase of a boat valued at \$5,000. ABC Boat Dealer is a new and used boat dealer. ABC Boat Dealer agrees to accept the \$2,000 pickup and \$3,000 cash in trade for the boat. In this example, the tax would be computed on \$5,000. The trade-in provision would not apply because the condition in paragraph 203.5(1) “b” has not been met. The property traded is not the type of property normally sold by ABC Boat Dealer in the regular course of the boat dealer’s business.

EXAMPLE 3: ABC Corporation trades 500 bushels of corn and \$500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because the condition in subparagraph 203.5(1) “b”(1) has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4: Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at \$650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept Customer A’s used refrigerator at a value of \$150 toward the purchase price of the new

REVENUE DEPARTMENT[701](cont'd)

refrigerator. Customer A pays Hometown Appliance \$500 in cash. The trade-in provision applies as both conditions in paragraph 203.5(1) “b” and subparagraph 203.5(1) “b”(1) have been met, and tax would be due on the \$500.

Several months later, Hometown Appliance sells the used refrigerator it received from Customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions in paragraph 203.5(1) “b” and subparagraph 203.5(1) “b”(1) were met. The sale is “at retail,” even if the sales price is exempt from tax.

EXAMPLE 5: ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is \$80. ABC Auto Supply allows a \$20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions in paragraph 203.5(1) “b” and subparagraph 203.5(1) “b”(2) have been met.

203.5(2) All the provisions of subrule 203.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in subrule 203.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1: John Doe has an automobile with a value of \$2,000. John and his neighbor Bill Jones, who has an automobile valued at \$3,500, decide to trade automobiles. John pays Bill \$1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on \$1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2: Joe has a Ford automobile with a value of \$5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at \$5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

203.5(3) Trade for services or specified digital products. The trade-in provisions referenced in Iowa Code section 423.1(51) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services or specified digital products. When taxable enumerated services or specified digital products are traded, the sales price would be determined based on the value of the service or specified digital products or other consideration.

EXAMPLE: A and B agree that A will purchase a car that B now owns. The two parties agree on a purchase price of \$9,000. In return for transfer of title from B, A agrees to pay B \$7,000 in cash and to paint B’s house with paint provided by B. A and B agree that the value of B’s house painting services is \$2,000. House painting is a taxable enumerated service; rule 701—219.13(423) contains more information about this service. Since the trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is \$9,000 and not \$7,000.

203.5(4) Three-way trade-in transactions. In a three-way trade-in transaction, the agreement provides that a lessee sells to a third-party dealer a vehicle (or other tangible personal property) that the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE: Customer A enters into a three-way agreement with Lessor B. Under the terms of the contract, Customer A sells a 2005 Ford Taurus owned by A to Used Car Dealer C. The retail price for the Ford Taurus is \$30,000. Used Car Dealer C then sells the Ford Taurus to Lessor B for the reduced price of \$25,000. Lessor B then leases the Ford Taurus to Customer A for a period of 12 months. The \$5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.3(59).

701—203.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure) or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. More information is contained in rule 701—219.13(423).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.2(1).

701—203.8(423) Payment from a third party. The sales price from the sales of tangible personal property, services, or enumerated services includes consideration received by the seller from third parties. The following conditions shall apply:

203.8(1) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

203.8(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

203.8(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

203.8(4) One of the following criteria is met:

a. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

REVENUE DEPARTMENT[701](cont'd)

b. The purchaser self-identifies to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

This rule is intended to implement Iowa Code chapter 423.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to rules necessary to implement the streamlined sales and use tax agreement and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 204, “Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 423, subchapter IV.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 204. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or that duplicate statutory language. Iowa has been a member of the Streamlined Sales Tax Governing Board and a party to the Streamlined Sales and Use Tax Agreement (SSUTA) since October 1, 2005. The goal of the SSUTA is to maintain uniformity of definitions of certain sales and use tax-related terms, state and local tax bases, sourcing rules, and administration, among other features. In order to maintain compliance with the SSUTA, Iowa statutes, rules, and policies must comply with each provision of the SSUTA. Iowa Code chapter 423, subchapter VI, is the Uniform Sales and Use Tax Act Administration, which outlines Iowa’s intent to enter into the SSUTA to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for sellers. Chapter 204 contains rules interpreting the Uniform Sales and Use Tax Act Administration and additional rules necessary to maintain compliance with the SSUTA and help the public understand tax policies that Iowa has adopted as part of implementing the SSUTA.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

REVENUE DEPARTMENT[701](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 204 and adopt the following **new** chapter in lieu thereof:

CHAPTER 204
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES
AND USE TAX AGREEMENT

701—204.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department that displays tax rates and tax jurisdictional boundaries based on either a five-digit

REVENUE DEPARTMENT[701](cont'd)

or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement Iowa Code section 423.55.

701—204.2(423) Permissible categories of exemptions.**204.2(1) Definitions.**

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

“Product-based exemption” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Use-based exemption” means an exemption based on the purchaser’s use of the product.

204.2(2) Product-based exemptions. Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

204.2(3) Entity-based and use-based exemptions. Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement’s definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than \$30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.4(423) Allocation of bad debts. If a seller is entitled under Iowa Code section 423.21 to deduct bad debts owed to the seller and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. More information is contained in Iowa Code section 423.45(2). In connection with any purchaser’s request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified

REVENUE DEPARTMENT[701](cont'd)

by this state and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to sourcing of taxable services, tangible personal property, and specified digital products and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 205, "Sourcing of Taxable Services, Tangible Personal Property, and Specified Digital Products," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.15 and 423B.5.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 205. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, are unnecessary, or are duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the sourcing of taxable services, tangible personal property, and specified digital products. These rules provide clarification about where a sale takes place in order to determine when and where Iowa sales or use tax applies.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind 701—Chapter 205 and adopt the following **new** chapter in lieu thereof:

CHAPTER 205

SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED DIGITAL PRODUCTS

701—205.1(423) Definitions. For purposes of this chapter, the following terms shall have the same definition as in Iowa Code section 423.1:

“*Agreement*” means the same as defined in Iowa Code section 423.1.

“*Department*” means the same as defined in Iowa Code section 423.1.

“*First use of a service*” means the same as defined in Iowa Code section 423.1.

“*First use of a service performed on tangible personal property*” means receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

“*Governing board*” means the same as defined in Iowa Code section 423.1.

“*Receive*” or “*receipt*,” with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—205.3(423), the location (or locations) where the purchaser (or the purchaser’s donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services, the location (or locations) where the service is performed on the purchaser (or the purchaser’s donee) is the location where the purchaser receives the service.

“*Retailer*” means the same as defined in Iowa Code section 423.1.

“*Seller*” means the same as defined in Iowa Code section 423.1.

701—205.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services using the destination sourcing requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the result of the service is received, is first used, or could potentially be first used by the purchaser or the purchaser’s donee. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

205.2(1) Determining the result of a service. Determining the location where the result of a service is received by a purchaser requires a fact-based inquiry on a case-by-case basis.

EXAMPLE 1: Company Z is a photography business located in Mason City, Iowa. Company Z enters into an agreement with Customer Y, a resident of the state of Illinois, to take a photoshoot in Okoboji, Iowa. Company Z charges Customer Y \$2,000 for the photoshoot itself and \$1,000 for printed photos once they are finalized. Customer Y pays Company Z \$3,000 in advance for the photoshoot and photographs. The photoshoot takes place as planned in Okoboji, and three weeks later Company Z sends Customer Y a package containing the photographs to Customer Y’s Illinois address.

The photoshoot is the result of Company Z’s service, which occurs in Okoboji, Iowa—the location where the performance of the photoshoot begins. Company Z must therefore charge Iowa sales tax and any applicable local option tax on the \$2,000 charge for the photoshoot. The \$1,000 charge for the photographs is a sale of tangible personal property and is sourced to Illinois—the location where the

REVENUE DEPARTMENT[701](cont'd)

photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$1,000 but may be responsible for collecting and remitting Illinois tax.

EXAMPLE 2: Same facts as in Example 1, except that Company Z charges Customer Y a one-time, flat \$3,000 charge without any itemization or breakdown of the cost. This \$3,000 charge represents the sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$3,000 but may be responsible for collecting and remitting Illinois tax.

205.2(2) *Subsequent use in Iowa.* If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (More information can be found in Iowa Code section 423.5.)

205.2(3) *Measurement of use tax due.* If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (More information can be found in Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

701—205.3(423) First use of services performed on tangible personal property.

205.3(1) *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

205.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and services tax.* A local option sales and services tax shall be imposed on the same basis as the state sales and services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and services tax sourcing rules shall be the same as the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—205.1(423) and 701—205.2(423) and subrule 205.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

205.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle, and glass repair;

REVENUE DEPARTMENT[701](cont'd)

- f.* Dry cleaning, pressing, dyeing, and laundering;
- g.* Electrical and electronic repair and installation;
- h.* Farm implement repair of all kinds;
- i.* Furniture, rug, carpet, and upholstery repair and cleaning;
- j.* Gun and camera repair;
- k.* Household appliance, television, and radio repair;
- l.* Jewelry and watch repair;
- m.* Machine repair of all kinds, including office and business machine repair;
- n.* Motor repair;
- o.* Motorcycle, scooter, and bicycle repair;
- p.* Pet grooming;
- q.* Wood preparation;
- r.* Sewing and stitching;
- s.* Shoe repair and shoeshine; and
- t.* Taxidermy services.

205.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed “received.”

EXAMPLE 1: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown’s subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa’s use tax rate exceeds Illinois’s tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE 2: Same facts as in subrule 205.3(4), Example 1, except that the Illinois repair shop delivers the repaired lawnmower to the owner’s residence in Iowa. In this case, the potential first use is at Ms. Brown’s residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE 3: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho’s home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 4: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer’s location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa. Iowa sales tax is due.

EXAMPLE 5: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory’s location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa’s use tax rate exceeds Minnesota’s tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE 6: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges

REVENUE DEPARTMENT[701](cont'd)

from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

205.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the service of painting of tangible personal property is deemed "received."

EXAMPLE 1: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa. Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 2: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

205.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE 1: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE 2: Mr. Marx, who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

REVENUE DEPARTMENT[701](cont'd)

205.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed “received.”

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob’s Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob’s Camera Shop dispatches a repairperson to Mr. Pagano’s studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

205.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed “received.”

EXAMPLE 1: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards’ bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards’ potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax imposed by Slater is due even though Bike-o-rama is located in Ankeny. Iowa sales tax is also due.

EXAMPLE 2: Same facts as in subrule 205.3(10), Example 1, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny and Bike-o-rama must collect state sales tax and any local option sales tax imposed by Ankeny.

EXAMPLE 3: Same facts as in subrule 205.3(10), Example 1, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards’ bike to his home in Slater, Iowa. Since the terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater’s local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

701—205.4(423) Sourcing rules for personal care services.

205.4(1) *Definition.* “Personal care services” means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

205.4(2) *Sourcing of personal care services.* Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of subrule 205.4(1) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser’s donee). The services will be received by the purchaser (or the purchaser’s donee) either at the seller’s location, pursuant to Iowa Code section 423.15(1) “a,” or at the purchaser’s (or the purchaser’s donee) location, pursuant to Iowa Code section 423.15(1) “b.”

205.4(3) *Examples of sourcing of personal care services.* The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE 1: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these

REVENUE DEPARTMENT[701](cont'd)

services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 2: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa's use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 3: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa. Iowa sales tax is due.

701—205.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—205.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. More information can be found in Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

205.5(1) Sales of admissions to virtual events. First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

205.5(2) Sales of admissions that can be used at multiple locations. Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore, the sale is sourced to Clive. More information can be found in Iowa Code section 423.15(1)"c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

701—205.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1)"b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. More information can be found in Iowa Code section 423.1(43)"b."

205.6(1) General examples of sourcing of tangible personal property. The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1)"a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1)"a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The retail store's delivery truck delivers the product to X's home in Waverly, Iowa. The sale is sourced to X's home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. More information can be found in Iowa Code section 423.15(1)"b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X's home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)"b." The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. More information can be found in Iowa Code section 423.15(1)"b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales

REVENUE DEPARTMENT[701](cont'd)

pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X's home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." It is irrelevant that the product was delivered by a third-party common carrier. More information can be found in Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser's donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y's Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser's donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser's address available from seller's business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X's payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer's business records indicate that the purchaser's address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1) "c." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser's address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1) "d." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer's address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X's address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. More information can be found in Iowa Code section 423.15(1) "e." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

205.6(2) General examples of sourcing of specified digital products. The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller's business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests' access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y's on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. More information can be found in Iowa Code section 423.15(1) "a." Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (more information can be found in Iowa Code section 423.1(43)) and that location is known to the seller. More information can be found in Iowa

REVENUE DEPARTMENT[701](cont'd)

Code section 423.15(1) “b.” If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser’s address is available from seller’s business records. X purchases a specified digital product from C’s website. Prior to purchasing the specified digital product, X creates a user account through C’s website and lists X’s home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C’s business records that are maintained in the ordinary course of business indicate that X’s address is in Jefferson, Iowa. More information can be found in Iowa Code section 423.15(1) “c.” If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser’s address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X’s phone through an online application marketplace. X pays for the video game with X’s credit card. The marketplace saves the Ames, Iowa, home address associated with X’s credit card. However, the marketplace does not know X’s location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X’s payment information to source the sale. More information can be found in Iowa Code section 423.15(1) “d.” If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

205.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, Iowa, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y’s office in Des Moines, Iowa. X receives the couch at Y’s office in Des Moines, and X takes the couch to X’s home in Indianola, Iowa. While purchasing the couch, X provides Y with X’s Indianola address, which Y keeps on file. For the remainder of the rental period, X’s primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). More information can be found in Iowa Code section 423.15(2) “a.” In this case, the down payment was made and the product was received at the seller’s business location. Iowa Code section 423.15(1) “a” governs the sourcing of the down payment. More information can be found in subrule 205.5(1). Therefore, in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X’s home address is on file with Y for the remainder of the rental period, X’s address is the “primary property location” of the couch during those periods. More information can be found in Iowa Code section 423.15(2) “a.” Therefore, the subsequent monthly payments are sourced to X’s Indianola address that is contained in the records maintained by Y in the ordinary course of business. More information can be found in Iowa Code section 423.15(2) “a.” Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X’s home address in Indianola, Iowa, and arranges to have Y deliver the couch to X’s home in Indianola, Iowa. The \$50 down payment constitutes the “first periodic payment” and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1) “b.” More information can be found in Iowa Code section 423.15(2) “a.” Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the

REVENUE DEPARTMENT[701](cont'd)

city of Indianola on the down payment. More information can be found in subrule 205.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. More information can be found in subrule 205.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, partway through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the "primary property location" as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. More information can be found in Iowa Code section 423.15(2) "a."

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, partway through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the "primary property location" indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. More information can be found in Iowa Code section 423.15(2) "a." Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. More information can be found in Iowa Code section 423.15(1) "b." C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 205.6(1). More information can be found in Iowa Code section 423.15(2) "b."

205.6(4) Sales of items from vending machines. Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

205.6(5) Sales of items by an itinerant merchant, peddler, or salesperson having a route. When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1) "b," regardless of whether the location is the customer's home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

205.6(6) Items purchased for resale but withdrawn from inventory. If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the items were purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X's home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County are due.

205.6(7) Items withdrawn from inventory by a manufacturer. Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials,

REVENUE DEPARTMENT[701](cont'd)

supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. More information can be found in rule 701—219.6(423).

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X's withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax are due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

ARC 7148C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to bundled transactions
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 206, "Bundled Transactions," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 423.2.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 206. This chapter was recently updated, and the Department has determined that it does not contain language that is obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of bundled transactions. The rules reduce uncertainty about how tax applies when items are sold together.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

REVENUE DEPARTMENT[701](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 206 and adopt the following **new** chapter in lieu thereof:

CHAPTER 206
BUNDLED TRANSACTIONS

701—206.1(423) Taxability of bundled transactions. The sales price of a bundled transaction is subject to tax if any product included in the bundled transaction would be taxable if sold separately. For purposes of this rule, products include tangible personal property, services, and specified digital products and exclude real property and services to real property.

701—206.2(423) Bundled transaction. A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price.

206.2(1) Distinct and identifiable product. “Distinct and identifiable product” does not include any of the following:

REVENUE DEPARTMENT[701](cont'd)

a. Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sales of the products. Packaging or other materials include but are not limited to containers, boxes, sacks, bags, bottles, envelopes, wrapping, labels, tags, twine, garment hangers, and instruction guides.

EXAMPLE 1: Seller Z provides paper and plastic bags for purchasers to use to carry away their purchased items. The bags are incidental or immaterial to the retail sales of the products and are not distinct and identifiable products. Seller Z's retail sale of purchased items in the provided bags does not constitute a bundled transaction.

EXAMPLE 2: Seller X sells brownies and offers purchasers the option of adding a premium box for an increased price. The sales price of the brownies is the same whether they are sold on their own or with a standard box, but the total sales price increases if the purchasers select a premium box. The premium box is distinct and identifiable from the food product because it requires separate shopping preferences and product selection by the purchaser and is not standard with every order of food product. The retail sale of the brownies and the premium box may constitute a bundled transaction if the other requirements pursuant to Iowa Code section 423.2(8) are satisfied.

EXAMPLE 3: Seller A offers purchasers the option to buy reusable, long-lasting grocery bags to use to carry away purchased grocery items. If the reusable grocery bags are purchased with other items and separately itemized, they are taxable and the sale does not constitute a bundled transaction.

b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction. Examples include a free car wash with the purchase of gasoline or free dinnerware with the purchase of groceries.

c. Items specified in the definition of "sales price" in Iowa Code section 423.1.

206.2(2) *One nonitemized price.* "One nonitemized price" does not include the following:

a. A price that is separately identified by product on a binding sales document, or other sales-related documentation, that is made available to the customer in paper or electronic form, including but not limited to an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

EXAMPLE 1: Seller A sells a bakery item as part of a meal which consists of taxable prepared food. The purchaser selects items from a list of options of prepared food to be included in the meal. The individual items of the meal are not itemized on the receipt and the meal is always the same price, notwithstanding the items selected by the purchaser. The meal is sold for one nonitemized price, and the sales price of the meal is subject to tax as a bundled transaction.

EXAMPLE 2: Seller B enters into a contract with buyer D to provide various information technology services. Buyer D selects the information technology services it wants from seller B. Through negotiation, buyer D and seller B agree on a price based on the services selected and seller B bills buyer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from seller B to buyer D only contains one price for all of the services, since the price was based on the products selected by buyer D, the price is not one nonitemized price and the sale does not constitute a bundled transaction.

701—206.3(423) Transactions not taxable as bundled transactions. Generally, the entire sales price from a bundled transaction is subject to sales tax. However, the transactions described in this rule are not taxable as bundled transactions.

206.3(1) *Sales involving mixed tangible personal property and services.* The retail sale of tangible personal property or specified digital product and a service, if the tangible personal property or specified digital product is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE: Seller A charges customer B for computer programming services where customer B is also given a backup disk and instruction manual. The true object of the transaction is the provision of the programming services. Seller A is selling nontaxable services and is not making a sale of a bundled transaction. Iowa sales tax is not due on the programmer's charge for services; sales tax is due on seller A's purchases of tangible personal property used to fulfill the service.

206.3(2) *Sales involving services.* The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. If the transaction is not a bundled transaction as a result of this exclusion, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

206.3(3) *True object test.* The true object of a transaction is the main product that is the subject of the transaction. Determining the true object of a transaction is a fact-based inquiry and shall be made on a case-by-case basis. Factors that may be considered in determining the true object of a transaction include but are not limited to the nature of the seller's business and purchaser's reason for making the purchase.

206.3(4) *Sales involving de minimis taxable products.* A transaction that includes taxable and nontaxable products and the seller's purchase price or sales price of the taxable products is de minimis. "De minimis" means the seller's purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products. A seller shall use either the seller's purchase price or seller's sales price of the products to determine whether the taxable products are de minimis. A seller may not use a combination of the seller's purchase price and seller's sales price of the products to determine whether the taxable products are de minimis.

EXAMPLE 1: Seller H sells a coupon book that includes a packet of stickers for one nonitemized price of \$75. The packet of stickers is not provided free of charge. Seller H purchased the stickers, a taxable product, for \$2 per packet, which does not exceed 10 percent of the total purchase price of the coupon book and stickers. Seller H's sale of the coupon book and stickers is not a bundled transaction, and the sales price of \$75 is not subject to tax.

EXAMPLE 2: Technology Company F (company F) sells access to a day-long live webinar about the latest trends occurring in the technology industry for one nonitemized price of \$200. The webinar, which does not allow people viewing the presentation to submit questions, is not subject to Iowa sales tax. The customer also receives a smartwatch that is included in the payment of the webinar but is not provided free of charge. Company F's sales price of the smartwatch is \$50, which exceeds 10 percent of the total sales price of the fee. The watch is subject to sales tax by the customer. Because company F's purchase price of the watch is not de minimis, the \$200 transaction is a bundled transaction and is subject to tax.

206.3(5) *Sales involving taxable and exempt food or medical products.* The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

- a.* The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies; and
- b.* The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

EXAMPLE: Seller F offers its customers a package containing two prepared hot dogs and five frozen hot dogs. The sales price for the two prepared hot dogs is \$5, and the sales price of the five frozen hot dogs is \$10. The package is sold for one nonitemized price of \$15. The sales price of the package is not taxable because the sales price of the taxable items (the two prepared hot dogs) is 50 percent or less of the total sales price of the package.

These rules are intended to implement Iowa Code section 423.2(8).

ARC 7172C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to remote sales and marketplace sales
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 207, “Remote Sales and Marketplace Sales,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 423.14A.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 207 and adopt a new Chapter 207 with revisions to remove unnecessary restrictive terms and provide additional clarity. These rules describe the Department’s interpretation of the underlying statute to help the public understand requirements for remote and marketplace sellers. These rules reduce uncertainty about who must collect and remit Iowa sales tax. Citations to rule 701—213.10(423) in rule 701—207.11(423) refer to a rule that will be adopted in a future rulemaking.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

REVENUE DEPARTMENT[701](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 207 and adopt the following **new** chapter in lieu thereof:

CHAPTER 207
REMOTE SALES AND MARKETPLACE SALES

701—207.1(423) Definitions.

207.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—200.1(423).

207.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“*Gross revenue from sales*” means all revenue from Iowa sales.

“*Iowa sales*” means the same as defined in Iowa Code section 423.14A(1) “a” and includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. “Iowa sales” includes sales made through a marketplace.

“*Marketplace*” means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

“*Physical presence in Iowa*” means the activities described in Iowa Code section 423.1(48) “a”(1).

“*Remote seller*” means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

“*Retailer*” means the same as defined in Iowa Code section 423.1(47). “Retailer” includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

REVENUE DEPARTMENT[701](cont'd)

“Sales threshold” means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): \$100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.

701—207.2(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.3(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 202 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.4(423) Permits; incorporation of 701—Chapter 201. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 201 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.

701—207.5(423) Retailers with physical presence in Iowa.

207.5(1) *Sales threshold inapplicable.* The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

207.5(2) *Mixed marketplace and nonmarketplace sales.* A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has \$80,000 in gross revenue from Iowa sales. Seller X makes \$10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining \$70,000 in gross revenue comes from Iowa sales made at Seller X’s storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the \$70,000 in nonmarketplace sales. On its Iowa sales tax return, Seller X should report \$80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of \$10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

701—207.6(423) Remote sellers—registration and collection obligations.

207.6(1) *Combined Iowa sales from all sources.* The sum of the total amount of Iowa sales through marketplace and nonmarketplace Iowa sales determines whether remote sellers meet the sales threshold.

207.6(2) *Remote sellers with Iowa sales solely through marketplaces.* If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller’s registration and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

REVENUE DEPARTMENT[701](cont'd)

The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X has \$2,000 in gross revenue from sales on Marketplace Y and \$198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few low-cost Iowa sales, meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

207.6(3) *Remote sellers making both marketplace and nonmarketplace sales.* A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

701—207.7(423) Marketplace facilitators—registration and collection obligations. A marketplace facilitator that meets the sales threshold must collect and remit Iowa sales tax and applicable local option sales tax on all taxable sales made through the marketplace facilitator's marketplace that are sourced to Iowa. A marketplace facilitator must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of a marketplace seller that makes sales on a marketplace facilitator's marketplace.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.

701—207.8(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.

701—207.9(423) Commencement of collection obligation and sales tax liability.

207.9(1) *Commencement of collection obligation.* If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will

REVENUE DEPARTMENT[701](cont'd)

determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

207.9(2) Commencement of sales tax liability. If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 207.9(1), the remote seller or marketplace facilitator without physical presence in Iowa is not liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 207.9(1). A purchaser will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

207.9(3) Permit registration. If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales and use tax permit under 701—Chapter 201 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

701—207.10(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 201 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020; therefore, S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.

701—207.11(423) Coupons; incorporation of rule 701—213.10(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailers' discounts, which reduce the sales price and thus the taxable amount of a sale. The requirements of rule 701—213.10(423) apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.

701—207.12(423) Customer returns marketplace purchase directly to marketplace seller.

207.12(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator, upon acknowledgement of receipt of the item by the marketplace seller.

207.12(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

REVENUE DEPARTMENT[701](cont'd)

207.12(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.

701—207.13(423) Exempt and nontaxable sales.

207.13(1) Exempt sales. A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—204.6(423) for an explanation of the liability relief provided to retailers that rely on the taxability matrix in determining whether to collect tax on an item.

207.13(2) Nontaxable sales. A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

207.13(3) Exemption certificates submitted to a marketplace facilitator. An exemption certificate as described in rule 701—288.3(423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.

701—207.14(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.

These rules are intended to implement Iowa Code section 423.14A.

ARC 7173C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to multilevel marketer agreements
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 208, “Multilevel Marketer Agreements,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 421.5 and 421.17.

Purpose and Summary

The proposed rulemaking rescinds Chapter 208 and adopts a new Chapter 208 regarding multilevel marketer agreements. These agreements allow multilevel marketer companies to enter into contracts with the Department to collect and remit sales tax. The rules help the companies understand eligibility requirements for the multilevel marketer program. This rulemaking repromulgates the existing Chapter

REVENUE DEPARTMENT[701](cont'd)

208 with updated language and an additional rule to provide additional clarity that the Department determined was necessary.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

REVENUE DEPARTMENT[701](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 208 and adopt the following new chapter in lieu thereof:

CHAPTER 208
MULTILEVEL MARKETER AGREEMENTS

701—208.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property and specified digital products to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in 701—subrules 208.1(3) and 208.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456.

208.1(1) Definitions. The following definitions of terms are applicable to this chapter:

“Independent distributor” means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

“Multilevel marketer” means a wholesaler that sells tangible personal property or specified digital products for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

“Sales tax” or *“sales taxes”* for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine whether local option sales and service taxes are due, see rules 701—270.2(422B) and 701—270.3(422B).

208.1(2) Collection of tax. Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer’s tangible personal property or specified digital product occurs in Iowa or the property is used in Iowa (more information is contained in subparagraph 208.1(4) “a”(1)). In addition, local option sales tax is due on the sale if delivery of the tangible personal property or specified digital product to the consumer occurs within a local option tax jurisdiction. More information and examples illustrating delivery and taxation can be found in rules 701—270.2(422B) and 701—270.3(422B).

208.1(3) Eligibility requirements. For a multilevel marketer to be eligible for a multilevel marketer agreement, the following criteria must be met:

a. Tangible personal property or specified digital products are sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor’s personal use.

b. Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.

c. The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.

d. The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department has full discretion to decide whether to enter a multilevel marketer agreement. The department can request any and all information and documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department’s refusal to enter into an agreement with the multilevel marketer.

208.1(4) Terms of the multilevel marketer agreement. The multilevel marketer agreement will become effective on the date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 208.1(5), the multilevel marketer agreement

REVENUE DEPARTMENT[701](cont'd)

remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa. Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales that are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions described in subparagraph 208.1(4) "a"(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales and use tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 423.14(2) "e";

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules, and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 208; and

(7) The multilevel marketer agrees to register for an Iowa sales and use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales and use tax permit or file Iowa sales and use tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director. Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forego any claim for refund of tax that was paid on such sale.

208.1(5) Termination of a multilevel marketer agreement. If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

REVENUE DEPARTMENT[701](cont'd)

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 208.1(5)“a.” To accommodate the time necessary to effectuate changes by the multilevel marketer and the department, the effective date of the termination of the multilevel marketer agreement shall be 60 days from the date of the notice of the written termination, unless a request for additional time is made by the multilevel marketer and the request is granted by the department.

208.1(6) *Liability of independent distributors.* After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1: An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2: An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer that has the multilevel marketer agreement with the department.

208.1(7) *Legislative changes.* All multilevel marketer agreements are subject to all applicable legislative enactments that are made subsequent to the agreement and that impact the agreement.

701—208.2(421) Other sources of tax collection requirements. Notwithstanding any provision in this chapter or any multilevel marketer agreement and notwithstanding whether a multilevel marketer agreement is entered between a person and the department, multilevel marketers and independent distributors may have an obligation to collect Iowa sales tax and any applicable local option sales tax if they meet the definition of “retailer” under Iowa Code section 423.1(47).

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

ARC 7174C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to agricultural rules
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 214, “Agricultural Rules,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2(1), 423.2(6), 423.3(2), 423.3(3), 423.3(5), 423.3(6), 423.3(8), 423.3(11) through 423.3(16), 423.3(51) and 423.3(57).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 214 and adopt a new Chapter 214, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes to taxpayers engaged in agricultural activity. The Department proposes revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 214 and adopt the following **new** chapter in lieu thereof:

CHAPTER 214
AGRICULTURAL RULES

701—214.1(423) Farm machinery and equipment and items used in agricultural production that are attached to a self-propelled implement of husbandry. The sales price from the sale of farm machinery and equipment directly and primarily used in production of agricultural products and certain items used in agricultural production that are attached to or towed by a self-propelled implement of husbandry is exempt from sales and use tax.

214.1(1) Farm machinery and equipment.

a. Exempt. Under this rule, to be eligible for the exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

- (1) A self-propelled implement; or
- (2) An implement customarily drawn or attached to a self-propelled implement; or
- (3) A grain dryer; or
- (4) An auxiliary attachment that improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or
- (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

REVENUE DEPARTMENT[701](cont'd)

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn by or attached to a vehicle subject to registration, an auxiliary attachment for a vehicle subject to registration, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle subject to registration is not eligible for the exemption allowed under this rule.

214.1(2) *Attachments to self-propelled implements of husbandry.*

a. Exempt. Exempt from the tax under this rule are the following items if, and only if, they are used in agricultural production:

- (1) A snow blower that is to be attached to a self-propelled implement of husbandry; or
- (2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry; or
- (3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

b. Used in agricultural production. Under this subrule, the items must be used in agricultural production, and not “directly and primarily” used in production of agricultural products as is required under subrule 214.1(1).

EXAMPLE: Farmer Jones purchases a front-mounted blade that will be attached to a self-propelled implement of husbandry (e.g., farming tractor). Farmer Jones primarily uses the blade to prepare previously uncultivated land—a use that is not for agricultural production. However, Farmer Jones sporadically uses the front-mounted blade for agricultural production. Even though Farmer Jones does not directly and primarily use the front-mounted blade in agricultural production, the front-mounted blade is exempt from sales or use tax because the blade is occasionally used in agricultural production and it is attached to a self-propelled implement of husbandry.

214.1(3) *Definitions and specific provisions.* For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—200.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Nonexclusive examples of items not included within the meaning of the term “agricultural production” are the clearing or preparation of previously uncultivated land, the creation of farm ponds, and the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. Machinery and equipment used for these purposes would be used for activities that are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be repaired to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to repair the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. Self-propelled implement. The term “self-propelled implement” means an implement that is capable of movement from one place to another under its own power. An implement is not self-propelled merely because it has moving parts. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

REVENUE DEPARTMENT[701](cont'd)

e. Directly used in agricultural production.

(1) Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property’s use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Primarily used in agricultural production. Property is “primarily used” in agricultural production based on the total time it is used in agricultural production in comparison to the time it is used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of agricultural production. Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply to Farmer Brown’s tractor and wagon. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed for the elevator’s tractor and wagon.

h. Grain dryer. The term “grain dryer” includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term “grain dryer” does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement and is directly and primarily used in agricultural production.

i. Replacement parts.

(1) The term “replacement parts” means any farm machinery or equipment that is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts that materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include: lubricants, oils, greases, and coolants.

(2) Tangible personal property that has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible

REVENUE DEPARTMENT[701](cont'd)

personal property that is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(3) The sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment that would be exempt include: air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

j. Implement of husbandry.

(1) The term “implement of husbandry” means any tool, equipment, or machinery necessary to the carrying on of the business of agricultural production and without which that could not be done. To be an implement of husbandry, the following must both be true:

1. The tool, equipment, or machine must be necessary to the carrying on of the business of agricultural production; and

2. Agricultural production must be impossible without the use of the tool, equipment, or machine.

(2) Whether a given item is an implement of husbandry depends on the facts of each particular case, and in each particular case the person claiming the exemption has the burden of proving that the person is entitled to the exemption.

k. Snow blower. “Snow blower” as used in this rule means an attachment that has the primary purpose of snow removal by the throwing of snow and that is ordinarily thought of as a snow blower.

l. Rear-mounted or front-mounted blade. “Rear-mounted or front-mounted blade” as used in this rule means a stationary attachment that has a primary purpose of pushing or leveling, for example, sand, dirt, snow, gravel, or manure. The term “rear-mounted or front-mounted blade” does not include mounted buckets or loaders that have a primary purpose of loading or digging.

m. Rotary cutter. “Rotary cutter” as used in this rule means an attachment used for mowing of grassy areas, pastures, and brush, but does not include attachments often referred to as “finishing mowers” and “mid-mount mowers.”

214.1(4) Taxable and nontaxable transactions. The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. A lessor’s purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee’s use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. The lease of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

b. A lessor’s purchase of a snow blower, rear-mounted or front-mounted blade, or rotary cutter is not subject to tax if such item is leased to a lessee who uses the item in agricultural production and the item will be attached to an implement of husbandry.

c. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

d. The owner or lessee of a snow blower, rear-mounted or front-mounted blade, or rotary cutter need not be a farmer as long as the snow blower, rear-mounted or front-mounted blade, or rotary cutter is used in agricultural production and the snow blower, rear-mounted or front-mounted blade, or rotary cutter is attached to an implement of husbandry.

REVENUE DEPARTMENT[701](cont'd)

e. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified for an exemption under this rule.

f. The sale or lease, within Iowa, of any snow blower, rear-mounted or front-mounted blade, or rotary cutter that is used, outside of Iowa, in agricultural production while attached to an implement of husbandry is a transaction eligible for the exemption, if the transaction is otherwise qualified for an exemption under this rule.

214.1(5) Auxiliary attachments. The following is a nonexclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code sections 423.3(8) and 423.3(11).

701—214.2(423) Farm implement repair of all kinds.

214.2(1) In general. Persons engaged in the business of repairing, restoring, or renovating implements, tools, machines, vehicles, or equipment used in the operation of farms, ranches, or acreages on which crops of all kinds are grown and on which livestock, poultry, or furbearing animals are raised or used for any purpose are selling a service subject to sales tax.

214.2(2) Installation not taxable. Those services relating to the installation of new parts or accessories that are not replacements are not taxable.

This rule is intended to implement Iowa Code section 423.2(6) “r.”

701—214.3(423) Irrigation equipment used in agricultural production. The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term “irrigation equipment” includes, but is not limited to, circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold to or rented by a contractor or farmer and the equipment is directly and primarily used in agricultural production. The term “agricultural production” is defined in rule 701—200.1(423).

This rule is intended to implement Iowa Code sections 423.3(12) and 423.3(13).

701—214.4(423) Sale of a draft horse. The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code section 423.3(14).

701—214.5(423) Veterinary services. Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like that are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—214.17(423) explains the exemption for machinery or equipment used in livestock or dairy production that may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.6(423) Commercial fertilizer and agricultural limestone.

REVENUE DEPARTMENT[701](cont'd)

214.6(1) Commercial fertilizer. The sales price from the sales of commercial fertilizer is exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

214.6(2) Agricultural limestone. The sales price from the sales of agricultural limestone is exempt from sales and use tax only if the purchaser intends to use the limestone for disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. Rule 701—200.1(423) contains definitions of “agricultural production” and “plants.” Sales of agricultural limestone used for other purposes are subject to sales tax. Examples of taxable sales include, but are not limited to, sales of agricultural limestone for application on a lawn, golf course, or cemetery.

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

701—214.7(423) Breeding livestock. The sales price from the sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sales price from the sale of agricultural livestock that is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, the sales price from the sale of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. Rule 701—200.1(423) contains a definition of “livestock.”

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk that the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(3).

701—214.8(423) Domesticated fowl. The sales price from the sale of domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. Rule 701—200.1(423) contains a definition of the term “domesticated fowl.”

This rule is intended to implement Iowa Code section 423.3(3).

701—214.9(423) Agricultural health promotion items.

214.9(1) Definitions. For purposes of this rule, the following definitions apply:

“*Adjuvant*” means any substance that is added to an herbicide, a pesticide, or an insecticide to increase its potency.

“*Agricultural production*” means the same as defined in rule 701—200.1(423).

“*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

“*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term includes preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

“*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices that are used to kill insects are not insecticides.

“*Livestock*” means the same as defined in rule 701—200.1(423). For the purposes of this rule, “livestock” includes domesticated fowl.

“*Medication*” includes antibiotics or other similar drugs administered to livestock.

“*Pesticide*” means any substance that is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance that merely repels pests or any device, such as a rat trap, that kills pests by mechanical action.

REVENUE DEPARTMENT[701](cont'd)

“Plants” means the same as defined in rule 701—200.1(423).

“Surfactant” means a substance that is active on a surface.

214.9(2) Agricultural health promotion items and adjuvants. The sales price from the sale of herbicides, pesticides, insecticides, food, and medication that are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Sales of adjuvants, surfactants, and other products that enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. The sales price from the sale of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose, e.g., in disease control or on the behalf of another person engaged in agricultural production for market.

This rule is intended to implement Iowa Code sections 423.3(5) and 423.3(16).

701—214.10(423) Drainage tile. The sales price from the sale or installation of drainage tile that is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.

701—214.11(423) Materials used for seed inoculations. The sales price from the sale of materials used for seed inoculations is exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.

701—214.12(423) Fuel used in agricultural production.

214.12(1) Definitions. For purposes of this rule, the following definitions apply:

“Aquaculture” means the same as defined in rule 701—200.1(423).

“Fuel” includes electricity.

“Implement of husbandry” means the same as defined in paragraph 214.1(1) “j.”

“Livestock” means the same as defined in rule 701—200.1(423) and includes domesticated fowl.

214.12(2) Exemptions.

a. *Fuel used for livestock buildings.* The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. *Fuel used for flowering, ornamental, or vegetable plant production buildings.*

(1) The sales price from the sale of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business is exempt from tax. See subparagraph (3) for the formula for calculating exempt use if a building is only partially used for growing flowering, ornamental, or vegetable plants.

(2) Fuel used in a flowering, ornamental, or vegetable plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in flowering, ornamental, or vegetable plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space; loading docks; storage of property other than flowering, ornamental, or vegetable plants; housing of heating and cooling equipment; and packaging flowering, ornamental, or vegetable plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and

REVENUE DEPARTMENT[701](cont'd)

used for raising flowering, ornamental, or vegetable plants by the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in flowering, ornamental, or vegetable plant production. Subrule 214.18(12) provides information about a seller's and purchaser's liability for sales tax.

EXAMPLE 1: Bill Brown's herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising flowering, ornamental, or vegetable plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green's greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing flowering, ornamental, or vegetable plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing flowering, ornamental, or vegetable plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising flowering, ornamental, or vegetable plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising flowering, ornamental, or vegetable plants	=	800
Total square footage	=	1,000
TOTAL:	$800 \div 1,000$	= .80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green's greenhouse is exempt from sales tax.

c. Sales of fuel used for aquaculture. Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

d. Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry. The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements that cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

214.12(3) Partial use. If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code section 423.3(6).

701—214.13(423) Water used in agricultural production. The sales price from the sale of water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. The sales price from the sale of water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water bills and collects tax on the first 5,000 gallons of water per month.

REVENUE DEPARTMENT[701](cont'd)

The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.14(423) Hatcheries. The sales price from the sale of egg-type cockerel chicks, broiler chicks, and turkey poults is subject to tax. If sale of domestic poultry is for breeding, rule 701—214.7(423) provides information.

When pullets and poults are sold for production purposes, the sales price from the sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(3).

701—214.15(423) Sales by farmers. The sales price from the sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption and is exempt from tax. In order to sell tangible personal property not otherwise exempt to ultimate consumers or users, farmers shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code sections 423.3(2), 423.3(51), and 423.3(57).

701—214.16(423) Sales of livestock (including domesticated fowl) feeds. The sales price from the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption is exempt from tax. The sales price from the sale of feed sold for consumption by pets is subject to tax. The sales price from the sale of antibiotics that are administered as an additive to feed or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(16).

701—214.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.

214.17(1) The sales price from the sale of farm machinery, equipment, and replacement parts used in livestock or dairy production is exempt from sales and use tax.

214.17(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, that contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property that performs a specialized function and that has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

c. Property used in livestock or dairy production that is neither equipment nor machinery.

(1) *Real property.* The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or

REVENUE DEPARTMENT[701](cont'd)

building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply that is not machinery or equipment. Examples of farm supplies that could be mistaken for equipment and are not exempt from tax on other grounds can be found in subrule 214.19(4).

d. *Hand tools.* The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

e. *“Directly used” in livestock or dairy production.* To determine if machinery or equipment is “directly used” in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Paragraph 214.17(2) “g” contains an explanation of when livestock or dairy production begins and ends.

(1) Definition. If the machinery or equipment is used in livestock or dairy production, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery’s or equipment’s use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. *“Primarily used” in livestock or dairy production.* Machinery or equipment is “primarily used” in livestock or dairy production based on the total time it is used in livestock or dairy production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

g. *Beginning and end of livestock or dairy production.* Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal’s body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

h. *Machinery and equipment design.* Farm machinery and equipment used in livestock or dairy production is eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment that are not specifically designed for use in livestock or dairy production,

REVENUE DEPARTMENT[701](cont'd)

but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans' use would be considered exempt.

i. Replacement parts. The term "replacement parts" means the same as defined in paragraph 214.1(2) "i."

214.17(3) Examples of machinery and equipment directly used in livestock or dairy production.

a. Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

b. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

c. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

d. Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

214.17(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in livestock or dairy production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

b. Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).

c. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or other facilities for farm employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.

g. Vehicles subject to registration.

214.17(5) The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments that improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

214.17(6) Auxiliary attachments exemption. Sales of auxiliary attachments that improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

REVENUE DEPARTMENT[701](cont'd)

214.17(7) Seller's and purchaser's liability for sales tax. The seller is relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.

214.18(1) The sales price from the sale of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants is exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term “flowering, ornamental, or vegetable plants” does not include silvicultural products or fungi.

214.18(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, that contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property that performs a specialized function that, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

c. Property used in the flowering, ornamental, or vegetable plant production process that is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply that is not machinery or equipment. Subrule 214.19(4) provides examples of supplies that could be mistaken for equipment and are not exempt from tax on other grounds.

d. Hand tools. The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

REVENUE DEPARTMENT[701](cont'd)

e. “Directly used” in the flowering, ornamental, or vegetable plant production process. To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. Paragraph 214.18(2) “g” contains an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery’s or equipment’s use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in flowering, ornamental, or vegetable plant production. Machinery or equipment is “primarily used” in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of flowering, ornamental, or vegetable plant production. Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

h. Machinery and equipment design. Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment that are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer’s use would be considered exempt.

i. Replacement parts. The term “replacement parts” means the same as defined in paragraph 214.1(2) “i.”

214.18(3) Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 214.19(3).

214.18(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in flowering, ornamental, or vegetable plant production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

REVENUE DEPARTMENT[701](cont'd)

b. Machinery or equipment used in the growing operation's management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

c. Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

g. Vehicles subject to registration.

214.18(5) Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property that is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places that sell such items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

214.18(6) Self-propelled implements. The sales price from the sale of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same is exempt from tax if the implements are used directly and primarily in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of flowering, ornamental, or vegetable plants, wagons containing sterilized soil, and tractors used to pull these items.

214.18(7) Machinery and equipment used in flowering, ornamental, or vegetable plant production that are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—214.19(423) includes nonexclusive examples of machinery and equipment that are not self-propelled or attached to self-propelled machinery and equipment and that are directly and primarily used in flowering, ornamental, or vegetable plant production.

214.18(8) Fuel used in plant production is discussed in paragraph 214.12(2) "b."

214.18(9) The sales price from the sale of water used in the production of plants is exempt from tax. If water is not separately metered, the plants' grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

214.18(10) Agricultural health promotion items. The sales price from the sale to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants is exempt from tax. For the purposes of this rule, a virus, bacterium, fungus, or insect that is purchased for use in killing insects or other pests is an insecticide or pesticide. Rule 701—214.9(423) contains more information regarding these exemptions.

214.18(11) Miscellaneous exempt and taxable plant sales.

a. Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

b. The sales price from the sale of portable buildings that will be used to display plants for retail sales is taxable.

c. The sales price from the sale of whitewash that will be painted on greenhouses to control the amount of sunlight entering those greenhouses is subject to tax as the sale of a supply rather than exempt from tax as a sale of equipment.

214.18(12) Seller's and purchaser's liability for sales tax. The seller is to be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of

REVENUE DEPARTMENT[701](cont'd)

machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.19(423) Nonexclusive lists. The following tables list items that are taxable or exempt.

214.19(1) Exempt for agricultural production.

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides
combines, cornheads, platforms	pickers
conveyors, temporary or portable*	plants (seeds)
corn pickers	planters
crawlers, tractor	plows
cultipackers	piston rings
cultivators	pruning and picking equipment*
discs	replacement parts
draft horses	rock pickers
drags	rollers*
drainage pipe and tile	rotary blade mowers; not lawn mowers
dusters*	rotary hoes
ensilage cutters	seeders
ensilage forks and trucks (a pickup does not qualify)	seed cleaners*
farm wagons and accessories	seed planters
fertilizer, agricultural	seeds
fertilizer spreaders	self-propelled implements
filters	shellers*
forage harvesters, boxes	silo blowers, unloaders*
fuel for grain drying or other agricultural production	sowers
gaskets	spark plugs for exempt machinery
grain augers, portable*	sprayers*
grain drills	spreaders
grain dryer, heater and blower only	sprinklers
grain planters	subsoilers
harrows	surfactants
hay conditioners	tillers

REVENUE DEPARTMENT[701](cont'd)

hay hooks	tires for exempt machinery
hay loaders	tractor chains
herbicides	tractors, farm
implements customarily drawn or attached to a self-propelled implement	tractor weights
insecticides	vegetable harvesters
	weeders*

*Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in agricultural production or, if portable, used directly and primarily in agricultural production.

214.19(2) *Exempt for dairy and livestock production.*

adjuvants	heaters, portable
alternators and generators ¹	hog feeders, portable
artificial insemination equipment	hog ringers ³
auger systems	hoof trimmers, portable ³
automatic feeding systems, portable	hypodermic syringes and needles, nondisposable
batteries for exempt machinery	implements customarily drawn or attached to a self-propelled implement
barn ventilators	incubators, portable
bedding materials ²	inlets and inlet systems
breeding stock, agricultural	inoculation materials
bulk feeding tanks, portable	insecticides
bulk milk coolers and tanks, portable	kill cones
calf weaners and feeders, portable	livestock feeding, watering and handling equipment, portable
cattle feeders, portable	loading chutes, portable
chain and rope hoists, portable ¹	manure brooms, portable ³
chicken pickers, plucking equipment	manure handling equipment, including front- end and rear-end loaders, portable ³
chick guards	manure scoops, portable ¹
clipping machines, portable ³	medications
conveyors, temporary or portable ¹	milk coolers, portable
cow stalls, portable	milking equipment, including cans, etc. ³
cow ties, portable	milking machines
cow watering and feeding bowls, portable	milk strainers and strainer disks, if not disposable
crawlers, tractor	milk tanks, portable
currying and oiling machines, portable	pesticides
curtains and curtain systems	poultry feeders, portable
dehorner	poultry founts, portable
domestic fowl	poultry litters, portable
draft horses	poultry nests, portable
drip systems	refrigerators
electric fence equipment, portable	replacement parts
fans and fan systems	sawdust

REVENUE DEPARTMENT[701](cont'd)

farm wagons and accessories	self-propelled implements
farrowing houses, crates, stalls, portable	shutters and shutter systems
feed	space heaters, portable
feed bins, portable	specialized flooring, portable
feed carts, portable	sprayers ¹
feed elevators, portable	squeeze chutes, stalls, portable
feed grinders, portable	stanchions, portable
feed scoops ³	surfactants
feed tanks, portable	tires for exempt machinery
feeder chutes, portable	thermometers ³
feeders, portable	tractor chains
fence and fencing supplies, temporary or portable	tractors, farm
foggers	tractor weights
fuel to heat or cool livestock buildings	vacuum coolers
gaskets	ventilators
gates, portable	water filters, heaters, pumps, softeners, portable
gestation stalls, portable	waterers/watering tanks, portable
grooming equipment, portable ³	weaners
head gates, portable	wood chips ²

¹Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in dairy or livestock production or, if portable, used directly and primarily in dairy or livestock production.

²Exempt when used as livestock and poultry bedding.

³Designed for farm use.

214.19(3) *Exempt for flowering, ornamental, or vegetable plant production.*

air-conditioning pads	greenhouse monorail systems*
airflow control tubes	greenhouse thermometers
atmospheric CO ₂ control and monitoring equipment	handcarts used to move plants
backup generators	lighting that provides artificial sunlight
bins holding sterilized soil	overhead heating, lighting, and watering systems*
control panels for heating and cooling systems*	overhead tracks for holding potted plants*
coolers used to chill plants*	plant tables
cooling walls	plant watering systems
equipment used to control water levels for subirrigation	portable buildings used to grow plants

REVENUE DEPARTMENT[701](cont'd)

fans used for cooling and ventilating*
 floor mesh for controlling weeds
 germination chambers
 greenhouse boilers*
 greenhouse netting or mesh when used
 for light and heat control

seeding and transplanting machines
 soil pot and soil flat filling machines
 steam generators for soil sterilization*
 warning devices that monitor excess heat or cold
 watering booms

*Exempt if not real property. "Real property" is defined in Iowa Code section 4.1(13) as "lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal." More information can be found in 701—Chapter 219.

214.19(4) *Taxable even if used in agricultural production.*

additives
 air compressors
 air conditioners, unless a replacement part
 for exempt machinery
 air tanks
 antifreeze
 axes
 barn cleaner, permanent
 baskets
 belt dressing
 bins, permanent^
 brooms
 buckets
 building materials* and supplies
 burlap cleaners
 cattle feeders, permanent
 cement#
 chain saws
 cleaning brushes

 cleansing agents and materials
 computers (including laptop), for personal use
 computer software
 construction tools
 concrete#
 conveyors, permanent
 cow ties, permanent
 ear tags
 fence, posts, wire, permanent
 field toilets
 fire prevention equipment
 freon

lubricants and fluids
 lumber*
 marking chalk

 mops
 motor oils
 nails
 office supplies
 oxygen
 packing room supplies
 paint and paint sprayers
 pliers
 posthole diggers, hand tool
 poultry brooders, permanent
 poultry feeders, permanent
 poultry nests, permanent
 pruning tools
 pumps for household or lawn use
 radios, unless a replacement part for
 exempt machinery
 refrigerators for home use
 repair tools
 road maintenance equipment
 road scraper
 roofing
 sanders
 scrapers
 screwdrivers
 shingles
 shovels
 silos
 snow fence, unless portable and used directly
 in dairy and livestock production

REVENUE DEPARTMENT[701](cont'd)

fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain tanks, permanent ^{*^}	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders
lanterns	wheel barrows
light bulbs (for household use)	wrenches

* Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

[^] Does not include grain bins used to hold loose grain for drying or storage.

Does not include cement or concrete used in pads or foundations under grain bins.

This rule is intended to implement Iowa Code sections 423.3(6), 423.3(8) and 423.3(11).

701—214.20(423) Grain bins. The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

214.20(1) *Property considered to be a grain bin or material used to construct a grain bin.* In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

- a. Exempt property:
 - (1) Grain bins, including hopper bins.
 - (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
 - (3) Steps, ladders, or staircases permanently attached to a grain bin.
 - (4) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.
 - (5) Catwalks.
 - (6) Roof vents permanently attached to a grain bin.
 - (7) Grain bin flooring and floor supports.
 - (8) Concrete pad or foundation under a grain bin.
 - (9) Stirring equipment permanently attached in a grain bin.
 - (10) Fans permanently attached to a grain bin.
 - (11) Temperature sensors or temperature cables permanently attached in a grain bin.
 - (12) Spreaders permanently attached in a grain bin.
 - (13) Sweeps or augers permanently attached in a grain bin.
 - (14) Bolts and other builders’ hardware permanently attached to a grain bin.
 - (15) Controls and devices to operate the above-listed property.
 - (16) Motors for the above-listed property.
 - (17) Replacement parts for the above-listed property.

REVENUE DEPARTMENT[701](cont'd)

- b.* Taxable property:
 - (1) Bucket elevators.
 - (2) Distributors.
 - (3) Receiving stations, including drag conveyors and dump pits.
 - (4) Pneumatic or air systems.
 - (5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.
 - (6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.
 - (7) Samplers.
 - (8) Scales or weighers.
 - (9) Other items that remain tangible personal property and are not permanently attached to a grain bin.

214.20(2) *Primarily used to hold loose grain for drying or storage.* Property is deemed to be “primarily used to hold loose grain for drying or storage” if it is used more than 50 percent of the time to hold loose grain for drying or storage.

214.20(3) *Claiming the exemption.*

a. A contractor must provide an exemption certificate to its supplier when purchasing grain bins, grain bin materials, or grain bin replacement parts in order to purchase them free from sales tax. The contractor entering into a construction contract with a sponsor to erect a grain bin or entering into a contract to repair a grain bin must also obtain an exemption certificate from the sponsor of the construction/repair contract to avoid accruing and remitting use tax on the grain bins, grain bin materials, and the grain bin replacement parts that were purchased tax-free from the contractor’s supplier.

b. The contractor must accrue consumer’s use tax on the purchase price of the grain bins, grain bin materials, and grain bin replacement parts unless the contractor obtains an exemption certificate from the sponsor of the construction or repair contract. If the grain bin materials or replacement parts are not used in an exempt manner or if an exemption certificate is not obtained, it is the contractor’s responsibility to accrue and remit use tax. The contractor must not charge sales tax to the sponsor of a construction or repair contract because those materials and replacement parts remain building materials used in the performance of a construction contract.

EXAMPLE 1: Company A is in the business of constructing and repairing grain bins. Company A regularly purchases grain bin materials and replacement parts from its supplier. Company A may provide to its supplier an exemption certificate pursuant to Iowa Code section 423.3(16A) so that the materials and replacement parts are purchased tax-free.

A person, also known as a sponsor, enters into a construction contract with Company A to construct a grain bin on the sponsor’s property. The sponsor provides an exemption certificate to Company A also pursuant to Iowa Code section 423.3(16A). Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials purchased from its supplier tax-free.

EXAMPLE 2: Assume the same facts as in Example 1, except that Company A does not provide an exemption certificate to its supplier when it purchases grain bin materials and replacement parts. The supplier must charge and collect from Company A sales tax on the full sales price of the grain bin materials and replacement parts.

The sponsor enters into a construction contract with Company A to erect a grain bin. Whether or not the sponsor provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A), Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials because Company A paid sales tax on the sales price of the grain bin materials when it purchased them from its supplier.

EXAMPLE 3: Assume the same facts as in Example 2. The sponsor enters into a construction contract with Company A to erect a grain bin and provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A). Company A may now file a refund claim with the department requesting that the department refund the sales tax that Company A paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. Alternatively, Company A may claim a credit on its sales tax return(s) equal to the amount of sales tax paid to its supplier when

REVENUE DEPARTMENT[701](cont'd)

it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. The burden is on Company A to prove that the building materials for which the credit or refund is claimed were used in erecting a grain bin.

EXAMPLE 4: Assume the same facts as in Example 1, except that the sponsor does not provide an exemption certificate to Company A. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 5: Assume the same facts as in Example 1, except that the sponsor enters into a construction contract with Company A for the construction of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 6: Assume the same facts as in Example 1, except that the sponsor enters into a contract with Company A for the repair of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. When invoicing the sponsor, Company A must separately itemize the materials and the labor charges incurred in fulfilling this repair contract, and the sales price of the materials included on the invoice must include any mark-up. Company A is obligated to charge and collect sales tax on the materials and labor charges listed on the invoice.

EXAMPLE 7: Assume the same facts as in Example 1 except that, in addition to constructing the grain bin, the contractor provides and installs property, such as portable equipment, that remains tangible personal property after installation. As with the grain bin, grain bin materials, and grain bin replacement parts, the contractor purchases the portable equipment tax-free, not because it is exempt under this subrule, but because it is a purchase for resale. Unless the portable equipment qualifies for another exemption (such as in rule 701—214.1(423)), even if the contractor obtains an exemption certificate from the sponsor for the grain bin, grain bin materials, and replacement parts, the contractor must charge sales tax to the sponsor because the portable equipment remains tangible personal property and the contractor sells that equipment to the sponsor at retail.

This rule is intended to implement Iowa Code section 423.3.

701—214.21(423) Warehousing of raw agricultural products.

214.21(1) *In general.* The sales price on the warehousing of raw agricultural products is subject to sales tax unless the warehousing of raw agricultural products is storage in transit and has a destination outside of Iowa, regardless of whether the raw agricultural products originated within or outside of Iowa. Because the tax imposed by Iowa Code section 423.2(6) “ax” is imposed on the warehousing and not the sale of raw agricultural products, the interstate commerce exceptions found in Iowa Code section 423.3 do not apply.

214.21(2) *Definition.* For purposes of this rule:

“*Raw agricultural products*” includes but is not limited to corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any form of processing. For purposes of this rule, grain drying is not considered processing.

214.21(3) *Other charges.* Other charges relating to warehousing of raw agricultural products may be subject to sales tax when separately invoiced. 701—Chapter 206 contains more information about bundled transactions.

214.21(4) *Transit warehouses.* The warehousing of raw agricultural products to be delivered within Iowa is subject to sales tax, while the warehousing of those products placed into interstate commerce is not subject to sales tax.

a. Formula. Transit warehouses may compute the tax on warehousing fees based upon a formula consisting of a numerator that is the quantity of raw agricultural products housed at the warehouse with intended intrastate delivery in Iowa and a denominator that is the total quantity of raw agricultural products housed in the warehouse.

b. Definition. For purposes of this rule:

“*Transit warehouses*” are those warehouses where raw agricultural products in bulk quantities are transported to and then shipped to different locations at different times.

REVENUE DEPARTMENT[701](cont'd)

c. Numerator. Raw agricultural products picked up at the warehouse or delivered to a location in Iowa must be included in the numerator, even if the products may be or are subsequently delivered to a common carrier for shipment outside of Iowa.

d. Information used to calculate tax. The information used in the formula for the computation of tax on storage fees must be, in most cases, supplied by the principal storing the products in the warehouse. The warehouse is responsible for acquiring and verifying the information used in the formula with the principal at least once every 90 days.

214.21(5) Exemptions. Warehousing service will not be subject to sales tax if a contract for the warehousing of raw agricultural products is with a tax-certifying or tax-levying body of the state of Iowa; any instrumentality of the state, county, or municipal government; the federal government or its instrumentalities; a tribal government as defined in Iowa Code section 216A.161; or an agency or instrumentality of a tribal government if used for public purposes.

a. Consignment to federal government. Fees for the warehousing of raw agricultural products placed into storage by a producer that are later consigned to the federal government under a loan agreement are subject to sales tax.

b. Federal government activity. Warehousing of raw agricultural products is exempt from sales tax only if the federal government makes payment to the warehouse for warehousing and the federal government actually owns the products or goods during the time the products or goods are warehoused.

This rule is intended to implement Iowa Code sections 423.2(6) “ax” and 423.3(31).

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to exemptions primarily benefiting manufacturers and other persons engaged in processing and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 215, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.3(47) through 423.3(53), 423.3(82), 423.3(92), 423.3(93), 423.3(95), 423.4(7) and 423.4(8).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 215, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the taxability and exemption provisions and processes that are primarily applicable to taxpayers engaged in processing and manufacturing. The Department proposes revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other changes and for organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind 701—Chapter 215 and adopt the following new chapter in lieu thereof:

CHAPTER 215

EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS
ENGAGED IN PROCESSING

701—215.1 Reserved.

701—215.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of “processing” is allowed to manufacturers of food or food ingredients using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

215.2(1) “Food or food ingredients” means the same as defined in Iowa Code section 423.3(49) “b.” This means that for purposes of this exemption, “food or food ingredients” means the same as “food and food ingredients” as defined in Iowa Code section 423.3(57) “d” and implemented by rule 701—220.3(423) but also includes tangible personal property that could be sold for ingestion or chewing by humans but is sold for another use.

EXAMPLE 1: Manufacturer A produces gelatin that qualifies as a food or food ingredient. Manufacturer A only sells the gelatin to a cosmetics manufacturer. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer A to produce the gelatin is exempt from sales tax even though the gelatin was not sold for human consumption.

EXAMPLE 2: Manufacturer B produces two types of gelatin products. Product 1 is manufactured at a quality such that it may be used for technical purposes, such as an ingredient in wood glue, but humans could not consume Product 1 safely. Product 2 is manufactured at a quality such that humans could safely eat it, though it can also be sold for technical purposes like Product 1. Product 1 is not a food or food ingredient. Product 2 is a food or food ingredient.

EXAMPLE 3: Manufacturer C produces alcohol, all of which qualifies as a food or food ingredient. Manufacturer C sells one-third of its product to vodka Manufacturer V, one-third to fuel ethanol Manufacturer F, and one-third to perfume Manufacturer P. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer C to produce the alcohol is exempt from sales tax regardless of whether Manufacturer C sells the alcohol to Manufacturer V, F, or P.

Manufacturer V’s product is food-grade vodka sold at grocery and convenience stores. Manufacturer V may claim exemption for the same inputs used in producing its vodka as Manufacturer C.

Manufacturer F’s product is only sold to be used in motor vehicles and is harmful to humans if consumed. Manufacturer F cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its ethanol fuel. Manufacturer F may qualify for exemptions provided under other Iowa Code sections.

Manufacturer P’s product is only sold for cosmetic purposes and is harmful to humans if consumed. Manufacturer P cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its perfume. Manufacturer P may qualify for exemptions provided under other Iowa Code sections.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, which will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

REVENUE DEPARTMENT[701](cont'd)

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish that a product is a food or food ingredient for purposes of this exemption. The department's determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine and the orange juice are both food or food ingredients for purposes of this exemption.

215.2(2) The following activities constitute processing when performed by a manufacturer to create food or food ingredients. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce the food or food ingredient. Washing, sorting, and grading of fruits or vegetables; washing, sorting, and grading of eggs; repairing or replacing defective or broken-down machinery and equipment; and the mixing or agitation of liquids are examples of activities that do not qualify as "processing."

b. Maintenance of the quality or integrity of the food or food ingredient and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food or food ingredient in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating that holds the food or food ingredient at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or food ingredient or to hold the food or food ingredient in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food or food ingredient. Also, processing of food or food ingredients does not cease when the food or food ingredient is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the food or food ingredient marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food or food ingredient is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of the food or food ingredient. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment that cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food or food ingredient samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect-killing equipment used in areas where food or food ingredients are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for food or food ingredients is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold the food or food ingredient, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food or food ingredient into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food or food ingredients into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material that will become a food or food ingredient or used to move the food or food ingredient

REVENUE DEPARTMENT[701](cont'd)

itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or the food or food ingredient and taxable services used in door openers that open doors for forklifts or other devices moving the material or the food or food ingredient. Any loading dock that is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food or food ingredient to a loading dock is exempt from tax. If the food or food ingredient is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).

701—215.3(423) Services used in processing.

215.3(1) Electricity, steam, or any taxable service is used in processing only when used in any operation that subjects raw material to some special treatment that changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

a. The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants; warehouses; or offices is subject to tax. Also subject to tax is the sales price of any taxable services used to repair or replace defective or broken-down machinery and equipment.

b. The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax.

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax.

215.3(2) Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam that is consumed for taxable purposes. When practical, electricity or steam consumed as power or used in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam that is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment, or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—215.4(423) Chemicals, solvents, sorbents, or reagents used in processing.

215.4(1) Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail are exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers’

REVENUE DEPARTMENT[701](cont'd)

guides are considered to be retail sales. The terms “chemical,” “solvent,” “sorber,” and “reagent” are defined in rule 701—200.1(423).

215.4(2) For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorber, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

215.4(3) To qualify for this exemption, all of the following conditions must be met:

- a. The item must be a chemical, solvent, sorber, or reagent.
- b. The chemical, solvent, sorber, or reagent must be directly used and consumed, dissipated, or depleted during processing.
- c. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
- d. The chemical, solvent, sorber, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An “inert gas” is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in Iowa Code section 423.3(47) “d.”

This rule is intended to implement Iowa Code section 423.3(52).

701—215.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, that is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, “river” means a natural body of water or waterway that is commonly known as a river. “Well,” for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain water.

This rule is intended to implement Iowa Code section 423.3(53).

701—215.7 Reserved.

701—215.8(423) Exempt sales or rentals of core-making and mold-making equipment, and sand-handling equipment.

215.8(1) Exempt sales and rentals of machinery and equipment. The sales price from sales or rentals of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used by a foundry in the mold-making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment that may be exempt includes sand storage tanks, conveyors, patterns, mallor controllers, and sand mixers. A nonexclusive list of items that would not be exempt includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold-making process are not exempted from tax by this rule. Subrule 215.14(2) provides definitions of “directly used,” “equipment,” and “machinery.” Iowa Code section 423.3(47) “d” provides definitions of “replacement part” and “supplies.”

215.8(2) Exempt sales of fuel and electricity. The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

REVENUE DEPARTMENT[701](cont'd)

215.8(3) *Exempt design and installation services.* The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(82).

701—215.9(423) Chemical compounds used to treat water. Chemical compounds placed in water that is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water that is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds that are used to treat water that is not sold at retail or that are not used directly in processing are subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.10(423) Exclusive web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.10(1) *Definitions.* For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(92) “e.”

215.10(2) *Claiming the exemption.* Iowa Code section 423.3(92) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(92) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.10(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;
- c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.10(3) “b”;
- d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;
- e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;
- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs 215.10(3) “a” through “f.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and
- h. Electricity purchased for use in operating the web search portal.

215.10(4) *Limitation of exemption.* The purchases or leases of the items listed in subrule 215.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of

REVENUE DEPARTMENT[701](cont'd)

the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

- a. Electricity not used for operation or maintenance, such as in the office or employee break room;
- b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;
- c. Building materials that become part of real property, such as concrete, steel or roofing; and
- d. Tangible personal property that becomes part of real property, such as a dishwasher.

215.10(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3(92).

701—215.11(423) Web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.11(1) *Definitions.* For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(93) “e.”

215.11(2) *Claiming the exemption.* Iowa Code section 423.3(93) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(93) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.11(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;
- c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.11(3) “b”;
- d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;
- e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;
- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs 215.11(3) “a” through “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and
- h. Electricity purchased for use in operating the web search portal business.

215.11(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 215.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials

REVENUE DEPARTMENT[701](cont'd)

that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(93).

701—215.12(423) Large data center business exemption. A data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

215.12(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95) “e.”

215.12(2) Claiming the exemption. Iowa Code section 423.3(95) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95) “d,” the data center business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.12(3) Exempt purchases. Paragraphs 215.11(3) “a” through “h” are incorporated in full by this reference.

215.12(4) Limitation of exemption. The purchase or lease of the items listed in subrule 215.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.

b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

This rule is intended to implement Iowa Code section 423.3(95).

701—215.13(423) Data center business sales and use tax refunds. Data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

215.13(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95) “e.”

“Refund year” means the year beginning with the date of initial site preparation of the data center facility.

“Rehabilitation” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although they may be included as part of an overall rehabilitation project, singular actions such as the installation of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

215.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. Investment of \$136 million to \$200 million. Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility

REVENUE DEPARTMENT[701](cont'd)

contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. Investment of \$10 million to \$136 million—new construction. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. Investment of \$5 million to \$136 million—rehabilitation. Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. Investment of \$1 million to \$10 million—new construction. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

215.13(3) Purchases eligible for refunds. Paragraphs 215.11(3)“a” through “h” are incorporated in full by this reference.

215.13(4) Sustainable design standards. In order to claim the refunds detailed in paragraphs 215.13(3)“a” through “h,” data center businesses must comply with the sustainable design and construction standards as required by 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

215.13(5) Failure to meet investment qualifications. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95)“d,” the data center business loses the right to claim the refund and the business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

215.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 215.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 6 percent of the sales price of computers and equipment listed in subrule 215.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

REVENUE DEPARTMENT[701](cont'd)

- (1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;
- (2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and
- (3) The delivery of the fuel used for purposes of commercial energy.

215.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be approved by the department before a refund claim can be reviewed. The following format must be used for the affidavit:

Iowa Department of Revenue
Sales Tax Refund Affidavit

NAME OF AFFIANT

ADDRESS OF AFFIANT



AFFIDAVIT FOR
DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(7) or 423.4(8);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - ☐ \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - ☐ \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - ☐ \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - ☐ \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - ☐ \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and

REVENUE DEPARTMENT[701](cont'd)

6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

Name of Affiant

Date

Position of Affiant

This rule is intended to implement Iowa Code section 423.4(7) and 423.4(8).

701—215.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt when used for an exempt manufacturing purpose. Rule 701—215.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—215.22(423) exempts the service of designing or installing new industrial machinery and equipment.

215.14(1) Generally. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

a. Directly and primarily used in processing by a manufacturer (as described in rule 701—215.15(423)).

b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (as described in rule 701—215.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (as described in rule 701—215.17(423)).

d. Directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

e. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (as described in rule 701—215.20(423)).

f. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraphs 215.14(1) “a” through “e” (as described in rule 701—215.21(423)).

215.14(2) Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.

a. Computers and computer peripherals. “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. Machinery. “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. “Machinery” also includes all devices used or required to control, regulate, or

REVENUE DEPARTMENT[701](cont'd)

operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. "Machinery" does not include tangible personal property that becomes a structure or a part of real property after installation.

c. Equipment. In general usage, "equipment" refers to devices or tools used to produce a final product or achieve a given result. Exempt "equipment" under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer. "Equipment" does not include tangible personal property that becomes a structure or a part of real property after installation.

d. Replacement parts. "Replacement part" means the same as defined in Iowa Code section 423.3(47) "d."

e. Supplies. "Supplies" means the same as defined in Iowa Code section 423.3(47) "d."

f. Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies. "Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies" means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—215.14(423) through 701—215.20(423), regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. "Hand tool" means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment, computers, and computer peripherals. "Point-of-sale equipment, computers, and computer peripherals" means input, output, and processing equipment, computers, and computer peripherals used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, computers, and computer peripherals do not include equipment, computers, and computer peripherals used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, computers, and computer peripherals. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—215.14(423) through 701—215.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

h. Examples. When used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

(1) Coolers, including coolers that do not change the nature of materials stored in them.

(2) Equipment that eliminates bacteria.

(3) Palletizers.

REVENUE DEPARTMENT[701](cont'd)

- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyor systems.
- (9) Equipment that maintains an environment necessary to preserve a product's integrity.
- (10) Equipment that maintains a product's integrity directly.
- (11) Quality control equipment.
- (12) Water used for cooling.

215.14(3) *Leased and rented property.* The exemptions under rules 701—215.14(423) through 701—215.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—215.14(423) through 701—215.20(423). Additionally, a lessor's purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

215.14(4) *Recordkeeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—215.14(423) through 701—215.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47).

701—215.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer.

215.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);
- b.* Directly used as described in subrule 215.15(2);
- c.* Primarily used as described in subrule 215.15(2);
- d.* Used in processing as described in subrule 215.15(3); and
- e.* Used by a manufacturer as described in subrule 215.15(4).

215.15(2) *Directly and primarily used.*

a. Directly used.

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;

REVENUE DEPARTMENT[701](cont'd)

2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and

3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.

2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.

3. Property used by administrative, accounting, or personnel departments.

4. Property used by security, fire prevention, first aid, or hospital stations.

5. Property used in communications or safety.

b. *Primarily used.* The primary use of property is the activity or activities for which the property is used more than half of the time.

215.15(3) Processing.

a. *Generally.* “Processing” and “receipt or producing of raw materials” mean the same as defined in Iowa Code section 423.3(47) “d.” With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. *The beginning of processing.* Processing begins with a processor’s receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. *The completion of processing.* Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. *Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances, Example C demonstrates the middle stages of processing, and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A’s employees cut the trees, transport the logs to Company A’s facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A’s sawmill. The walnut trees are real property while they are growing. Thus, no “production of raw materials” has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A’s factory. However, if the transport vehicles are “vehicles subject to registration,” the vehicles are not exempt from the fee for new registration under this rule (as described in subparagraph 215.14(2) “g”(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

215.15(4) Manufacturer.

a. *Generally.* Iowa Code section 423.3(47)“d”(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

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

“*Manufacturer*” means the same as defined in Iowa Code section 423.3(47).

“*Transporting for hire*” means the service of moving persons or property for consideration, including but not limited to the use of a “personal transportation service” as that term is described in Iowa Code section 423.2(6) and rule 701—211.51(423).

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is “primarily engaged” in any of the activities listed in Iowa Code section 423.3(47)“d”(4)(c). A person is “primarily engaged” in an activity if the person generates more than 50 percent of the person's gross revenue from its operating business from, or spends more than 50 percent of the person's time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in “repairing tangible personal property or real property” (Iowa Code section 423.3(47)“d”(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47)“d”(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B's production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47)“d”(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47)“d”(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

215.15(5) Manufacturing.

a. *Activities commonly understood to be manufacturing.* “Manufacturing” means the same as defined in Iowa Code section 423.3(47).

b. *Premises primarily used to make retail sales.*

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

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

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.

REVENUE DEPARTMENT[701](cont'd)

6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. Rebuttable presumption. In addition to the premises listed in paragraph 215.15(5)“b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1)“a.”

- (1) For purposes of paragraph 215.15(5)“c”:

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

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

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1)“a” and the location is not one of those listed in paragraph 215.15(5)“b,” the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1)“a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

Retail sales sourced to the premises

Gross sales attributable to the premises

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

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 215.15(5)“c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail

REVENUE DEPARTMENT[701](cont'd)

stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

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

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

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

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

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

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

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

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

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

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

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

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

REVENUE DEPARTMENT[701](cont'd)

on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

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

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

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

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

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

EXAMPLE 4: Company A owns premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

215.15(6) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).

REVENUE DEPARTMENT[701](cont'd)

701—215.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

215.16(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2);

d. Used by a manufacturer as described in subrule 215.15(4); and

e. Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

215.16(2) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

215.16(3) Example of property directly and primarily used to maintain integrity or unique environmental conditions. A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system

REVENUE DEPARTMENT[701](cont'd)

directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) “a”(2).

701—215.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing.

215.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrules 215.15(2) and 215.17(3);

c. Primarily used as described in subrule 215.15(2); and

d. Used in research and development as described in subrule 215.17(2) of:

(1) New products; or

(2) Processes of processing.

215.17(2) “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

215.17(3) Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

215.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

215.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47) “a”(3).

701—215.18 Reserved.

701—215.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products.

215.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2); and

d. Used in:

(1) Recycling of waste products as described in subrule 215.19(2); or

(2) Reprocessing of waste products as described in subrule 215.19(2).

215.19(2) Recycling and reprocessing.

a. “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another nonwaste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

215.19(3) Replacement parts and supplies.

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical

REVENUE DEPARTMENT[701](cont'd)

contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

215.19(4) Examples.

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).

701—215.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer.

215.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Pollution-control equipment as described in subrule 215.20(2); and

b. Used by a manufacturer as described in subrule 215.15(4).

215.20(2) “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an

REVENUE DEPARTMENT[701](cont'd)

energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).

701—215.21(423) Exemption for the sale of fuel or electricity used in exempt property. The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—215.14(423), 701—215.15(423), 701—215.16(423), 701—215.17(423), 701—215.19(423), or 701—215.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, computers, or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—215.14(423) through 701—215.20(423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “b.”

701—215.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

215.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service as described in subrule 215.22(2);
- b. Of new as described in subrule 215.22(3); and
- c. Industrial machinery or equipment as described in subrule 215.22(4).

215.22(2) Design or installation services include electrical and electronic installation. “Design or installation” services do not include any repair service.

215.22(3) “New” means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

215.22(4) Industrial machinery or equipment.

a. *Generally.* “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 215.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer as described in rule 701—215.15(423).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment as described in rule 701—215.16(423).

(3) Property used directly and primarily in research and development of new products or processes of processing as described in rule 701—215.17(423).

(4) Property used directly and primarily in recycling or reprocessing of waste products as described in rule 701—215.19(423).

(5) Pollution-control equipment used by a manufacturer as described in rule 701—215.20(423).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers or computer peripherals as described in Iowa Code section 423.1.

(2) Replacement parts as described in Iowa Code section 423.3(47) “d.”

(3) Supplies as described in Iowa Code section 423.3(47) “d.”

(4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in paragraph 215.14(2) “f.”

REVENUE DEPARTMENT[701](cont'd)

215.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

ARC 7183C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to telecommunication services
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 217, “Telecommunication Services,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 34A.7B and 423.3(47A).

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 217 and adopt a new Chapter 217. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of telecommunication services. The chapter also contains definitions necessary for the State to maintain compliance with the Streamlined Sales and Use Tax Agreement.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

REVENUE DEPARTMENT[701](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 217 and adopt the following new chapter in lieu thereof:

CHAPTER 217
TELECOMMUNICATION SERVICES

701—217.1(423) Taxable telecommunication service and ancillary service. The sales price of all telecommunication service and ancillary service are subject to the sales or use tax.

701—217.2(423) Definitions.

REVENUE DEPARTMENT[701](cont'd)

217.2(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

217.2(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“800 service” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

“Ancillary services” means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

“Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

“Detailed telecommunication billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“Directory assistance” means an ancillary service of providing telephone number information and address information.

“Fixed wireless service” means a telecommunication service that provides radio communication between fixed points.

“Home service provider” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. §124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“International” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“Interstate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

“In this state” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“Intrastate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“Mobile telecommunication service” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. §124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. More information is contained in Iowa Code section 423.2(9).

“Mobile wireless service” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

REVENUE DEPARTMENT[701](cont'd)

“Paging service” means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

“Pay telephone service” means a telecommunication service provided through any pay telephone. “Pay telephone service” also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Residential telecommunication service” means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

“Sales price from the sale of telecommunication service” or *“sales price”* means all charges to any person that are necessary for the end user to secure the service, except those charges that are in the nature of a sale for resale (more information is contained in subrule 217.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state, even though payment of the charge may also be necessary to secure other services.

“Telecommunication service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunication service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer’s premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. §522.6 and audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 CFR §20.3;
8. Ancillary services;
9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Value-added non-voice data service” means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

“Vertical service” means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

REVENUE DEPARTMENT[701](cont'd)

“Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.3(423) Imposition of tax.

217.3(1) Taxable telecommunication service and ancillary service. The sales price of the sale of telecommunication service and ancillary service are subject to Iowa sales or use tax. The following is a nonexclusive list of taxable telecommunication services:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

217.3(2) Other taxable services and circumstances. The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce that are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Sales price of services performed by another company.* The sales price collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable sales price of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical and electronic installation and repair.* The sales price of the installation or repair of any inside wire that provides electrical current that allows an electronic device to function is subject to tax. The sales price is from the enumerated service of electrical and electronic repair and installation. The sales price of inside wire maintenance charges for services performed under a service or warranty contract is also subject to tax. Depending upon the circumstances, the sales price is for the enumerated service of electrical and electronic repair and installation or is incurred under an optional service or warranty contract for an enumerated service. In either event, the receipts are subject to tax.

e. *Electrical and electronic installation and repair: billing methodology.* The sales price of the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, is subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs, including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. *Nonitemized taxes and charges.* Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

REVENUE DEPARTMENT[701](cont'd)

g. Rental of tangible personal property. The sales price of the rental of any device for home or office use or to provide a telecommunication service to others is taxable as the rental of tangible personal property. The sales price of rental includes rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device that is included in the sales price of the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. More information is contained in Iowa Code section 423.3. Other exemptions may be applicable, as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the sales price of the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of the sales price.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. More information is contained in subrule 217.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A: Company A is located in Des Moines, Iowa. Company A charges a customer \$2 to transmit a fax to Dubuque, Iowa. The \$2 is a taxable sales price. Midwest Telephone Company charges Company A \$500 per month for the intrastate communication service on the company's dedicated fax line. The \$500 is also a sales price from a taxable communication service.

EXAMPLE B: The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing that is attributable to expenses for faxing. For example, "bill to John Smith for \$1,000 for legal services performed, fax expenses that are part of this billing—\$30." The \$30 is not a sales price for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

217.4(1) Detailed communications billing service.

217.4(2) Internet access fees or charges.

217.4(3) Value-added non-voice data service.

217.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

a. Fees and charges for securing only interstate telecommunication services.

b. Federal taxes.

c. Fees and charges for only interstate directory assistance.

217.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase

REVENUE DEPARTMENT[701](cont'd)

of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

217.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

217.4(7) 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service that routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

- a. The amount is no more than \$1 per month per telephone access line; and
- b. The surcharge is separately identified and separately billed.

217.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

217.4(9) Resale exemption. A service or facility furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualifies for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

217.4(10) Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

217.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. More information is contained in 701—Chapter 219.

This rule is intended to implement Iowa Code section 423.3.

701—217.5(423) Bundled transactions in telecommunication service. More information on general rules on bundled transactions is contained in 701—Chapter 206. In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

217.5(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

217.5(2) If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate, unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

This rule is intended to implement Iowa Code section 423.2(8).

701—217.6(423) Sourcing telecommunication service.

217.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services, unless the service falls under one of the exceptions set forth in subrule 217.6(2).

217.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

- a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

REVENUE DEPARTMENT[701](cont'd)

b. The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1) “*e*” shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer’s website. No items are delivered. The sale would be sourced to the consumer’s Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller’s website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer’s billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller’s website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer’s place of primary use.

e. The sale of an ancillary service is sourced to the customer’s place of primary use.

f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

(1) The seller’s telecommunication system; or

(2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

g. The sale of telecommunication service sold on a call-by-call basis is sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer’s place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

REVENUE DEPARTMENT[701](cont'd)

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

This rule is intended to implement Iowa Code section 423.20.

701—217.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

217.7(1) Retailers liable for collecting and remitting tax. A retailer that sells taxable telecommunication service and ancillary service is liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

217.7(2) Billing date and tax period. A company that bills the company's subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in the company's sales price. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the sales price stated in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

217.7(3) Permitting business offices. A company must have a permit for each business office that provides telecommunication service in this state. The company must collect and remit tax upon the sales price of the operation of each office.

217.7(4) Credit. A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

217.7(5) Direct pay permit not applicable to telecommunication services. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

217.7(6) Guaranteed amounts for coin-operated telephones. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable sales price collected.

This rule is intended to implement Iowa Code section 423.36.

701—217.8(34A) Prepaid wireless 911 surcharge.

217.8(1) Definitions. The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Department" means the department of revenue.

"Prepaid wireless 911 surcharge" means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

"Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

REVENUE DEPARTMENT[701](cont'd)

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“Seller” means a person who sells prepaid wireless telecommunications service to another person.

217.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

217.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service in paragraph 217.6(2) *“b.”* More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(3) *“a,”* including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer's Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

g. The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

217.8(4) Audit, appeal, and enforcement.

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

REVENUE DEPARTMENT[701](cont'd)

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

217.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

217.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

701—217.9(423) State sales tax exemption for central office equipment and transmission equipment. Central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by certain providers enumerated in Iowa Code section 423.3(47A) "a."

217.9(1) *Definitions.* The following definitions are applicable to this rule:

"Central office equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(1).

"Transmission equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(4).

217.9(2) *Central office equipment or transmission equipment.* The following are central office equipment or transmission equipment:

a. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

b. Peripheral equipment used to support the transmission of communications over the network, such as emergency power equipment, lightning arrestors, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

c. Circuit equipment that utilizes the message path to carry signaling information or that utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

d. Radio equipment, including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

217.9(3) *Not central office equipment or transmission equipment.* The following are not central office equipment or transmission equipment:

a. Telecommunications towers. These towers are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

b. Equipment shelters or enclosures erected on concrete or other foundations. These shelters or enclosures are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

c. Fencing erected around the telecommunications towers and equipment shelters or enclosures. This rule is intended to implement Iowa Code section 423.3(47A).

ARC 7149C

REVENUE DEPARTMENT[701]**Notice of Intended Action****Proposing rulemaking related to resale and processing exemptions primarily of benefit to retailers and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1(24), 423.1(39), 423.1(46), 423.1(54), 423.1(55), 423.2(1), 423.3(2), 423.3(50), 423.3(98), 423.3(104) and 423.15(2).

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 225. This chapter provides the Department’s interpretation of the underlying statutes and how those statutes apply to retailers who qualify for a resale or other sales or use tax exemptions on certain purchases in order to aid retailers’ understanding of the underlying statutes and to reduce uncertainty about the application of certain exemptions to retailers’ purchases. The Department proposes adding to the rules to add clarification and removing portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to those changes and for organizational reasons. A citation in subrule 225.5(5) to rule 701—221.5(423) refers to a rule that will be adopted in a future rulemaking.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY
OF BENEFIT TO RETAILERS

701—225.1(423) Paper or plastic plates, cups, and dishes; paper napkins; wooden or plastic spoons and forks; and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers are considered sales for resale. The sales price from the sale of such items by retailers to consumers or users is subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction is deemed to be a retail sale to the retailer and therefore is taxable.

Sales of reusable placemats to retailers that sell meals are also subject to tax.

EXAMPLE 1: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of

REVENUE DEPARTMENT[701](cont'd)

these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type that is normally sold in the regular course of the retailer's business and that is held for sale by the retailer.

EXAMPLE 1: A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2: B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3: C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4: XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance, XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(55) and 423.3(50).

701—225.3(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.3(1) In general.

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property that is not sold in the manner set forth in paragraph 225.3(1) "a" above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding the clients' accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity that is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

EXAMPLE 2: An automobile repair shop purchases solvents that are used in cleaning automobile parts and thus in performing the shop's automobile repair service. Tax is due at the time the automobile repair shop purchases the solvents because the solvents are not sold to the customer and because, in this case, the items are not transferred to a customer in a form or quantity that is capable of a fixed or definite price value. Thus, the solvents are deemed consumed by the purchaser engaged in the performance of the service.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3: A retailer purchases television picture tubes tax-free and makes a separate charge for the picture tube to the customer. Since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the picture tube exempt from tax for subsequent resale.

EXAMPLE 4: A beauty shop purchases shampoo and other items to be used in the performance of the shop's service. Tax is due at the time the beauty shop purchases such items from the shop's supplier because the customers of the beauty shop are not separately billed for the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price value. The items are consumed by the beauty shop.

EXAMPLE 5: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas, and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the items.

EXAMPLE 6: An accounting firm purchases plastic binders that are used to cover the reports issued to the firm's customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 7: A meat locker purchases materials, such as wrapping paper and tape, that the meat locker uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because the materials are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 8: A jeweler purchases materials, such as main springs and crystals, to be used in the performance of a service. These items are purchased by the jeweler for resale when the items are transferred to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 9: A lawn care service applies fertilizer, herbicides, and pesticides to the lawn care service's customers' lawns. The following are examples of invoices to customers that are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....\$60"; "Fertilizer...50 lbs....\$100"; and "Materials applied to lawn...4 bushel...\$40." The following are examples of information placed upon an invoice that would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...\$30" or "Fifty pounds of fertilizer was applied to this lawn."

225.3(2) *Purchases made by automobile body shops or garages with body shops.* Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

a. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. More information is contained in Iowa Code section 423.3(2).

b. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items that will be resold (detailed list below) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" that such shops consume in rendering repair services. Some of the materials are transferred to the recipients

REVENUE DEPARTMENT[701](cont'd)

of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

- Abrasives
- Battery water
- Body filler or putty
- Body lead
- Bolts, nuts and washers
- Brake fluid
- Buffing pads
- Chamois
- Cleaning compounds
- Degreasing compounds
- Floor dry
- Hydraulic jack oil
- Lubricants
- Masking tape
- Paint
- Polishes
- Rags
- Rivets and cotter pins
- Sanding discs
- Sandpaper
- Scuff pads
- Sealer and primer
- Sheet metal
- Solder
- Solvents
- Spark plug sand
- Striping tape
- Thinner
- Upholstery tacks
- Waxes
- White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts:

- Accessories
- Batteries
- Brackets
- Bulbs
- Bumpers
- Cab corners
- Chassis parts
- Door guards
- Door handles
- Doors
- Engine parts
- Fenders
- Floor mats

REVENUE DEPARTMENT[701](cont'd)

Grilles
Headlamps
Hoods
Hubcaps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies that are generally not transferred to the body shop's customer during the course of the repair and, therefore, could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase:

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bits
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Signs
Spreaders for putty
Washing equipment and parts
Welding equipment and parts

Because of the nature of the body shop business and the formulas devised by the insurance industry to reimburse a body shop for cost of "materials," it is possible for a body shop, in the body shop's invoices to customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shop, and some of such individual materials are not even transferred by the body shop to the body shop's customers. Therefore, the body shop is generally the "consumer" of "materials" and does not purchase those materials for resale. Thus, the body shop should pay tax to retailers on all materials purchased and consumed by the body shop. If materials are purchased from non-Iowa retailers that do not collect Iowa tax from the body shop, such a body shop should remit consumer use tax to the department of revenue on such materials.

A body shop must collect sales tax on the taxable service of repairing motor vehicles. More information is contained in rule 701—218.2(423). However, due to the nature of the insurance formulas,

REVENUE DEPARTMENT[701](cont'd)

it is possible for the body shop to itemize that portion of the body shop's billing that would be for repair services and that portion relating to consumed "materials." It is also possible for the body shop to itemize that portion of the body shop's charges for parts that the body shop purchases for resale to the body shop's customers. A body shop does not and cannot resell the tools and supplies previously listed in this rule; the body shop's purchases of such items are taxable.

Therefore, as long as a body shop separately itemizes on the body shop's invoices to the body shop's customers the amounts for labor, parts, and "materials," the body shop should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In the body shop's invoice to the customer, the labor is separately listed at \$600, the part (fender) is separately listed at \$600, and the category of "materials" is separately listed for a lump sum of \$200, for a total billing of \$1,400. The Iowa sales tax computed by the body shop should be on \$1,200, which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for the taxable "sales price," as defined in Iowa Code section 423.1(51), which is taxable under Iowa Code section 423.2.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to the shop's supplier at the time of purchase.

This rule is intended to implement Iowa Code sections 423.1(39) and 423.3(2).

701—225.4(423) Maintenance or repair of fabric or clothing. Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. This rule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene (also known as "perch") or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt from tax. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—225.5(423) The sales price from the leasing of all tangible personal property subject to tax.

225.5(1) Leases. The rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because "leases" and "rentals" of tangible personal property are taxable retail "sales" of that property. The rental of tangible personal property is not a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is applicable to sales and leases of tangible personal property for subsequent rental or lease.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE A: ABC buys blowers, hand tools, ladders, plumbers' snakes, sanders, and tillers for subsequent short-term rental to various customers. ABC's purchases of these items of equipment are purchases for resale and are exempt from tax.

EXAMPLE B: In addition to its purchases of equipment for subsequent rental, ABC leases from retailers, long-term, items of heavier equipment, such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, ABC's leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.5(2) *Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services.* In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(6) "bf" and 423.2(8) concerning transportation services and bundled service contracts, respectively.

225.5(3) *Rental of real property distinguished from rental of tangible personal property.* If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided that allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.5(4) *Rental of tangible personal property and rental of fixtures.* The rental of tangible personal property that shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property that is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis.

225.5(5) *Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt.* Under the law, the sales price from rental of tangible personal property includes royalties and copyright and license fees. The rental of all property that is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Therefore, the sales price from the rental of films, videodiscs, videocassettes, and computer software that are the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible personal property is subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. More information is contained in rule 701—221.5(423) for an exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

REVENUE DEPARTMENT[701](cont'd)

225.5(6) Deposits and additional fees. Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment that is applied to the rental receipts.

When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.5(7) Leasing of tangible personal property moving in interstate commerce.

a. In the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor is a retailer maintaining a place of business in this state as defined in Iowa Code section 423.1(48). Whether the lease agreement is executed in Iowa or not is irrelevant.

c. Where a lessee rents equipment sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(24), 423.1(43), 423.1(46), 423.1(54), 423.2(1), and 423.15(2).

701—225.6(423) Certain inputs used in taxable vehicle wash and wax services. The sales price from the sale of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) is exempt from tax.

225.6(1) Definitions. For the purposes of this rule, terms mean the same as defined in Iowa Code section 423.1 and 701—Chapter 200. Additionally, the following definitions apply:

“*Secondary vehicle wash and wax facility*” means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6).

REVENUE DEPARTMENT[701](cont'd)

Examples of “secondary vehicle wash and wax facilities” include but are not limited to vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a “secondary vehicle wash and wax facility” unless it can prove otherwise.

“*Stand-alone vehicle wash and wax facility*” means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a “stand-alone vehicle wash and wax facility” although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes that are sold out of vending machines.

“*Vehicle*” means the same as defined in Iowa Code section 321.1.

“*Vehicle wash and wax facility*” means any retailer that provides vehicle wash and wax services.

“*Vehicle wash and wax services*” or “*vehicle wash and wax*” means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

“*Water*” means water directly consumed or used in providing the taxable vehicle wash and wax service. “Water” does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services since these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.6(2) *Purchases made by a stand-alone vehicle wash and wax facility.* Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the retailers of such items with an exemption certificate.

225.6(3) *Purchases made by a secondary vehicle wash and wax facility.*

a. Sales price of electricity and water. The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting, and water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the retailers. The retailer should not charge tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity that is measured by the meter that separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the

REVENUE DEPARTMENT[701](cont'd)

nature of the secondary vehicle wash and wax service facility's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation. The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water retailer in writing of the percentage of exempt usage, if required.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department at the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate that indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE A: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax

REVENUE DEPARTMENT[701](cont'd)

services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is “consumed” in performance of the automobile dealership’s business operations.

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water retailers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water retailers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership’s returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE B: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The gas station shall furnish to the electricity or water retailer an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE C: Same facts as Example B, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement Iowa Code section 423.3(98).

701—225.7(423) Exemption for certain purchases by commercial enterprises.

225.7(1) Exemption. The sales price from the sale of specified digital products and of prewritten computer software sold, and of enumerated services described in Iowa Code section 423.2(1)“a”(5) or 423.2(6)“bq,” “br,” “bs,” and “bu” furnished to a commercial enterprise for use exclusively by a commercial enterprise is exempt from tax.

REVENUE DEPARTMENT[701](cont'd)

225.7(2) Commercial enterprise as purchaser. A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104)“b”(1). For purposes of Iowa Code section 423.3(104)“b”(1). For purposes of Iowa Code section 423.3(104)“b”(1), the following definitions apply:

a. Insurance company. “Insurance company” means the same as defined in Iowa Code section 423.3(47)“d.” Excluded from the definition of “insurance company” is the following nonexhaustive list of entities: benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B.

b. Occupation. “Occupation” means the principal business of an individual, such as the business of farming.

c. Profession. “Profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation.

225.7(3) Exclusive use by a commercial enterprise. A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise’s business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

- (1) Word processing software loaded onto employees’ work computers.
- (2) Software that displays a menu on a tablet used by customers at a restaurant.
- (3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

- (1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.
- (2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.7(4) Noncommercial purposes. “Noncommercial purposes” means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

- a.* Personal and recreational use.
- b.* Holding a product for future use for a noncommercial purpose.

225.7(5) De minimis. “De minimis” means an amount of use of a product for noncommercial purposes that, when considering the product’s value and the frequency with which the use for noncommercial purposes occurs during the product’s total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).

ARC 7150C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to local option sales and services tax
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 270, “Local Option Sales and Services Tax,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

REVENUE DEPARTMENT[701](cont'd)

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99F.10(6) and 423B.5.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 270. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or are duplicative of statutory language. The proposed chapter describes the Department's interpretation of the underlying statute to help the public understand local option taxes. These rules reduce uncertainty about when tax applies.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

REVENUE DEPARTMENT[701](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 270 and adopt the following new chapter in lieu thereof:

CHAPTER 270
LOCAL OPTION SALES AND SERVICES TAX

701—270.1(423B) Definitions.

270.1(1) *Incorporation of definitions.* To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and chapter 423B and rule 701—200.1(423).

270.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“City” means the same as defined in Iowa Code section 362.2(4).

“Local option tax” or “local option taxes” means the taxes imposed by Iowa Code chapter 423B.

“Most recent certified federal census” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs that modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

“Unincorporated area of the county” means all areas of a county that are outside the corporate limits of all cities that are located within the geographical area of the county.

This rule is intended to implement Iowa Code section 423B.7.

701—270.2(423B) Imposition of local option taxes and notification to the department. This rule describes notification and other requirements as related to the department. More information on election forms and instructions can be found in 721—Chapter 21.

270.2(1) *Notice to the department.* Within ten days of the election at which a majority of those voting on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

270.2(2) *Avoiding a lapse in tax due to expiration of a former local option tax.* A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. A local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

This rule is intended to implement Iowa Code section 423B.6.

REVENUE DEPARTMENT[701](cont'd)

701—270.3(423B) Administration.

270.3(1) *Generally.* The department is charged with the administration of the tax, once imposed, and must administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

270.3(2) *Incorporation of 701—Chapter 11.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to retailers required to collect local option taxes in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.4(423B) Filing returns; payment of tax; penalty and interest.

270.4(1) *Incorporation of 701—Chapter 202.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 202 apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

270.4(2) *Local tax collections not included to determine filing frequency.* Local option tax collections are included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.

701—270.5(423B) Permits. Except as otherwise stated in this chapter, the requirements of 701—Chapter 201 apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.6(423B) Sales subject to local option sales and services tax. All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

270.6(1) *Sourcing.* The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 205 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

270.6(2) *Sellers responsible for collecting local option sales and services tax.* Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).

701—270.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and services tax is imposed upon the same basis as the Iowa state sales and services tax, with the following exceptions:

1. Local option tax is not imposed on the sales price from the sale of tangible personal property and services that are excluded from local option tax as described in Iowa Code section 423B.5(1).

2. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service to the extent precluded by Section 602 of the Telecommunications Act of 1996. A “local taxing jurisdiction” is any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.

3. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including the one-time registration fee applicable to vehicles subject

REVENUE DEPARTMENT[701](cont'd)

to registration or subject only to the issuance of a certificate of title. Also, exemptions that are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

This rule is intended to implement Iowa Code section 423B.5.

701—270.8(423B) Local option sales and services tax payments to local governments.

270.8(1) *County-imposed local sales and services tax; division of funds from accounts.* Division of the amount from each county's account to be distributed is done with these steps.

a. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

b. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax-imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census that is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census that is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction that is used to compute the participating jurisdiction's share of the revenue from the county's account that is based on county population. Example 3 of this rule contains a demonstration of how an interim census can affect a population distribution formula.

c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately, then totaled. The property tax amount for each sales tax-imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

d. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in paragraph 270.8(1) "c" is added to the amount found in paragraph 270.8(1) "b." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1: If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

Step 1:

REVENUE DEPARTMENT[701](cont'd)

Distribution Basis	Amount
Population	\$ 75,000.00
Property Taxes Levied	25,000.00
Total	<u>\$100,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	17,796	20.59%	15,442.50
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00

REVENUE DEPARTMENT[701](cont'd)

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	21,782,457	39.42%	9,855.00
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	15,442.50	9,855.00	25,297.50
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2: If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 7,500.00
Property Taxes Levied	2,500.00
Total	<u>\$10,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	981	23.45%	1,758.75
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

REVENUE DEPARTMENT[701](cont'd)

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	346,849	30.96%	774.50
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	1,758.75	774.00	2,532.75
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3: For the purposes of understanding this example, assume that the numbers for “certified population” from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The cities’ percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1,752}{1,752 + 1,493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1,493}{1,493 + 1,752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The “amount to be distributed by population” found in Step 4 of Example 2 would then be recomputed based on the new figures.

270.8(2) City-imposed local option sales and services tax. More information on the distribution of city-imposed local sales and services tax can be found in Iowa Code section 423B.7(1).

This rule is intended to implement Iowa Code section 423B.7.

701—270.9(423B) Allocation procedure when sourcing of local option sales tax remitted to the department is unknown. If the director is unable to determine from which county local option sales tax was collected, that local option sales tax shall be allocated among the various counties in which local option sales and services tax is imposed according to the following procedure:

REVENUE DEPARTMENT[701](cont'd)

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and services tax fund.
2. The total amount of receipts for which the director is unable to determine a county of collection that have accumulated since the last allocation of these receipts shall be added together to form one lump sum.
3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and services tax is imposed shall be determined.
4. The amount of population so determined in numbered paragraph "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and services tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and services tax is imposed is determined.
5. The sum determined to exist in numbered paragraph "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in numbered paragraph "3" above and the denominator of which is the number calculated by the method described in numbered paragraph "4." The procedure described herein in numbered paragraph "5" shall be used until the amount of tax due to every county imposing local option sales and services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and services tax fund. Characterization of the term "most recent certified federal census" can be found in rule 701—270.1(423B), and methods of rounding off percentages and monetary sums can be found in rule 701—270.8(423B).

This rule is intended to implement Iowa Code section 423B.7(1).

701—270.10(423B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) "d." The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and services tax due for the given tax period in relation to combined total payment of sales and local option sales and services tax actually received for that tax period.

This rule is intended to implement Iowa Code section 423B.7.

701—270.11(423B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable to a particular jurisdiction is based on destination sourcing. More information can be found in Iowa Code section 423.15 and 701—Chapter 205. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula that rationally apportions the progress of an excursion gambling boat among jurisdictions that impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples 1 and 3 utilize a "distance" formula for apportionment. Examples 2 and 4 utilize a "time" formula for apportionment. In Examples 1 and 2, state sales tax is included in the sales price of the taxable items. In Examples 3 and 4, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 1: The excursion gambling boat “Auric” is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters that are part of a local option sales tax jurisdiction and 25 of those miles that are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a “distance” apportionment formula are determined as follows:

1. $(25 \div 50) \times 0.01 = 0.005$
(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate
2. $1 + 0.06 + 0.005 = 1.065$
 $1 + \text{state sales tax rate} + \text{effective LOST rate} = (1 + \text{effective total tax rate})$
3. $\$10,000.00 \div 1.065 = \$9,389.67$
Gross receipts \div (1 + effective total tax rate) = total sales
4. $\$9,389.67 \times 0.06 = \563.38
Total sales \times state tax rate = state tax amount
5. $\$9,389.67 \times 0.005 = \46.95
Total sales \times effective LOST rate = LOST amount
6. $\$563.38 + \$46.95 = \$610.33$
State tax amount + LOST amount = total tax amount

EXAMPLE 2: The excursion gambling boat “Blue Diamond” is based in Davenport. Assume that, as in Example 1, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example 1, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. The calculation is performed as follows:

1. $(2 \div 3) \times 0.01 = 0.00666$
(hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate
2. $1 + 0.06 + 0.00666 = 1.06666$
 $1 + \text{state sales tax rate} + \text{effective LOST rate} = (1 + \text{effective total tax rate})$
3. $\$10,000.00 \div 1.06666 = \$9,375.06$
Gross receipts \div (1 + effective total tax rate) = total sales
4. $\$9,375.06 \times 0.06 = \562.50
Total sales \times state tax rate = state tax amount
5. $\$9,375.06 \times 0.00666 = \62.44
Total sales \times effective LOST rate = LOST amount
6. $\$562.50 + \$62.44 = \$624.94$
State tax due + LOST due = total tax amount

EXAMPLE 3: The excursion gambling boat “Golconda” is based in Dubuque. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles, the Golconda is passing through waters that are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is \$106,000; \$100,000 in gross receipts, \$6,000 in state sales tax. Local option tax is calculated as follows:

1. $(25 \div 50) \times 0.01 = 0.005$
(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate
2. $1 + 0.005 = 1.005$
 $1 + \text{effective LOST rate}$
3. $\$100,000.00 \div 1.005 = \$99,502.49$

REVENUE DEPARTMENT[701](cont'd)

Gross receipts including LOST \div (1 + effective LOST rate) = total sales

$$4. \quad \$99,502.49 \times 0.06 = \$5,970.15$$

Total sales \times state tax rate = state tax amount

$$5. \quad \$100,000.00 - 99,502.49 = \$497.51$$

Gross receipts including LOST – total sales = LOST amount

$$6. \quad \$5,970.15 + \$497.51 = \$6,467.66$$

State tax due + LOST due = total tax amount

$$7. \quad \$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE 4: The excursion gambling boat “Black Jack” is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is \$159,000; \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example 2, the Black Jack’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example, tax is computed as follows:

$$1. \quad (2 \div 3) \times 0.01 = 0.00666 \text{ effective LOST rate}$$

(hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate

$$2. \quad 1 + 0.00666 = 1.00666$$

1 + effective LOST rate

$$3. \quad \$150,000.00 \div 1.00666 = \$149,007.61$$

Gross receipts including LOST but not state tax \div (1 + effective LOST rate) = total sales

$$4. \quad \$149,007.61 \times 0.06 = \$8,940.46$$

Total sales \times state tax rate = state tax amount

$$5. \quad \$150,000.00 - 149,007.61 = \$992.39$$

Gross receipts including LOST but not state tax – total sales = LOST amount

$$6. \quad \$8,940.46 + \$992.39 = \$9,932.85$$

State tax amount + LOST amount = total tax amount

$$7. \quad \$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the “distance” method of apportionment set out in Examples 1 and 3 or the “time” method set out in 2 and 4 above without informing the department in advance of filing a sales tax return of the licensee’s choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 423B.5.

ARC 7151C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to new school infrastructure local option sales and services tax and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 271, “New School Infrastructure Local Option Sales and Services Tax—Effective On or After April 1, 2003, Through Fiscal Years Ending December 31, 2022,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423E.1 to 423E.6.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department was directed on September 22, 2023, to propose this Notice of Intended Action to rescind and reserve Chapter 271. The Department determined the chapter was unnecessary or obsolete because the underlying statutes it implemented have been repealed. This chapter implemented rules related to the School Infrastructure Local Option (SILO) Tax Fund, which has since been replaced by the Secure an Advanced Vision for Education (SAVE) Fund.

The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

REVENUE DEPARTMENT[701](cont'd)

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **701—Chapter 271**.

ARC 7184C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to flood mitigation program
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 272, "Flood Mitigation Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 418.12 and 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 418 and sections 423.2A(2) and 423.2A(3).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 272 and adopt a new Chapter 272, which consists of rules relating to the Department's role in the administration of the Flood Mitigation Program. These rules are required under Iowa Code chapter 418. These rules interpret the underlying statutes about the calculation and remittance of the sales tax increment funding to projects approved under Iowa Code chapter 418. The Department proposes revisions to the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department further proposes to add a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute for the Flood Mitigation Program.

REVENUE DEPARTMENT[701](cont'd)

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306–3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

REVENUE DEPARTMENT[701](cont'd)

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 272 and adopt the following **new** chapter in lieu thereof:

CHAPTER 272
FLOOD MITIGATION PROGRAM

701—272.1(418) Flood mitigation program. Iowa Code chapter 418 authorizes and governs the flood mitigation program to assist governmental entities in undertaking approved projects. This chapter sets forth rules for the department of revenue's administration of the calculation and remittance of the sales tax increment funding. The Iowa department of homeland security and emergency management's administrative rules for other aspects of this program are found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and sections 423.2(11), 423.2A(2) and 423.2A(3).

701—272.2(418) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code chapter 418. Additionally, the following definitions apply:

“Corresponding quarter” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

“Department” means the Iowa department of revenue.

This rule is intended to implement Iowa Code section 418.1.

701—272.3(418) Sales tax increment calculation.

272.3(1) Sales tax increment calculation formula. The department will calculate quarterly the amount of the sales tax increment as described in Iowa Code section 418.11(2). To do so, the department will determine the base year for the flood mitigation project when the period for processing returns for the final quarter in the base year is complete.

272.3(2) Sales considered within the calculation formula. Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

272.3(3) Identification of retailers. Each governmental entity that has established a project under Iowa Code chapter 418 must notify the department of retail establishments in the governmental entity's applicable area that are collecting sales tax as soon as possible. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under Iowa Code chapter 418.

This rule is intended to implement Iowa Code sections 418.11 and 423.2A(2).

701—272.4(418) Sales tax increment fund.

272.4(1) Deposits. For each governmental entity that establishes a flood mitigation project under Iowa Code chapter 418, the department will deposit collected funds into each applicable area's sales tax increment fund as described in Iowa Code section 418.12(3). Additionally, moneys will not be deposited in the fund before the period for processing returns is complete.

272.4(2) Requests for remittances; limitations.

a. Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations described in Iowa Code section 418.12(4) “*a.*” The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

REVENUE DEPARTMENT[701](cont'd)

b. If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to the limitations in Iowa Code section 418.12(4) “a,” those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

272.4(3) *Authorized expenditures.* Funds from requests for remittances made to the department by a governmental entity shall only be used for the governmental entities’ costs or obligation to the project as described in Iowa Code section 418.13(1).

272.4(4) *Remittance of funds to the general fund.* The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations found in Iowa Code section 418.12(5).

This rule is intended to implement Iowa Code sections 418.12, 418.13 and 423.2A(2).

701—272.5(418) Administrative fee.

272.5(1) *Administrative fee.* Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the flood mitigation program.

272.5(2) *Amount retained.* The amount retained each quarter will be the total of the prorated shares amongst all projects in both the flood mitigation program and the reinvestment districts program authorized under Iowa Code chapter 15J.

272.5(3) *Prorated share.* Each entity’s prorated share of the administrative fee for each quarter will be calculated as follows:

Flood mitigation entity’s distribution for the quarter		Either \$25,000 or the
Total distributions of both the flood mitigation and	x	department’s actual expenses,
reinvestment districts for the quarter		whichever is less

This rule is intended to implement Iowa Code section 423.2A(3).

ARC 7185C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to reinvestment districts program
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 273, “Reinvestment Districts Program,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15J.6 and 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15J and sections 423.2A(2) and 423.2A(3).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 273 and adopt a new Chapter 273, which consists of rules relating to the Department’s role in the administration of the Reinvestment Districts Program. These rules are required under Iowa Code chapter 15J. These rules interpret the underlying statutes about the calculation and remittance of the sales tax revenues to reinvestment district and reinvestment project funds pursuant to Iowa Code chapter 15J. The Department proposes revisions to the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department also

REVENUE DEPARTMENT[701](cont'd)

renumbered some rules due to other edits and for organizational reasons. The Department further proposes to add a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute to the Reinvestment Districts Program.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
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Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

REVENUE DEPARTMENT[701](cont'd)

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 273 and adopt the following **new** chapter in lieu thereof:

CHAPTER 273
REINVESTMENT DISTRICTS PROGRAM

701—273.1(15J) Purpose and definitions. The Iowa reinvestment Act provides for the reinvestment of as much as \$100 million in state hotel and motel and state sales tax revenues from revenue-generating projects within certain districts. The economic development authority board is authorized to oversee the implementation and administration of certain provisions of this program, including evaluating projects and making funding decisions. This chapter sets forth rules for the department of revenue's administration of the calculation, collection, and remittance of funds for this program. The economic development authority board's administrative rules about this program are found at 261—Chapter 200. Terms mean the same as defined in Iowa Code chapter 15J.

This rule is intended to implement Iowa Code chapter 15J.

701—273.2(15J) New state tax revenue calculations.

273.2(1) State sales tax. For districts established before July 1, 2020, the department will calculate the state sales tax revenues as described in Iowa Code section 15J.5(1) "b"(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(1) "b"(2).

273.2(2) State hotel and motel tax. For districts established before July 1, 2020, the department will calculate the state hotel and motel tax revenues as described in Iowa Code section 15J.5(2) "b"(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(2) "b"(2).

273.2(3) Identification of new retail establishments and lessors. Each municipality that has established a district under Iowa Code chapter 15J must notify the department of new retail establishments and lessors in the district that are created as soon as possible. This process shall be ongoing until the municipality ceases to utilize state sales tax revenue or state hotel and motel tax revenue under this chapter or the district is dissolved.

This rule is intended to implement Iowa Code sections 15J.5, 423.2(11) and 423A.6.

701—273.3(15J) State reinvestment district fund.

273.3(1) Deposits. The department shall deposit moneys into the appropriate district fund as described in Iowa Code section 15J.6; however, moneys shall not be deposited in the fund before the period for processing returns is complete.

273.3(2) Late-filed returns. Moneys described in Iowa Code section 15J.6 that are collected from late-filed returns shall be deposited in the fund. Such moneys shall be deposited following the period for processing returns for the quarter in which the late return is received, subject to the limitations of Iowa Code chapter 15J.

273.3(3) Refund claims. If the moneys described in Iowa Code section 15J.6 are the subject of a refund claim and that claim is granted by the department, the department may offset any refund at a later date against funds remitted to the district in which the new retail establishment or new lessor that had remitted the refunded tax amount is located.

This rule is intended to implement Iowa Code section 15J.6.

701—273.4(15J) Reinvestment project fund. State sales tax revenue and state hotel and motel tax revenue will be remitted by the department and deposited into reinvestment project funds as described in

REVENUE DEPARTMENT[701](cont'd)

Iowa Code section 15J.7. Moneys deposited in the fund shall only be used to fund projects as described in Iowa Code section 15J.7(1) and not those projects described in Iowa Code section 15J.7(4).

This rule is intended to implement Iowa Code section 15J.7.

701—273.5(15J) End of deposits—district dissolution.**273.5(1) Cessation of deposits.**

a. The department shall cease to deposit state sales tax revenues and state hotel and motel revenues once the limitations described in either Iowa Code section 15J.8(1) or 15J.8(2) are met.

b. The department shall cease to deposit new tax revenues into a district's account within the fund once the maximum benefit amount approved by the board for the district has been reached. If a district reaches the maximum benefit amount, the department shall notify the municipality and the board within a reasonable amount of time.

273.5(2) District dissolution.

a. If a municipality dissolves a district pursuant to Iowa Code section 15J.8(2), the municipality must notify the department as required by Iowa Code section 15J.8(2).

b. When a municipality is notified that its maximum benefit amount has been reached, the municipality shall dissolve the district by ordinance as soon as practicable after notification.

This rule is intended to implement Iowa Code section 15J.8.

701—273.6(15J) Administrative fee.

273.6(1) Administrative fee. Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the reinvestment district program.

273.6(2) Amount retained. The amount retained each quarter will be the total of the prorated shares amongst all projects in both the reinvestment districts programs and the flood mitigation program authorized under Iowa Code chapter 418.

273.6(3) Prorated share. Each entity's prorated share of the administrative fee for each quarter will be calculated as follows:

Reinvestment district entity's distribution for the quarter		Either \$25,000 or the
Total distributions of both the flood mitigation and	x	department's actual expenses,
reinvestment districts for the quarter		whichever is less

This rule is intended to implement Iowa Code section 423.2A(3).

ARC 7152C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to local option sales tax urban renewal projects
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 274, "Local Option Sales Tax Urban Renewal Projects," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14 and 423B.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2A, 423B.1, 423B.7 and 423B.10.

Purpose and Summary

REVENUE DEPARTMENT[701](cont'd)

The purpose of this proposed rulemaking is to readopt Chapter 274. The chapter provides the Department's rules for administering the Local Option Sales Tax (LOST) Urban Renewal Projects. The rules provide explanations to local governments and the public about the process for the calculation, collection, and distribution of funds used for the projects as well as the information required of local governments to assist the Department in this process. The Department proposes revisions to the rules to remove portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to the other edits and for organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

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Department of Revenue
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Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 274 and adopt the following new chapter in lieu thereof:

CHAPTER 274
LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

701—274.1(423B) Purpose and definitions. This chapter sets forth the department of revenue's rules on administration of the calculation, collection, and distribution of funds to be deposited for use to fund urban renewal projects as described in Iowa Code chapter 423B. For purposes of this chapter, "local sales and service tax" means the local tax imposed by a jurisdiction pursuant to an election authorized by Iowa Code section 423B.1 and described in Iowa Code section 423B.5. All other terms have the same meaning as defined in Iowa Code sections 423B.1 and 423B.10.

701—274.2(423B) Establishing sales and revenue growth. For purposes of establishing the sales amount in the base year and the revenue growth in subsequent fiscal years, the department will calculate sales as described in Iowa Code section 423B.10(3).

701—274.3(423B) Requirements for cities adopting an ordinance.

274.3(1) Within at least 90 days following the adoption of an ordinance, an eligible city must notify the director of the department of revenue of its intent to pursue funding for an urban renewal project based upon the increase in local sales and services tax revenue. The notification must include the following information:

- a.* A copy of the resolution of the board of supervisors from each county in the urban renewal area from which local sales and services tax revenues are to be collected approving the collection and use of local sales and services tax;
- b.* A copy of the urban renewal plan and the resolution adopting the city's urban renewal plan;
- c.* A copy of the adopted ordinance, including:
 - (1) The current and original, if applicable, purpose or purposes for which the local option sales and services tax was enacted; and
 - (2) The amount and proportion of revenue that will be redistributed from each current revenue purpose to fund urban renewal within the urban renewal area;
- d.* The legal description of the urban renewal area covered by the ordinance;
- e.* A map showing the geographic boundaries of the urban renewal area; and
- f.* A geographic information system boundary file, if available, showing the geographic boundaries of the urban renewal area.

274.3(2) Each urban renewal area must have its own separate ordinance, and the department shall be notified separately for each urban renewal area. Notification shall be mailed or otherwise submitted to: Director, Iowa Department of Revenue, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319.

274.3(3) Each urban renewal area must have its own separate resolution of the board of supervisors from each county from which local option sales and services tax revenues will be collected and used for urban renewal projects located within the urban renewal area.

701—274.4(423B) Identification of retail establishments. The eligible city shall assist the department of revenue in identifying retail establishments in the urban renewal area that are collecting the local

REVENUE DEPARTMENT[701](cont'd)

sales and services tax. The department of revenue will identify sales tax permit holders within the urban renewal area using the geographic information system boundary file, if available, provided to the department. If no boundary file is provided, the department will rely upon the map submitted by the eligible city. If any of the urban renewal area boundaries submitted are street centerlines, the information provided to the department shall indicate whether only retail establishments within the bounded area should be considered part of the urban renewal area, or if in addition to the retail establishments within the bounded area, retail establishments immediately adjacent to the bounded area should also be included.

701—274.5(423B) Calculation of base year taxable sales amount. The calculation of the base year taxable sales amount is as follows:

274.5(1) The base year taxable sales and services amount will be the total taxable sales and services subject to the local sales and services tax that are made by retail establishments within the urban renewal area during the base year.

274.5(2) Taxable sales of tangible personal property and services that are subject to the local sales and services tax that are made by retail establishments or service providers located within the urban renewal area include only those sales that are sourced to the county in which the urban renewal area is located.

274.5(3) Those sales made by retail establishments or service providers located within the urban renewal area that are sourced outside of the county are not subject to the local sales and services tax. For sourcing rules, more information can be found in Iowa Code section 423.15 and 701—Chapter 205.

701—274.6(423B) Determination of tax growth increment amount. The local sales and services tax growth increment amount for the urban renewal area will be computed for each fiscal year following the base year. The annual local option sales and services tax growth increment amount is equal to the current year taxable sales and services subject to the local sales and services tax that are made by retail establishments located in the urban renewal area minus the corresponding base year taxable sales and services amount for the urban renewal area multiplied by the current local sales and services tax rate applicable to the jurisdiction.

701—274.7(423B) Distribution of tax base and growth increment amounts. The revenues from the local sales and services tax growth amount for urban renewal areas in jurisdictions that have enacted ordinances pursuant to Iowa Code section 423B.10 shall be determined annually and shall be distributed to the city within 120 days following the end of the fiscal year in which they are collected.

These rules are intended to implement Iowa Code sections 423.2A, 423B.1, 423B.7, and 423B.10.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to rebate of Iowa sales tax paid
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 275, “Rebate of Iowa Sales Tax Paid,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 423.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2A and 423.4.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 275 and adopt a new Chapter 275, which consists of rules relating to and interpreting sales and use tax rebates granted to sanctioned automobile racetrack facilities, baseball and softball complexes, and raceway facilities. The rules provide the rebate's scope and applicability and the methods for obtaining a rebate by the eligible entities. The Department proposes revisions to the rules for clarification and removal of portions of the rules that the Department has determined are unnecessary and duplicative of statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
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Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

REVENUE DEPARTMENT[701](cont'd)

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 275 and adopt the following **new** chapter in lieu thereof:

CHAPTER 275
REBATE OF IOWA SALES TAX PAID

701—275.1(423) Sanctioned automobile racetrack facilities. Iowa Code section 423.4(5) provides for rebates of qualifying sales made at sanctioned automobile racetrack facilities. Definitions of key terms may be found in Iowa Code section 423.4(5)“a.”

275.1(1) Affidavit by owner or operator. The owner or operator of an automobile racetrack facility seeking a rebate allowed under Iowa Code section 423.4(5) of the sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue
Sales Tax Rebate Affidavit

NAME OF AFFIANT	*	AFFIDAVIT FOR SANCTIONED AUTOMOBILE RACETRACK FACILITY
	*	
ADDRESS OF AFFIANT	*	
	*	

The undersigned duly swears that the named Automobile Racetrack Facility complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

- a. The facility is sanctioned as an automobile racetrack facility;
 - b. The sanctioned automobile racetrack facility is located as part of a racetrack and entertainment complex, including any museum attached to or included in the sanctioned automobile racetrack facility, but excluding any restaurant;
 - c. The sanctioned automobile racetrack facility has not and will not receive any grants under the community attraction and tourism program pursuant to Iowa Code chapter 15F, subchapter II, or the vision Iowa program pursuant to Iowa Code chapter 15F, subchapter III;
 - d. The sanctioned automobile racetrack facility is located on a maximum of 232 acres of Iowa land;
 - e. The sanctioned automobile racetrack facility is located in a city with a population, as defined by this rule, of at least 14,500, but not more than 16,500;
 - f. The city in which the sanctioned automobile racetrack facility is located is in a county with a population, as defined by this rule, of at least 35,000, but no more than 40,000;
 - g. Construction of the sanctioned automobile racetrack facility was commenced on or before July 1, 2006;
 - h. Cost of construction of the automobile racetrack facility upon completion is at least \$35 million;
- and

REVENUE DEPARTMENT[701](cont'd)

i. There has not been a “change of control” as defined in the rules governing this program regarding the legal ownership or operation of the automobile racetrack facility.

The undersigned duly swears that he or she is the owner or operator of the sanctioned automobile racetrack facility or that the undersigned is the authorized representative of the sanctioned automobile racetrack facility and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned automobile racetrack facility has met all of the requirements as contained herein.

Name of Affiant
Position of Affiant

Date

275.1(2) Notification to the department of revenue. The owner or operator of the automobile racetrack facility will provide the department with the identity of all retailers at the automobile racetrack facility that will be collecting sales tax and is required to keep the information current. The owner or operator of the automobile racetrack facility will notify the department within ten days of the termination of a retailer from collecting sales tax at the racetrack facility. In addition, the owner or operator of the automobile racetrack facility will notify the department within ten days of the start-up of a retailer collecting sales tax at the automobile racetrack facility.

275.1(3) Limitations. The automobile racetrack facility rebate program applies only to transactions that occur on or after January 1, 2006, but before the end date provided in Iowa Code section 423.4(5), and for which sales tax was collected. Only the state sales tax is subject to rebate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions that occur on or after the date of the change of control of the automobile racetrack facility. The rebate is limited to 5 percent.

275.1(4) Termination of rebate program. The rebate program for automobile racetrack facilities terminates on the earliest of the dates listed in Iowa Code section 423.4(5) “g.”

275.1(5) Sourcing of sales. Advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the automobile racetrack facility is located must be imposed.

Other types of sales eligible for rebate under this program include but are not limited to sales by vendors and sales at concessions, gift shops, and museums. However, sales by a restaurant on facility land are not subject to rebate.

275.1(6) Requirements to obtain a rebate of state sales tax by the racetrack facility. In order to obtain a rebate, a request is considered timely and complete when the authorized form containing all requested information is filed quarterly with the department.

This rule is intended to implement Iowa Code section 423.4(5).

701—275.2(423) Baseball and softball complex sales tax rebate.

275.2(1) Generally.

a. *Rebate approval.* An entity whose project pursuant to Iowa Code section 15F.207 is reviewed and recommended by the economic development authority and approved by the enhance Iowa board is entitled to rebates of qualifying sales tax in accordance with Iowa Code section 423.4(10) and this rule, not to exceed the amount awarded by the economic development authority.

b. *Qualifying rebates.* Qualifying rebates of Iowa state sales tax may be made to the owner or operator of a complex as defined in this rule for sales occurring on or after the project completion date for a period of ten years or the date the award was made, whichever is later. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

275.2(2) Definitions. For the purpose of this program, the definitions found in Iowa Code section 423.4(10) apply. In addition, the following definitions apply:

REVENUE DEPARTMENT[701](cont'd)

“Department” means the department of revenue.

“Eligible baseball and softball complex” or *“complex”* means a facility located in this state that has a project completion date that is after July 1, 2016, is designed and built to host baseball and softball games and has a cost of construction upon completion that is at least \$10 million. The boundaries of a “complex” may be a portion or the entirety of a premises. After granting an award to a complex, the enhance Iowa board shall describe in writing to the department the physical boundaries of the complex and provide the department a map illustrating the approved boundaries of the complex.

“Placed into service” means the first day a complex is able to host a baseball or softball game.

275.2(3) *Notification to the department of revenue.* The owner or operator of the complex shall provide the department with a copy of the award notice from the enhance Iowa board.

275.2(4) *Retailer identification.*

a. Identification of retailers. The owner or operator shall provide the department with the identity of all retailers at the complex that will be collecting sales tax, provide sales tax permit numbers for each retailer, and keep the information current.

b. Notification to department. The owner or operator of the complex shall notify the department within ten days of the start-up or termination of a retailer collecting sales tax at the complex. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the complex or after one calendar year expires since the retailer collected sales tax at the complex.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the complex before rebates are paid for sales made by that retailer.

275.2(5) *Baseball and softball complex rebate request form and filing requirements.* To obtain the rebate, the owner or operator must submit a rebate request to the department on the authorized form furnished by the department. A properly completed form shall adhere to the following rules:

a. Who may file the claim. The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the complex. The following information shall be provided:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number, which must be associated with an address at the complex.

c. Sales at the complex. Information on sales at the complex and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.2(5) “b” and Iowa Code section 423.4(10) are eligible for rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the complex took place.

275.2(6) *Fund transfers.* The amount of sales tax revenues transferred from the general fund to the complex fund is that portion of sales tax receipts remaining in the general fund after other department transfers, as described in Iowa Code section 423.4(10) “e.”

275.2(7) *Termination of rebate program.* The rebate program terminates 30 days following the date on which \$5 million in total rebates has been provided. The rebate award for each complex terminates on the earliest of the following dates:

- a.* Ten years after the project completion date; or
- b.* The date on which total rebates equal to the amount of the rebate award have been provided to the complex; or
- c.* The date of the change of control of the facility.

275.2(8) *Sourcing of sales.*

REVENUE DEPARTMENT[701](cont'd)

a. Generally. In general, sales are considered to occur “at the complex” if they occur within the boundaries identified in the physical description provided by the enhance Iowa board and are sourced to a location within those boundaries under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the baseball and softball complex regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

This rule is intended to implement Iowa Code section 423.4(10).

701—275.3(423) Raceway facility sales tax rebate. Qualifying rebates of Iowa state sales and use tax may be made to the owner or operator of a raceway facility that meets the requirements of Iowa Code section 423.4(11).

275.3(1) Definitions. For purposes of this rebate, unless further defined below, the terms used in this rule mean the same as defined in Iowa Code section 423.4(11). Additionally, “incurred date” means the date on which the payment for the project cost was made or the performance of the work that gave rise to the payment occurred, whichever is later.

275.3(2) Retailer identification.

a. Identification of retailers. The owner or operator shall provide the identity of all retailers at the raceway facility that will be collecting sales tax and provide the department with the sales tax permit number for each retailer. During the period in which rebates may be claimed, the owner or operator shall keep the information current.

b. Notification to department. The owner or operator shall notify the department within ten days of the termination or start-up of a retailer collecting sales tax at the raceway facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the raceway facility or after one calendar year expires since the retailer collected sales tax at the raceway facility.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the raceway facility before rebates are paid for sales made by that retailer.

275.3(3) Project cost report and rebate form and filing requirements. To request a rebate, the owner or operator must timely submit a project cost report and rebate request to the department on the authorized form, furnished by the department, in addition to the retailer sales report, as described in subrule 275.3(4). A properly completed rebate form shall contain the following:

a. Documentation and information required.

- (1) Invoices for project costs.
- (2) An explanation of how each cost meets the definition of “project costs.”
- (3) The date each cost was incurred and the date each cost was paid.

b. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

c. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the report.

d. Filing frequency. To be considered timely, the form and supporting documentation must be provided to the department within 90 days of the date the project cost was paid. Generally, this report is filed quarterly with the rebate request form; however, the project cost report may be filed more frequently if necessary to meet the 90-day filing requirement. Project cost reports and rebate forms will not be accepted on or after the earliest date provided in Iowa Code section 423.4(11) “g.”

275.3(4) Raceway facility retailer sales report and filing requirements. The owner or operator must submit a retailer sales report to the department on the authorized form furnished by the department. A properly completed form shall contain the following.

a. Who may file the claim. Rebate claims shall only be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the raceway facility. Retailer information must include:

REVENUE DEPARTMENT[701](cont'd)

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number.

c. Sales at the raceway facility. Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.3(4) “b” and Iowa Code section 423.4(11) that occur during the time period specified in Iowa Code section 423.4(11) “c”(3) are eligible for the rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

275.3(5) Sourcing of sales.

a. Generally. In general, sales are considered to occur at the raceway facility if they occur within the boundaries of the raceway facility portion of the fairgrounds and are sourced to that raceway facility under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the raceway facility is located must be imposed on the sales price of advance ticket and admissions sales.

275.3(6) Local option sales tax. Local option taxes imposed under Iowa Code chapter 423B are not eligible for rebate under this program.

This rule is intended to implement Iowa Code section 423.4(11).

ARC 7153C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to facilitating business rapid response to state-declared disasters and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 276, “Facilitating Business Rapid Response to State-Declared Disasters,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 29C.24.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 29C.24.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 276, which provides the Department’s rules for administering Iowa Code section 29C.24. Iowa Code section 29C.24 helps facilitate the rapid response of businesses and workers to a disaster by providing that out-of-state businesses and employees that perform disaster and emergency-related work on critical infrastructure during a disaster response period due to a state-declared disaster are not subject to income, corporate income, use, equipment; or property tax or tax filing, permit, or return requirements. The Department proposes revisions to the

REVENUE DEPARTMENT[701](cont'd)

rules to remove portions of the chapter that the Department determined are unnecessary and duplicative of statutory language. In its Red Tape Review Report, the Department recommended amending the statute to make rulemaking on this topic permissive rather than mandatory because there is little need for additional information in rules.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

REVENUE DEPARTMENT[701](cont'd)

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 276 and adopt the following new chapter in lieu thereof:

CHAPTER 276

FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS

701—276.1(29C) Purpose. The Iowa department of revenue, the Iowa department of homeland security and emergency management and the secretary of state are authorized and tasked by the legislature to jointly administer and oversee mutual aid among the political subdivisions of Iowa, other states and the federal government and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.

701—276.2(29C) Definitions. For purposes of this chapter, the definitions from Iowa Code section 29C.24 are adopted by reference.

701—276.3(29C) Disaster or emergency-related work.

276.3(1) Out-of-state business. An out-of-state business conducting operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period does not establish a level of presence that would subject the out-of-state business to any of the requirements and responsibilities listed in Iowa Code section 29C.24(3) "a."

276.3(2) Out-of-state employee. The performance of disaster or emergency-related work during a disaster response period by an out-of-state employee is not a basis to determine that the out-of-state employee has established residency or a level of presence in Iowa that would subject the out-of-state employee to any of the requirements or responsibilities listed in Iowa Code section 29C.24(3) "b."

276.3(3) After the disaster response period ends. An out-of-state business or out-of-state employee remaining in Iowa after the disaster response period for which the disaster or emergency-related work was performed is responsible for all taxes, fees, registration, filing or other requirements the out-of-state business or out-of-state employee would have been subject to but for Iowa Code section 29C.24.

These rules are intended to implement Iowa Code section 29C.24.

ARC 7154C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to sales and use tax refund for biodiesel production
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 277, "Sales and Use Tax Refund for Biodiesel Production," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.4(9).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 423.4(9).

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 277, which consists solely of rule 701—277.1(423), which provides and describes the process for taxpayers to obtain a refund of sales or use tax paid by biodiesel producers. The Department proposes revisions to this chapter to remove portions of the rule that the Department determined were unnecessary and duplicative of statutory language.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

REVENUE DEPARTMENT[701](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 277 and adopt the following **new** chapter in lieu thereof:

CHAPTER 277

SALES AND USE TAX REFUND FOR BIODIESEL PRODUCTION

701—277.1(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar year 2012 to the ending year specified in Iowa Code section 423.4(9) “e.”

277.1(1) *Qualifications for the refund.* To be eligible for the refund, a biodiesel producer that produces biodiesel in Iowa must meet the criteria listed in Iowa Code section 423.4(9) “a.”

277.1(2) *Calculation of the refund.* The amount of refund is calculated as described in Iowa Code section 423.4(9) “b” and up to the number of gallons identified in Iowa Code section 423.4(9) “c.” No refund will be allowed for gallons produced at a facility on or after the date identified in Iowa Code section 423.4(9) “e.”

277.1(3) *Claiming the refund.* In order to claim a refund for each calendar quarter, a biodiesel producer must file Form IA 843, Refund Return, on which the biodiesel producer will include the number of biodiesel gallons produced during the quarter, the calculation of the biodiesel production refund, and the amount of biodiesel production refund claimed. The biodiesel producer must also timely file all sales and use tax returns due and timely pay all sales and use taxes owed on the biodiesel producer's purchases, even when the amount of the biodiesel production refund due exceeds the amount of sales and use taxes owed for the quarter. The department will reduce the amount of the refund issued by the amount of any sales and use taxes owed by the biodiesel producer.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2023. The producer also owes \$10,000 of Iowa use tax based on purchases made during the first quarter of 2023. In order to claim a refund, the producer must timely file an Iowa sales and use tax return and pay \$10,000 of use tax with the return and file Form IA 843, Refund Return, to request a refund of \$200,000 (5 million gallons multiplied by 4 cents per gallon) for the first quarter of 2023.

This rule is intended to implement Iowa Code section 423.4(9).

ARC 7155C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to refunds for eligible businesses under economic development authority programs and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 278, “Refunds for Eligible Businesses Under Economic Development Authority Programs,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15.

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 278, which consists solely of rule 701—278.1(15). This proposed rule interprets the underlying statutes and provides the scope and methods for obtaining a refund of sales and use tax paid for eligible businesses approved under programs by the Iowa Economic Development Authority. The Department proposes to revise the rule for clarification and to remove portions that the Department has determined are unnecessary and duplicative of statutory language.

A Regulatory Analysis, including the proposed rule text, was published on October 4, 2023. A public hearing was held on October 25, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024
9 to 11 a.m.

Via video/conference call

January 3, 2024
1 to 3 p.m.

Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

REVENUE DEPARTMENT[701](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 278 and adopt the following new chapter in lieu thereof:

CHAPTER 278
REFUNDS FOR ELIGIBLE BUSINESSES UNDER ECONOMIC DEVELOPMENT
AUTHORITY PROGRAMS

701—278.1(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program or workforce housing tax incentives program by the economic development authority, a refund of sales and use tax is available.

278.1(1) Sales and use tax eligible for refund. Eligible businesses can receive a refund of the sales and use tax paid for those items listed in Iowa Code section 15.331A to the extent applicable for purposes of the particular program.

278.1(2) Sales and use tax ineligible for refund. The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property, furniture, or furnishings is not eligible for the refund. “Furnishings” means any furniture, appliances, equipment, and accessories that are movable and with which a room or building is furnished for comfort, convenience, or aesthetic value. Examples include rugs, décor, and window coverings. “Furnishings” does not include installed flooring such as hardwood, carpet, ceramic, stone, laminate, or vinyl.

278.1(3) When to claim the refund. To receive a refund, the eligible business must file a claim for refund within the following period of time:

a. *High quality jobs program.* The first date the eligible business may file a claim for refund is after the contract completion as defined in Iowa Code section 15.331A. The last date the eligible business may file a claim for refund is one year after the project completion date as defined in Iowa Code section 15.329.

b. *Workforce housing tax incentives program.* The first date the eligible business may file a claim for refund is after the agreement completion date as defined in Iowa Code section 15.355. The last date the eligible business may file a claim for refund is one year after the agreement completion date as defined in Iowa Code section 15.355.

278.1(4) How to claim the refund.

a. *Gas, electric, water, or sewer utility services.* To request a refund of the sales and use tax paid for gas, electric, water, or sewer utility services used during construction, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. *Contractor or subcontractor.* To request a refund of the sales and use tax paid on tangible personal property, or on services rendered to, furnished to, or performed for a contractor or subcontractor

REVENUE DEPARTMENT[701](cont'd)

relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. The Construction Contract Claim for Refund form shall include the tax credit certificate number given by the Iowa economic development authority. It is not necessary to attach invoices to the Construction Contract Claim for Refund form, but the department of revenue reserves the right to request invoices when reviewing the refund claim.

c. Racks, shelving, and conveyor equipment. To request a refund of the sales and use tax attributable to racks, shelving, and conveyor equipment, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

This rule is intended to implement Iowa Code chapter 15.

ARC 7156C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rulemaking related to underground storage tank rules
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 289, "Underground Storage Tank Rules Incorporated By Reference," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423E.3 to 423E.6.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department was directed on September 22, 2023, to propose this Notice of Intended Action to rescind Chapter 289.

The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

REVENUE DEPARTMENT[701](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **701—Chapter 289**.

ARC 7130C

COLLEGE STUDENT AID COMMISSION[283]**Adopted and Filed Emergency After Notice****Rulemaking related to uniform policies, future ready Iowa skilled workforce grant program, and workforce grant and incentive program**

The College Student Aid Commission hereby amends Chapter 10, “Uniform Policies”; rescinds Chapter 16, “Future Ready Iowa Skilled Workforce Grant Program,” Iowa Administrative Code, and adopts a new chapter with the same title; and adopts a new Chapter 34, “Workforce Grant and Incentive Program.”

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 560.

Purpose and Summary

The rulemaking rescinds and replaces rule 283—10.2(261) to leverage Chapter 10 for definitions and policies that are consistent among state financial aid programs in order to streamline and reduce redundancies in accord with Executive Order 10. As additional chapters are rescinded and promulgated anew in the future under Executive Order 10, the consistent definitions and policies will be cited from Chapter 10 rather than duplicated in each chapter.

Additionally, the rulemaking rescinds and adopts a new Chapter 16 for the Future Ready Iowa Skilled Workforce Grant Program. Statutory amendments to the program were enacted in 2023 Iowa Acts, Senate File 560, division VIII. Given the extent of the amendments, the existing chapter is now rescinded and a new chapter promulgated in lieu thereof under Executive Order 10 to ensure that outdated and obsolete provisions are eliminated.

Lastly, the rulemaking adopts a new Chapter 34 to implement the Workforce Grant and Incentive Program, which was enacted in 2023 Iowa Acts, Senate File 560, division VI.

Citations in the rules to Iowa Code sections 261.132, 256.230 and 84A.1B are to those sections as enacted by 2023 Iowa Acts, Senate File 560.

The rulemaking includes two standards that are adopted by reference, each of which aligns to standards in Title IV of the federal Higher Education Act of 1965. The first standard is the cost of attendance, which generally includes tuition and fees, books, supplies, transportation and miscellaneous personal expenses, and an allowance for food and housing costs. The second reference is to the process in which a student who is in default on a student loan regains eligibility for financial aid, which generally includes making nine consecutive on-time payments, repaying the defaulted loan in full, or consolidating the defaulted loan with other student loans in good standing.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7100C**. Public hearings were held on October 25, 2023, and October 26, 2023, at 4 p.m. at 475 SW 5th Street, Suite D, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Commission finds that the normal effective date of this rulemaking, 35 days after publication, should be waived and the rulemaking made effective on November 17, 2023, because statute requires grants to be allocated equally among the fall and spring

COLLEGE STUDENT AID COMMISSION[283](cont'd)

semesters. The waiver of the normal effective date will allow grants under each program to be awarded and applied to student accounts during the fall term of enrollment, providing recipients with the benefit of those funds during the term in which they were intended to be awarded.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on November 17, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking became effective on November 17, 2023.

The following rulemaking action is adopted:

ITEM 1. Rescind rule 283—10.2(261) and adopt the following **new** rule in lieu thereof:

283—10.2(261) Definitions.

“Financial metric” is the means by which the commission ranks the relative financial need of an applicant for financial assistance. The calculated financial metric shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form developed by the U.S. Department of Education, which is used to determine the financial metric. Relative need will be ranked based on the applicant's financial metric provided by the U.S. Department of Education. The FAFSA must be received by the processing agent by the date specified by the commission. A negative financial metric is the equivalent of zero.

“Financial need” is the difference between the applicant's cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023, and the applicant's financial metric and other available financial assistance at the eligible institution.

“Full-time” means enrollment in at least 12 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through “life experience credit” and “credit by examination” are not eligible for funding. Only coursework required for the student's eligible program of study can be used to determine enrollment status for state award calculations.

“Iowa resident” means a person who:

1. If attending an Iowa regent university, Iowa private college or university, or Iowa barber or cosmetology college, meets the criteria used by the state board of regents to determine residency for

COLLEGE STUDENT AID COMMISSION[283](cont'd)

tuition purposes as described in rule 681—1.4(262) and, if the person qualifies for residency only as described in 681—paragraph 1.4(2) “b,” meets the following additional criteria:

- Is a veteran or qualifying military person domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran or qualifying military person whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran or qualifying military person who is domiciled in the state of Iowa; or

2. If attending an Iowa community college, meets the criteria defined by the Iowa department of education to determine residency for community college tuition purposes as defined in 281—subrule 21.2(11) and, if the person qualifies for residency only as described in 281—subparagraph 21.2(11) “b”(5), meets the following additional criteria:

- Is a veteran of uniformed service or a national guard member domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran of uniformed service or a national guard member whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran of uniformed service or a national guard member who is domiciled in the state of Iowa.

“*Part-time*” means enrollment which includes 3 to 11 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through “life experience credit” and “credit by examination” are not eligible for funding. Only coursework required for the student’s eligible program of study can be used to determine enrollment status for state award calculations.

“*Program of study*” means a course of study that is eligible for federal student aid programs and leads to an undergraduate diploma, certificate, or degree.

“*Satisfactory academic progress*” is determined by the eligible institution, the standards of which meet the criteria for participation in federal student aid programs and are published on the eligible institution’s website.

ITEM 2. Adopt the following **new** rule 283—10.3(261):

283—10.3(261) Policies.

10.3(1) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the program. The student regains eligibility under this rule by providing documentation to the institution that the student has regained eligibility under Title IV of the Higher Education Act of 1965, as of July 1, 2023.

10.3(2) Reserved.

ITEM 3. Rescind 283—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16

FUTURE READY IOWA SKILLED WORKFORCE GRANT PROGRAM

283—16.1(261) Basis for aid. Assistance available under the future ready Iowa skilled workforce grant program is for Iowa residents who are aged 25 or older and are enrolled in approved programs aligned with high-demand jobs.

283—16.2(261) Definitions. As used in this chapter:

“*Approved program*” means an eligible program of study as defined in 283—Chapter 10 that is approved through the process described in 283—16.6(261).

“*Continuous enrollment*” means an eligible student is enrolled on a full-time or part-time basis in successive fall and spring semesters, or the equivalent, after receiving the award. Enrollment in the summer semester is not required to meet this condition.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

“Eligible institution” meets the criteria in Iowa Code section 261.132 and the provisions of 283—16.7(261).

“Full-time” means the same as defined in 283—10.2(261).

“Iowa resident” means the same as defined in 283—10.2(261).

“Part-time” means enrollment in at least 6 but less than 12 hours per semester, or the equivalent. An eligible student may enroll in fewer than six semester hours, or the equivalent, in the semester that the credential will be completed if part-time enrollment is not required to complete the program of study.

“Satisfactory academic progress” means the same as defined in 283—10.2(261).

“Semester” means the fall, spring, or summer term of enrollment at an eligible institution, if the eligible institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.

283—16.3(261) Eligible applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time in an approved program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the college student aid commission (commission) deems necessary on or before the date established by the commission and attends orientation, registers for classes with an academic advisor, and participates in career advising sessions.
2. Meets satisfactory academic progress standards, does not meet a condition in 283—subrule 10.3(1), and upon receipt of the grant, maintains continuous full-time or part-time enrollment during successive fall and spring semesters.
3. Is aged 25 or older as of July 1 prior to the year of enrollment.

283—16.4(261) Awarding of funds.

16.4(1) Selection criteria. All eligible applicants will be considered for an award.

16.4(2) Extent of award and maximum award. Eligible applicants may receive no more than the equivalent of four full-time awards. The maximum award will be established annually by the commission but will not be less than \$1,000 for a full-time student over the course of the fall and spring semesters.

16.4(3) Priority for awards. In the event that funds available are insufficient to provide maximum awards to all eligible applicants, awards are prioritized in the following order:

- a. Eligible applicants who received the grant in the prior state fiscal year, by application date.
- b. Eligible applicants who did not receive the grant in the prior state fiscal year, by application date.

16.4(4) Awarding process.

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. The commission will designate eligible applicants for awards and provide eligible institutions with rosters of designated eligible applicants.

c. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

d. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

e. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation, and promptly report those changes to the commission.

f. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

g. The commission will periodically investigate and review compliance of eligible institutions participating in this program with the criteria established in Iowa Code section 261.132 and this rule.

283—16.5(261) Exceptions. If an eligible applicant discontinues enrollment at the eligible institution due to military deployment, a temporary medical incapacity, in relation to a declaration of a national or state emergency, or other exceptional circumstances approved by the commission, the eligible applicant may apply for a waiver. If the waiver is approved, the eligible applicant is not required to maintain continuous enrollment during the period covered by the waiver.

283—16.6(261) Determination of programs of study aligned with high-demand jobs.

16.6(1) High-demand jobs. The commission will utilize the department of workforce development's most recent list of statewide high-demand jobs pursuant to Iowa Code section 84A.1B(14) and align those jobs to eligible programs of study.

16.6(2) Eligible programs of study. The eligible institution will offer a baccalaureate degree that is aligned with a high-demand job. The classification of instructional program code and the standard occupation code will be used to align eligible programs of study to high-demand jobs.

16.6(3) Designation. Eligible institutions will designate the eligible programs of study offered in the corresponding academic year.

16.6(4) Approved program. Before an eligible program of study is considered an approved program of study, the department of workforce development and the commission will jointly certify that the program of study is aligned with a high-demand job pursuant to Iowa Code section 84A.1B(14).

16.6(5) Grandfather clause. If the state workforce development board removes a high-demand job from a list created pursuant to Iowa Code section 84A.1B(14), an eligible applicant who received an award in a program of study aligned with that high-demand job will continue to receive the award as long as the eligible applicant continues to meet all other eligibility criteria.

283—16.7(261) Institution eligibility requirements.

16.7(1) Application process. An institution requesting to participate in the program may apply to the commission using the commission's designated application. An applicant institution will provide the commission with documentation establishing the applicant institution's eligibility as an eligible institution that offers eligible programs of study. Applicant institutions will submit the application and documentation establishing the applicant institution's eligibility before October 1 of the year prior to the beginning of the academic year for which the applicant institution is applying for participation.

16.7(2) Public information. A list of all eligible programs of study, as well as the necessary courses and the suggested course sequence, will be available in a prominent location on the eligible institution's website.

These rules are intended to implement Iowa Code section 261.132.

ITEM 4. Adopt the following new 283—Chapter 34:

CHAPTER 34
WORKFORCE GRANT AND INCENTIVE PROGRAM

283—34.1(261) Basis of aid. Assistance available under the Iowa workforce grant and incentive program is based on the financial need of Iowa residents enrolled in eligible programs of study at universities under the Iowa board of regents.

283—34.2(261) Definitions.

"Academic year" is defined as the fall, spring and summer semesters, in that sequence, within a state fiscal year.

"Eligible institution" means the same as defined in Iowa Code section 256.230.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

“Eligible program” means an undergraduate program of study as defined in 283—Chapter 10 that meets the provisions of Iowa Code section 256.230.

“Financial metric” means the same as defined in 283—Chapter 10.

“Financial need” means the same as defined in 283—Chapter 10.

“Full-time” means the same as defined in 283—Chapter 10.

“High-demand job” means the same as described in Iowa Code section 84A.1B(17).

“Iowa resident” means the same as defined in 283—Chapter 10.

“Part-time” means the same as defined in 283—Chapter 10.

“Satisfactory academic progress” means the same as defined in 283—Chapter 10.

283—34.3(261) Eligible workforce grant applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time as an undergraduate student in an eligible program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the commission deems necessary on or before the date established by the commission.
2. Establishes financial need, has an eligible financial metric, meets satisfactory academic progress standards, and does not meet a condition in 283—subrule 10.3(1).

283—34.4(261) Awarding of workforce grant funds.

34.4(1) Selection criteria. All eligible applicants will be considered for an award.

34.4(2) Extent of award and maximum award. Eligible applicants may receive no more than four full-time or eight part-time semesters of awards, or the equivalent.

a. The maximum award for full-time students will not exceed the student’s financial need and will not exceed \$2,000 per full-time semester.

b. A part-time student will receive a prorated award, as established by the commission, based on the number of credit hours for which the student is enrolled.

c. Awards will be provided during the fall and spring semesters of enrollment. Awards during the summer semester of enrollment may be provided if funding allows.

34.4(3) Priority for awards. In the event that funds available are insufficient to provide an award to all eligible applicants, awards will be prioritized as follows:

a. Eligible applicants who received a workforce grant in the prior academic year.

b. Eligible applicants with the lowest financial metrics.

c. Eligible applicants who are closest to the completion of their eligible program.

34.4(4) Awarding process.

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

c. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

d. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation and promptly report those changes to the commission.

e. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

f. The commission will periodically investigate and review compliance of eligible institutions participating in this state program with the criteria established in Iowa Code section 256.230 and this rule.

283—34.5(261) Eligible incentive payment applicant. Individuals who received a workforce grant and completed the eligible program within the same academic year may apply for the incentive payment if they meet the criteria of Iowa Code section 256.230 and are employed in Iowa.

283—34.6(261) Awarding of incentive payments.

34.6(1) *Selection criteria.* All eligible incentive payment applicants will be considered for an award.

34.6(2) *Extent of award and maximum award.* Eligible incentive payment applicants may apply for no more than one incentive payment of up to \$2,000.

34.6(3) *Awarding process.*

a. The commission will provide notice of the availability of the incentive payment application to eligible incentive payment applicants following completion of the eligible program. Eligible incentive payment applicants will apply for the incentive and begin full-time employment in a high-demand job in Iowa within six months of completing the eligible program.

b. Following the application deadline, the commission will designate eligible applicants for awards and begin tracking their employment.

c. After the applicant has completed 12 consecutive months of full-time employment, commission staff will verify with the Iowa employer that the applicant was employed full-time in a job position that is aligned with a high-demand job.

d. Following verification with the employer, the commission will make payment to the eligible incentive payment applicant.

These rules are intended to implement 2023 Iowa Acts, Senate File 560.

[Filed Emergency After Notice 11/17/23, effective 11/17/23]

[Published 12/13/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/13/23.

ARC 7127C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed****Rulemaking related to the dairy innovation program**

The Agriculture and Land Stewardship Department hereby amends Chapter 52, “Marketing,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in 2023 Iowa Acts, House File 700.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 700.

Purpose and Summary

This rulemaking implements 2023 Iowa Acts, House File 700, by creating rules for the Dairy Innovation Program.

The rules create definitions, provide eligibility criteria, and establish the application and review process as well as criteria to score applications. The rules also establish grant agreement terms and provide an explanation for how grant funds will be disbursed to awardees.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 20, 2023, as **ARC 7069C**. A public hearing was held on October 13, 2023, at 1 p.m. in the Second Floor Conference Room, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on January 17, 2024.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

The following rulemaking action is adopted:

ITEM 1. Reserve rules **21—52.25** to **21—52.40**.

ITEM 2. Adopt the following new division heading after rule **21—52.40**:

DAIRY INNOVATION PROGRAM

ITEM 3. Adopt the following new rules 21—52.41(159) to 21—52.47(159):

21—52.41(159) Definitions. For purposes of this division:

“*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 person applying for assistance under the program. This includes but is not limited to an individual or business.

“*Grant*” means an award of financial assistance with the expectation that, with the fulfillment of the conditions, terms, and obligations of the agreement with the department for the project, repayment of funds is not required by the recipient.

“*Project*” means an activity or activities undertaken by the applicant to be carried out to meet the goals of the program.

“*Recipient*” means a person who has applied for and been chosen to receive financial assistance through the program.

21—52.42(159) Eligibility.

52.42(1) *Eligible businesses.* The department has the sole authority in determining the eligibility of an applicant for participation in the program. To be eligible for a grant under the dairy innovation program, an applicant shall meet all the eligibility requirements in Iowa Code section 159.31A(4) as enacted by 2023 Iowa Acts, House File 700, as well as the following:

a. The business must currently be permitted by the department or actively working with the department to obtain a permit.

b. The business must not have been subject to any department license or permit suspension or revocation within the last five years from the date of the application submission.

52.42(2) *Eligible projects.* To be eligible for a grant under the program, a project shall meet the requirements of Iowa Code section 159.31A as enacted by 2023 Iowa Acts, House File 700, as well as the following requirements:

a. Not be in progress until a grant is awarded.

b. Be completed in 12 months or less.

c. Be conducted in Iowa.

52.42(3) *Ineligible expenses.* The following items are not eligible expenses under the program:

a. Expenses incurred prior to the awarding of a grant.

b. Start-up costs including but not limited to inventory, license, or permit fees or working capital.

c. Advertising, public relations, or entertainment costs.

d. Employee benefits and wages.

e. Paying off existing debt, related collection costs, or legal costs.

f. Paying off existing fines, penalties, or settlements from failure to comply with any applicable law or regulations.

52.42(4) *Grant amount and terms.* The maximum amount of financial assistance awarded to a recipient under the program shall not exceed \$100,000.

21—52.43(159) Application and review process.

52.43(1) The department will establish a uniform application process and make information about applying available on its website.

52.43(2) Applications will only be accepted during the times established by the department. Late submissions will not be accepted.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

52.43(3) An applicant must demonstrate the ability to provide matching support for the project on a one-to-one basis. The matching financial support shall be from private sources.

52.43(4) A scoring committee established by the department will review and evaluate applications based on the scoring criteria described in rule 21—52.44(159).

52.43(5) Projects for processing and projects for labor-reducing technology will be scored independently of each other.

52.43(6) The department, after considering the recommendations made by the scoring committee, will determine which applications to fund and how much should be awarded to each applicant. The department has final decision-making authority on requests for financial assistance for the program. The department will notify the applicant in writing of the approval or denial.

21—52.44(159) Scoring criteria.

52.44(1) *Application scoring.* A scoring committee will be established by the department to evaluate applications with a score of 0 to 100. Projects receiving a score below 60 will not be considered.

52.44(2) *Scoring criteria.* The department will use the following criteria to evaluate each application:

- a.* The extent to which the project addresses the goals of the program to create new jobs, expand opportunities and provide greater flexibility or convenience for local small-scale farmers, and reduce labor associated with the on-farm production and storage of milk: 25 points.
- b.* The sufficiency of the project's budget and financing structure: 20 points.
- c.* The sufficiency of the project's proposed work plan and timeline including a detailed description of the steps the applicant will take to complete the project as well as estimated dates: 20 points.
- d.* The ability of the applicant to demonstrate sound business management, financial aptitude, and stability: 15 points.
- e.* The extent to which measurable objectives can be determined that demonstrate the proposed project's benefit to the agriculture community: 10 points.
- f.* The completeness of the application information and sufficiency of detail used to describe the project in the application: 10 points.

21—52.45(159) Grant agreement.

52.45(1) *Agreement terms.* An agreement shall not be for more than one year. The department, in its sole discretion, may grant an extension, not to exceed three months, if the department determines extenuating circumstances are likely to delay or have delayed the completion of the project.

52.45(2) *Termination of agreement.* An agreement shall be terminated if the recipient no longer meets the qualifications for an eligible business. Additionally, an agreement may be terminated if the recipient, in the sole opinion of the department, does any of the following:

- a.* Substantially violates any applicable statute or rule;
- b.* Violates any agreement between the department and the recipient; or
- c.* Acts in a manner that may damage the reputation of the program.

21—52.46(159) Disbursement of funds. The department will disburse funds for a project only after an agreement has been executed between the recipient and the department and all the applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the agreement will be on a reimbursement basis for expenses incurred by the applicant and will be disbursed upon final completion of a project.

21—52.47(159) Authority of department. The department may enter upon the premises of any recipient to examine any records or materials necessary to ensure compliance with these rules.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 4. Adopt the following new division implementation sentence after rule 25—52.47(159):
This division is intended to implement 2023 Iowa Acts, House File 700.

[Filed 11/13/23, effective 1/17/24]

[Published 12/13/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/13/23.

ARC 7129C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rulemaking related to weights and measures

The Agriculture and Land Stewardship Department hereby rescinds Chapter 85, "Weights and Measures," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 214.10, 214A.1A, 215.24 and 215A.3 and 2023 Iowa Acts, House File 666.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 214, 214A, 215 and 215A and 2023 Iowa Acts, House File 666.

Purpose and Summary

This rulemaking updates the State's weights and measures rules by removing outdated or redundant provisions that are covered by statute. The rulemaking also simplifies and restructures the chapter to enhance readability for the public.

Additionally, the rulemaking implements 2023 Iowa Acts, House File 666, by adopting rules related to testing the accuracy and correctness of electric vehicle charging stations to assist in the proper collection of Road Use Tax Fund moneys. The standards being utilized are included in the 2023 version of the National Institute of Standards and Technology Handbook 44.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on September 20, 2023, as **ARC 7072C**. A public hearing was held on October 13, 2023, at 2 p.m. in the Second Floor Conference Room, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing.

Three comments were received. All comments encouraged the Department to update the ASTM reference date for biodiesel standards since those have recently changed. This request has been incorporated into rule 21—85.20(214A,208A).

Adoption of Rulemaking

This rulemaking was adopted by the Department on November 9, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on January 17, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 21—Chapter 85 and adopt the following **new** chapter in lieu thereof:

CHAPTER 85
WEIGHTS AND MEASURES

21—85.1(215) Definitions.

“Automatic grain scale” means a scale constructed with a mechanical device so that a stream of grain flowing into its hopper can be checked at any given weight, long enough to register said weight and dump the load. The garner above the scale should have at least three times the capacity of the scale to ensure a steady flow at all times.

1. On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be not smaller than one-fourth the value of the minimum reading-face graduation; the acceptance tolerances applied shall be not smaller than one-eighth the value of the minimum reading-face graduation.

2. However, on a prepacking scale (D.11, D.12) having graduated intervals of less than one-half ounce, the maintenance tolerances applied shall not be smaller than one-eighth ounce and the acceptance tolerances applied shall be not smaller than one-sixteenth ounce.

“Counter scale” means a scale of any type that is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

“Motor truck scale” means a scale built by the manufacturer for the use of weighing commodities transported by motor truck.

This rule is intended to implement Iowa Code section 215.18.

21—85.2(189,215) Weights and measures.

85.2(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology (NIST) and published in NIST Handbook 44 amended or revised as of January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.2(2) The NIST Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the NIST amended or revised as of January 1, 2020,

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the department.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

21—85.3 to 85.9 Reserved.

WEIGHTS AND SCALES

21—85.10(215) Scale design. A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

85.10(1) Stability of indications. A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including:

a. Displacement of the indicating elements to the full extent allowed by the construction of the scale,

b. Repeated operation of a locking device, and

c. Repeated application or removal of unit weights.

85.10(2) Interchange or reversal of parts. Parts that may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be:

a. So constructed that their interchange or reversal will not affect the performance of the scale, or

b. So marked as to show their proper positions.

85.10(3) Pivots. Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight, and cone-pivot points shall be sharp.

85.10(4) Position of equipment, primary or recording indicating elements (electronic weighing elements). A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable “customer” position; the permissible distance between the equipment and a reasonable customer position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

21—85.11(215) Scale pit.

85.11(1) In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer’s specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck. A slope of a one-inch drop across the ten-foot span may be allowed for drainage.

85.11(2) Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

21—85.12(215) Pitless scales. A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

85.12(1) Scale installation applications and permits must be submitted to the department the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

85.12(2) Piers shall extend below the frost line or be set on solid bedrock, and they shall be of reinforced concrete.

85.12(3) A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

85.12(4) Reinforced Portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale shall be provided on each end in a level plane with the scale platform.

85.12(5) A scale shall be installed at an elevation to ensure adequate drainage away from the scale.

85.12(6) A scale platform and indicator shall be protected from wind and other elements that could cause inaccurate operation of the scale. Protection modifications that attach to or touch the scale or parts attached to the scale shall be approved by the department prior to installation.

This rule is intended to implement Iowa Code section 215.14.

21—85.13(215) Master weights. Master scale test weights used for checking scales after being overhauled must be sealed as to their accuracy once every two years. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

21—85.14(215) Provision for sealing coin slot. Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

21—85.15(215) Lengthening of platforms. The length of the platform of a vehicle scale shall not be increased beyond the manufacturer's designed dimension except when the modification has been approved by a competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.18.

21—85.16(215) Accessibility for testing purposes. A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided, that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise, it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official. If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code sections 215.1A and 215.10.

21—85.17(215) Wheel-load weighers and axle-load scales. The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code section 215.18.

21—85.18 and 85.19 Reserved.

MEASURES

21—85.20(214A,208A) Motor fuel and antifreeze tests and standards.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

85.20(1) In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, and biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by ASTM International in effect on June 30, 2023, with the following exceptions:

- a. Biodiesel blended fuel classified as higher than B-20 but less than B-99.
- b. Tests and standards that are otherwise required by statute.

85.20(2) The components used to produce biodiesel blended fuel classified as higher than B-20 but less than B-99 must meet the following department standards:

- a. The biodiesel must meet ASTM International specification D6751.
- b. The diesel must meet ASTM International specification D975.

85.20(3) Diesel fuel that does not comply with ASTM International specifications may be blended with biodiesel, additives, or other diesel fuel so that the finished blended product does meet the applicable specifications.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2, and 215.18.

21—85.21(215) Tolerances on petroleum products measuring devices. All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. An additional one-half cubic inch tolerance shall be added per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.

21—85.22(215) Meter adjustments and tagging. If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department shall be promptly notified of same.

85.22(1) Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters shall be registered with the weights and measures bureau upon meeting requirements set forth by the department.

85.22(2) In accordance with the NIST Handbook 44, accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

85.22(3) If a meter is found to be inaccurate, an inspection report shall be left by the inspector requiring repair. After the meter has been repaired and placed in service, the licensee shall notify the weights and measures bureau.

85.22(4) If the meter has not been repaired within 30 days, the meter may be condemned and a red condemned tag may be attached to the meter.

This rule is intended to implement Iowa Code sections 215.5, 215.12 and 215.20.

21—85.23(215) Servicer's license fee. The fee for a servicer's license shall be \$10.

This rule is intended to implement Iowa Code section 215.23.

21—85.24(215) Recording elements. All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.

21—85.25(215) Air eliminator. All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

21—85.26(215) Delivery outlets. No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.

21—85.27(215) LP-gas delivery. In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products in Iowa to be equipped with a meter that has been licensed by the state of Iowa and carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

21—85.28(215) LP-gas meter registration. The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department. Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.20.

21—85.29(214A,215) Advertisement of the price of liquid petroleum products for retail use.

85.29(1) Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

85.29(2) Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump or shall be displayed in a manner clear to the purchaser for discounts offered for cash payment. Product names displayed shall match the product names on the retail motor fuel dispensers and all consumer receipts.

85.29(3) Notwithstanding the provisions of subrule 85.29(2), cash only prices may be posted by the petroleum marketer on the following basis:

a. Cash only prices must be disclosed on the posted sign as “cash only” or similar unequivocal wording in lettering 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height; or in lettering at least 6” high and ½” in stroke when the whole number price being shown is more than 36” in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.

85.29(4) On all outside display signs, the whole number shall not be less than 6” in height and not less than 3/8” in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.

85.29(5) The price must be complete, including taxes, without any missing numerals or fractions in the price.

85.29(6) Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height, or in lettering at least 6” high and ½” in stroke when the whole number price being shown is more than 36” in height.

85.29(7) A price advertising sign shall display if the price is in liters, and may display if the price is in gallons, the unit measure in letters of 3” minimum.

85.29(8) Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

85.29(9) The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.

85.29(10) Ethanol blended gasoline classified with an octane rating of 87 or higher may be labeled or advertised as “super” or “plus.”

85.29(11) The octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and 91 for premium grade gasoline.

85.29(12) A wholesale dealer selling ethanol blended gasoline or biodiesel fuel to a purchaser shall provide the purchaser with a statement indicating the actual volume percentage present. The statement may be on the sales slip provided or a similar document such as a bill of lading or invoice. This statement shall include the specific amount of biodiesel, even if the amount of renewable fuel is 5 percent or less.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.

21—85.30(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.

21—85.31(214,214A,215) Blender pumps. Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, that sell both ethanol blended gasoline classified as higher than E-15 and gasoline need to have at least two hoses per pump to separate registered gasoline fuels from flex fuels.

This rule is intended to implement Iowa Code section 214A.2.

21—85.32 to 85.39 Reserved.

MOISTURE-MEASURING DEVICES

21—85.40(215A) Testing devices. All moisture-measuring devices will be tested against a measuring device that will be furnished by the department, and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.

21—85.41(215A) Rejecting devices. Moisture-measuring devices may be rejected for any of the following reasons:

85.41(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

85.41(2) The person does not have available the latest charts for the type of device being used.

85.41(3) The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

85.41(4) The moisture-measuring device is not free from excessive dirt, debris, or cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.

21—85.42(215,215A) Specifications and standards for moisture-measuring devices. The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the Federal Grain Inspection Service; and those recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

21—85.43(215) Testing high-moisture grain. When testing high-moisture grain, the operator of a moisture-measuring device shall use the following procedure: Test each sample six times, adding the six measurements thus obtained and dividing the total by six to obtain an average, which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

21—85.44 to 85.49 Reserved.

TESTING AND ACCURACY

21—85.50(452A) Electric vehicle charging stations.

85.50(1) The department will inspect licensed electric fuel dealers and users for accuracy and correctness from a list provided by the department of revenue.

85.50(2) The specifications and tolerances for electric fuel and charging stations shall be those as published in the NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, amended or revised as of January 1, 2023, in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the department.

85.50(3) A charging station and each connector installed on a charging station will be tested for accuracy and correctness utilizing a measuring device that will be furnished by the department and tested against the electric fuel meter serving that charging station.

85.50(4) For purposes of this rule, “connector” means the portion of the charging station that directly interfaces, connects or plugs into an electric vehicle through which electric fuel is supplied to an electric vehicle.

This rule is intended to implement Iowa Code section 452A.21.

[Filed 11/17/23, effective 1/17/24]

[Published 12/13/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/13/23.

ARC 7128C

PHARMACY BOARD[657]

Adopted and Filed

Rulemaking related to controlled substances

The Board of Pharmacy hereby amends Chapter 10, “Controlled Substances,” and Chapter 12, “Precursor Substances,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 124.201 and 124B.2(2).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 124.201 and 124B.2(2).

Purpose and Summary

This rulemaking temporarily adds one List I chemical (a substance used to manufacture illicit fentanyl) to the list of precursor substances in Iowa Code chapter 124B and one hallucinogen to Schedule I of the Controlled Substances Act in response to similar action taken by the federal Drug Enforcement Administration.

Public Comment and Changes to Rulemaking

PHARMACY BOARD[657](cont'd)

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 26, 2023, as **ARC 7048C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on November 7, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on January 17, 2024.

The following rulemaking action is adopted:

ITEM 1. Amend subrule 10.39(6) as follows:

10.39(6) Amend Iowa Code section 124.204(4) by adding the following new ~~paragraph~~ paragraphs:

cl. No change.

cm. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one. Other names: eutylone, bk-EBDB.

ITEM 2. Amend subrule 12.1(1) as follows:

12.1(1) Amend Iowa Code section 124B.2(1) by adding the following new paragraphs:

ah. and *ai.* No change.

aj. 4-piperidone (piperidin-4-one), its acetals, its amides, its carbamates, its salts, and salts of its acetals, its amides, and its carbamates, and any combination thereof, whenever the existence of such is possible.

[Filed 11/14/23, effective 1/17/24]

[Published 12/13/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/13/23.

ARC 7192C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to settlement authority**

The Revenue Department hereby rescinds Chapter 3, “Voluntary Disclosure Program”; amends Chapter 7, “Appeals, Taxpayer Representation, and Other Administrative Procedures,” and Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments”; adopts Chapter 19, “Settlements—Compromises and Abatements of Tax, Penalty, and Interest”; amends Chapter 101, “Replacement Tax and Statewide Property Tax,” Chapter 108, “Replacement Tax and Statewide Property Tax on Rate-Regulated Water Utilities,” Chapter 254, “Administration,” Chapter 300, “Administration,” Chapter 305, “Assessments and Refunds,” Chapter 504, “Assessments, Refunds, Appeals,” Chapter 603, “Assessments, Refunds, Appeals,” Chapter 700, “Fiduciary Income Tax,” and Chapter 900, “Inheritance Tax,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.5 and 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 17A.10, 421.5, 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

Purpose and Summary

The purpose of this rulemaking is to implement division VI of 2023 Iowa Acts, Senate File 565. Division VI amends several Iowa Code sections related to settlement authority, including the authority to fully abate liabilities under certain circumstances. The Act also establishes new procedures related to estimated assessments. The statutory changes related to settlement authority in Iowa Code section 421.5 include a requirement that the Department adopt rules to administer the section. A new chapter is adopted to cover the various types of settlements that the Department may enter into. The chapter defines key terms of the statute and describes procedures related to different types of settlements. The settlement authority is very discretionary. Adopting rules on this authority provides taxpayers with information on the required procedures and limitations.

The sections of the Act related to estimated assessments did not include mandatory rulemaking authority. The Department did not find it necessary to adopt any new rules on the estimated assessment provisions of the statute at this time but did find that several rules that would otherwise need to be amended could instead be rescinded because they largely repeated the statute. One relevant rule, 701—700.11(422), is amended and significantly shortened as a result of the changes to ensure accuracy.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 18, 2023, as **ARC 7101C**. No public comments were received and no public hearing was requested. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on November 22, 2023.

Fiscal Impact

This rulemaking has no fiscal impact beyond that of the legislation it is intended to implement.

Jobs Impact

REVENUE DEPARTMENT[701](cont'd)

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on January 17, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **701—Chapter 3**.

ITEM 2. Amend rule 701—7.11(17A), parenthetical implementation statute, as follows:

701—7.11(17A,421) Informal stage of the appeals process.

ITEM 3. Amend subrule 7.11(5) as follows:

7.11(5) Settlements. Settlement proposals may be submitted to the department employee assigned to the appeal or through GovConnectIowa using the manage appeal feature. Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

ITEM 4. Amend rule **701—7.11(17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 17A.10 and 421.5.

ITEM 5. Rescind and reserve rule **701—7.31(421)**.

ITEM 6. Amend rule 701—10.3(422,423,450,452A), parenthetical implementation statute, as follows:

701—10.3(421,422,423,450,452A) Interest on refunds and unpaid tax.

ITEM 7. Amend subrule 10.3(2) as follows:

10.3(2) Interest on unpaid tax. Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period the government was deprived of the use of money. ~~Therefore, interest~~ Interest due cannot be waived except in accordance with the settlement authority described in Iowa Code sections 421.5 and 17A.10. *Vick v. Phinney*, 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States*, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems, Dep't of Revenue Hearing Officer decision*, Docket No. 77-9-6A-A (1978); *Waterloo Courier, Inc. v. Iowa Department of Revenue and Finance*, Case No. LACV081252, Black Hawk County District Court, December 30, 1999.

ITEM 8. Amend rule **701—10.3(422,423,450,452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 421.5, 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

REVENUE DEPARTMENT[701](cont'd)

ITEM 9. Adopt the following new 701—Chapter 19:

CHAPTER 19

SETTLEMENTS—COMPROMISES AND ABATEMENTS OF TAX, PENALTY, OR INTEREST

701—19.1(421) Settlements. Pursuant to Iowa Code section 421.5, in addition to the authority granted to the department pursuant to Iowa Code section 17A.10 and notwithstanding Iowa Code section 7D.9, the department may, in its sole discretion, settle any taxes, penalties, or interest. A settlement may be a compromise or full abatement of any amount in dispute.

701—19.2(421) Amounts qualifying for settlement. To be eligible for settlement under Iowa Code section 421.5, the amount must be of doubtful liability or doubtful collectability or must cause severe economic hardship, or the settlement of the amount must promote effective tax administration. The decision whether to accept a settlement amount will be based on a taxpayer's facts and circumstances; verifiable documentation is required for all grounds.

19.2(1) *Doubtful collectability.* Doubt as to collectability may exist in any case where the taxpayer's assets and discretionary income may not satisfy the full amount of the liability after satisfying senior priority liabilities. An offer to settle based on doubt as to collectability may be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the department could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the department will take into account the taxpayer's verifiable reasonable basic living expenses. In some cases, the department may accept an offer of less than the reasonable collection potential of a case if there are special circumstances.

19.2(2) *Severe economic hardship.* The department may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer severe economic hardship. Severe economic hardship is defined as the inability to pay reasonable basic living expenses. An offer to settle based on economic hardship may be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the department can collect without causing the taxpayer severe economic hardship.

19.2(3) *Doubtful liability.* A doubtful liability may exist where there is a significant doubt as to the existence or amount of the correct tax liability under the law. A doubtful liability does not exist where the liability has been established by a final court judgment or administrative ruling or final order of the department concerning the existence or amount of the liability. An offer to settle a doubtful liability may be considered acceptable if it reasonably reflects the likelihood the department could expect to collect through litigation. This analysis may include consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the department.

19.2(4) *Promote effective tax administration.* The department may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this subrule may be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid the liability in full. The department may settle cases where doing so will promote voluntary compliance with the law. The department may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws.

701—19.3(421) Settlement procedures and limitations, generally.

REVENUE DEPARTMENT[701](cont'd)

19.3(1) *Whether to seek a settlement.* When determining whether to seek a settlement, a taxpayer should first consider whether a settlement is necessary. Nothing in this chapter is intended to preclude a taxpayer who misses the time provided by law to appeal a notice of assessment from paying the amount due, filing a refund claim, and contesting any denial of that refund claim as described in Iowa Code section 421.60(2) “h.” If a taxpayer has not received a billing but has information that would adjust the liability down, the appropriate remedy is to file an amended return within the statute of limitations. If a taxpayer has received an estimated assessment and is within three years of when the assessment was issued, the taxpayer should file a return. If a taxpayer has received an assessment and is within the time period to file an appeal, it is proper to file an appeal rather than a settlement request. If a taxpayer does not dispute the liability, but is unable to pay the liability due to financial hardship, the taxpayer should submit an offer in compromise application.

19.3(2) *Which type of settlement to seek.* Different types of settlements require different forms and procedures. Procedures for abatement, offer in compromise, and voluntary disclosure agreements are described in specific rules below. For matters currently under appeal pursuant to 701—Chapter 7, settlement requests must be submitted to the appeals section of the legal services and appeals division in accordance with 701—subrule 7.11(5). For matters currently under audit, settlement requests must be submitted to the department employee assigned to the audit.

19.3(3) *Who may authorize a department settlement.* Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements under this chapter unless otherwise specified in rule or designated by the director.

19.3(4) *Discretionary nature of settlements.* There is no right to appeal an abatement denial, offer in compromise denial, or other settlement decision by the department under 701—Chapter 7. As described in Iowa Code section 421.5, a taxpayer shall not have the right to a settlement of any tax, penalty, or interest liability under this chapter or Iowa Code section 421.5. Any determination shall be discretionary and shall be final and conclusive except in the case of fraud or mutual mistake of material fact or as otherwise stated in a written settlement agreement between the taxpayer and the department.

701—19.4(421) Applications for abatement.

19.4(1) *When to file.* Abatement is intended to be a possible remedy for taxpayers who have received a billing or refund denial letter and have information that could lead to a reduction in the liability, but failed to file a timely appeal. Grounds for abatement include doubt as to liability and promoting effective tax administration.

19.4(2) *How to file an application.* To apply, a taxpayer must submit an application for abatement in the department’s prescribed paper or electronic format. The application can be submitted through GovConnectIowa or by using the form available on the department’s website and following the submission instructions on the form.

19.4(3) *Required information.* A request for abatement must be submitted on the department’s form. The form must be fully completed and properly signed.

19.4(4) *Review of requests.*

- a. After the application has been submitted, it will be reviewed by department staff.
- b. Additional information may be requested to assist the department in its review.
- c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the abatement request. The department’s decision on an abatement application will only be contained in a formal determination letter.
- d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted abatement request and must sign and return that agreement to the department in order to receive the partially granted abatement.
- e. Decisions to accept an abatement request in full or in part for doubt as to liability may be approved by the bureau chief of the compliance section of the tax management division or another staff member designated by the director.

REVENUE DEPARTMENT[701](cont'd)

f. Decisions to accept an abatement request to promote effective tax administration may only be approved by the director, the deputy director, or the division administrator of the legal services and appeals division.

19.4(5) Limitations. The department will accept applications for abatement during the appeal period but will not review such applications until the appeal period has passed. The department will generally not refund amounts already paid in response to an application for abatement. Some exceptions may include the following circumstances:

a. The application is received within three years after the return related to the application for abatement was due or within one year after the payment related to the application for abatement was made, whichever is later.

b. The application is received within one year of the final determination date of any final federal adjustment arising from an internal revenue service audit or other similar action by the internal review service with respect to the particular tax year at issue in the application.

c. Payments were received in violation of Title 11 of the United States Code.

d. Exceptional circumstances demonstrate that a refund would promote effective tax administration as described in subrule 19.2(4).

701—19.5(421) Offers in compromise.

19.5(1) When to file. An offer in compromise packet should be used to apply for relief based on doubtful collectability or severe economic hardship.

19.5(2) How to submit a packet. To apply, a taxpayer must submit an offer in compromise packet in the department's prescribed paper or electronic format. An offer in compromise packet can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

19.5(3) Required information. An offer in compromise must be submitted using the department's offer in compromise packet.

19.5(4) Review of requests.

a. After the packet has been submitted, it will be reviewed by department staff.

b. Additional information may be requested to assist the department in its review.

c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the offer in compromise request. The department's decision on an offer in compromise request will only be contained in a formal determination letter.

d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted offer in compromise request and must sign and return that agreement to the department in order to receive the partially granted offer in compromise.

e. Decisions to enter into an offer in compromise must be approved by the bureau chief of the central collections unit, the director, the deputy director, the division administrator of the legal services and appeals division, or another staff member designated by the director.

19.5(5) Limitations. The department will not review offer in compromise applications until a liability is at least one year old. Premature applications will be denied. Denial on this basis does not prevent the taxpayer from reapplying at a later date.

701—19.6(421) Voluntary disclosure agreements.

19.6(1) When to file. Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income, business activities, or representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income. In addition, activities may also result in tax liabilities that are past due and owing.

19.6(2) Purpose of the voluntary disclosure program. The purpose of the voluntary disclosure program is to promote effective tax administration through voluntary compliance by encouraging unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income or other Iowa taxes described in subrule 19.6(4).

REVENUE DEPARTMENT[701](cont'd)

19.6(3) *Anonymity.* A person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

19.6(4) *Type of taxes eligible.* Only taxes, penalties, and interest related to the following tax types are eligible for settlement under the voluntary disclosure program: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, composite return tax, local option school district income surtax, state sales tax, state use tax, fuel taxes, cigarette and tobacco taxes, local option tax, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

19.6(5) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;
- b. The person must have tax due;
- c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- d. The person must not have had any prior contact with the department or a representative of the department that could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- e. The type and extent of activities resulting in Iowa source income;
- f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- g. Any other factors which are relevant to the particular situation.

19.6(6) *How to file an application.*

a. *Required format.* To apply, a taxpayer must submit an application in the department's prescribed paper or electronic format. A voluntary disclosure application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

b. *Required information.* A voluntary disclosure application must be submitted using the department's form.

c. *Review of the application.*

- (1) After the application is submitted, it will be reviewed by department staff.
- (2) Additional information may be requested to assist the department in its review.
- (3) The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

19.6(7) *Terms of the voluntary disclosure agreement.*

a. *Discretion.* The department has the discretion to settle any outstanding Iowa tax, penalty, and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. Items considered by the department in determining the settlement terms include: the type of tax, the tax periods at issue, the reason for noncompliance, whether the tax is deemed to be held in trust for the state of Iowa, the types of activities resulting in the tax, the frequency of the activities that resulted in the tax, and any other matters which are relevant to the particular situation.

b. *Maximum scope of audit.* If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

REVENUE DEPARTMENT[701](cont'd)

c. Future filing requirements. All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases that dictate a different result.

d. Audit and assessment rights. The department reserves the right to audit all returns and other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

19.6(8) Commencement of the voluntary disclosure agreement. The voluntary agreement commences on the date the voluntary disclosure agreement is fully executed by all parties or another date specified by the agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer or taxpayers and the bureau chief of the compliance section of the tax management division or another staff member designated by the director. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. If a voluntary disclosure agreement is not reached, the department may assess tax, penalty, and interest as provided by law at the time the identity of the applicant becomes known to the department.

19.6(9) Voiding a voluntary disclosure agreement.

a. Authority. The department has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- (1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- (2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- (3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- (4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- (5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- (6) The person, based on a determination by the department, materially understates the person's tax liability; or
- (7) The person has made a material breach of the terms of the voluntary disclosure agreement.

b. Audit rights. Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty, and interest for that person's Iowa tax and tax collection responsibilities for all periods within the statute of limitations. If the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void, the department reserves the right to audit all returns or other documents submitted by the applicant or a third party on behalf of the applicant and to make an assessment for all tax, penalty, and interest owed. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may appeal the assessment pursuant to 701—Chapter 7. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7 but is considered to be "other agency action."

19.6(10) Partnerships, partners, S corporations, shareholders in S corporations, trusts, and trust beneficiaries. Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, S corporations, a shareholder in an S corporation, a trust, or trust beneficiaries,

REVENUE DEPARTMENT[701](cont'd)

the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility for participation in the voluntary disclosure program.

19.6(11) *Transfer or assignment.* The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

ITEM 10. Amend rule 701—101.8(437A) as follows:

701—101.8(437A) Abatement of tax. The abatement provisions of rule 701—7.31(421) 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement ~~with the director~~, the appropriate county treasurer shall be notified. ~~The director's department's~~ decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

ITEM 11. Amend rule 701—101.21(437A) as follows:

701—101.21(437A) Abatement of tax. The abatement provisions of ~~rule 701—7.31(421)~~ 701—Chapter 19 are applicable to the statewide property tax.

ITEM 12. Amend rule 701—108.8(437B) as follows:

701—108.8(437B) Abatement of tax. The abatement provisions of ~~rule 701—7.31(421)~~ 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement ~~with the director~~ department, the appropriate county treasurer shall be notified. ~~The director's department's~~ decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

ITEM 13. Amend rule 701—108.20(437B) as follows:

701—108.20(437B) Abatement of tax. The abatement provisions of ~~rule 701—7.31(421)~~ 701—Chapter 19 are applicable to the statewide property tax.

ITEM 14. Rescind and reserve rule **701—254.11(453A).**

ITEM 15. Rescind and reserve rule **701—300.11(422).**

ITEM 16. Rescind and reserve rule **701—305.5(422).**

ITEM 17. Rescind and reserve rule **701—504.4(421).**

ITEM 18. Rescind and reserve rule **701—504.5(422).**

ITEM 19. Rescind and reserve rule **701—603.4(421).**

ITEM 20. Rescind and reserve rule **701—603.5(422).**

ITEM 21. Amend rule 701—700.11(422) as follows:

701—700.11(422) Appeals to the director. ~~An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the~~ The ~~denial of a request for an income tax certificate of acquittance may be appealed. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period~~

REVENUE DEPARTMENT[701](cont'd)

~~provided by law for filing such claims denial. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.8(17A) to 701—7.22(17A) governing taxpayer protests.~~

This rule is intended to implement Iowa Code chapter 17A and sections 421.60 and 422.28.

ITEM 22. Rescind and reserve rule **701—900.4(450)**.

ITEM 23. Amend subrule 900.8(18) as follows:

900.8(18) Appeals. ~~Rule 701—86.4(450)~~ 701—Chapter 7 providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance tax imposed by Iowa Code chapter 450B.

ITEM 24. Amend subparagraph **900.9(2)“f”(1)** as follows:

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)“e,” the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, “real estate or real property” means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in ~~rule 701—86.4(450)~~ 701—Chapter 7. If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. ~~See 701—subrule 86.9(2) for Information on~~ additional factors to assist in the determination of fair market value of real property can be found in 701—subrule 86.9(2).

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