



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
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 Rule Making 2021

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
17	Friday, January 22, 2021	February 10, 2021
18	Friday, February 5, 2021	February 24, 2021
19	Friday, February 19, 2021	March 10, 2021

PLEASE NOTE:

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

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

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

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

NOTE: See also the Advisory Notice on page 1610.

ACCOUNTANCY EXAMINING BOARD[193A]

Denial of licensure; criminal convictions, 3.1(2), 3.4(3), 4.1(2), 4.2(3), 5.1(1), 5.3, 6.3(3), 6.4(1), 7.2(3), 8.1, 12.1, 13.5(1), 14.3(11) IAB 12/30/20 ARC 5357C	Professional Licensing Bureau Offices 200 E. Grand Ave., Suite 350 Des Moines, Iowa	January 21, 2021 10 to 11 a.m.
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Petitions for rule making, 5.1, 5.4 IAB 1/13/21 ARC 5378C	Via conference call Dial: 1.866.685.1580 Conference code: 0009991200	February 2, 2021 12 noon to 1 p.m.
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ARCHITECTURAL EXAMINING BOARD[193B]

Board administration; license renewal; continuing education, amendments to chs 1 to 4, 6, 7 IAB 12/30/20 ARC 5355C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 19, 2021 11 a.m. to 12 noon
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CORRECTIONS DEPARTMENT[201]

Waivers, amendments to chs 7, 50, 51 IAB 1/13/21 ARC 5376C	Via conference call Contact Michael Savala Email: michael.savala@iowa.gov	February 2, 2021 9 to 10 a.m. (If requested)
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DENTAL BOARD[650]

Licensure; criminal convictions, amend chs 11, 20, 30, 52; adopt ch 50 IAB 12/30/20 ARC 5371C	Via Zoom meeting: us02web.zoom.us/j/82941255805?pwd=uc2ZFamUza2paenJBaURRRTF4MktDUT09 Meeting ID: 829 4125 5805 Passcode: 412388 Call line for telephone access: 312.626.6799 Mute telephone or microphone upon entering the meeting	January 19, 2021 2 p.m.
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ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Temporary permits; licensure by verification, 3.3(4), 5.3 IAB 12/30/20 ARC 5356C	Small Conference Room, Third Floor 200 E. Grand Ave. Des Moines, Iowa	January 21, 2021 10 to 11 a.m.
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INSURANCE DIVISION[191]

Comprehensive review of rules, amendments to chs 2, 5, 40, 41, 44 to 46, 48, 99, 100, IAB 1/13/21 ARC 5389C	Via conference call Contact Tracy Swalwell Email: tracy.swalwell@iid.iowa.gov	February 4, 2021 9 a.m. (If requested)
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Credit for reinsurance, 5.33, 112.7(1)“e” IAB 1/13/21 ARC 5388C	Via Webex Dial: 1.408.418.9388 Access code: 179 697 7254	February 4, 2021 10 a.m.
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Retired status; reinstatement to active status; waivers; license renewal; continuing education, 1.1, 1.3, 1.8, 2.1(4), 2.2 to 2.5, 3.2(3), 3.3(2) IAB 12/30/20 ARC 5360C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	January 19, 2021 12 noon to 1 p.m.
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Contribution rates; terms and requirements; death benefits and beneficiaries; open and confidential records, amendments to chs 4, 5, 11 to 14, 17, 19 IAB 12/30/20 ARC 5359C	Via conference call Dial: 312.626.6799 Meeting ID number: 899 3701 7925 Pass code: 9614219527	January 29, 2021 9 a.m.
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MEDICINE BOARD[653]

Appointment of executive director, 1.3 IAB 12/30/20 ARC 5372C	Via Google Meet meet.google.com/xwz-winy-fyw Via telephone: +1 971.801.0248 PIN: 443 922 280# Mute telephone or microphone upon entering the meeting	January 20, 2021 2 to 3 p.m.
Waivers, 3.1, 3.4, 3.17, 8.11, 9.18, 10.6, 11.6, 13.21, 17.4(2), 17.5(13), 17.11, 17.30, 19.8, 20.8(12), 20.20, 20.25, 21.8, 23.1 IAB 12/30/20 ARC 5370C	Via Google Meet meet.google.com/xwz-winy-fyw Via telephone: +1 971.801.0248 PIN: 443 922 290# Mute telephone or microphone upon entering the meeting	January 20, 2021 1 to 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Duplicate wallet card; criminal convictions; licensure by verification, amend chs 4, 5, 20; adopt chs 14, 19 IAB 12/30/20 ARC 5367C	Webex ID : 1468944924 Password: vN6b6Vk* (US) +1 408.418.9388 (toll) Access code: 146 894 492 4	January 19, 2021 9 to 9:30 a.m.
Optometrists—use of injectables, 182.5 to 182.7 IAB 1/13/21 ARC 5383C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	February 2, 2021 10 to 10:30 a.m.
Physician assistants—licensure, criminal convictions, wallet cards, 326.4(7), 326.9, 329.2(11) IAB 12/30/20 ARC 5368C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 19, 2021 9:30 to 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Definition of “vertical infrastructure,” 180.2, 180.3 IAB 1/13/21 ARC 5375C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	February 4, 2021 1 to 2 p.m. (If requested)
Lighting at primary-secondary intersections, 136.1, 136.2, 136.6 IAB 12/30/20 ARC 5341C	Via conference call Contact: Tracy George Email: tracy.george@iowadot.us	January 21, 2021 1 to 2 p.m. (If requested)
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The following list will be updated as changes occur.

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

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

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

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ARC 5378C**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Notice of Intended Action****Proposing rule making related to petitions for rule making
and providing an opportunity for public comment**

The Administrative Services Department hereby proposes to amend Chapter 5, "Petitions for Rule Making," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These amendments are proposed as a result of changes made in 2020 Iowa Acts, House File 2389, relating to a submission of a petition of rule making and its disposition to the Administrative Rules Review Committee. The petition and disposition shall be submitted to the Committee. The proposed amendments comport with Iowa Code section 17A.7 as amended by 2020 Iowa Acts, House File 2389.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

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

Public Hearing

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

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

February 2, 2021
12 noon to 1 p.m.

Via conference call
Dial: 1.866.685.1580
Conference code: 0009991200

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 5.1(3) as follows:

5.1(3) Denial. The director may deny a petition because it does not substantially conform to the required form. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

ITEM 2. Adopt the following **new** subrule 5.1(4):

5.1(4) Submission to administrative rules review committee. The department shall submit a petition for rule making and the department's disposition of the petition to the administrative rules review committee.

ITEM 3. Amend rule 11—5.4(17A) as follows:

11—5.4(17A) Department consideration.

5.4(1) ~~Within 14 days after the filing of a petition, the department must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee.~~ Upon request by petitioner in the petition, the department must schedule a brief and informal meeting between the petitioner and the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to the petitioner.

5.4(3) ~~Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.~~

ARC 5376C**CORRECTIONS DEPARTMENT[201]****Notice of Intended Action****Proposing rule making related to waivers and providing an opportunity for public comment**

The Corrections Department hereby proposes to amend Chapter 7, “Waivers and Variances,” Chapter 50, “Jail Facilities,” and Chapter 51, “Temporary Holding Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 904.108.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The proposed amendments update Chapters 7, 50, and 51 of the Department’s rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for deletions of the word “variance” when the word is used in relation to “waiver.” Amendments are also proposed for the submission of information regarding waivers on the Legislative Services Agency’s Internet site.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Michael Savala
Department of Corrections
Jesse Parker Building
510 East 12th Street
Des Moines, Iowa 50319
Email: michael.savala@iowa.gov

Public Hearing

If requested, a public hearing to hear requested oral presentations will be held on February 2, 2021, via conference call from 9 to 10 a.m. Persons who wish to participate in the conference call should contact Michael Savala before 4:30 p.m. on January 29, 2021, to facilitate an orderly hearing. A conference call

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number will be provided to participants prior to the hearing. The public hearing will be canceled without further notice if no oral presentation is requested.

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 rule making.

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **201—Chapter 7**, title, as follows:

~~WAIVERS AND VARIANCES~~

ITEM 2. Amend rule 201—7.1(904) as follows:

201—7.1(904) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means an action by the department which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 201—7.4(904) as follows:

201—7.4(904) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule [201—7.6\(904\)](#), the department may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 201—7.5(904) as follows:

201—7.5(904) Filing of petition. A petition for a waiver must be submitted in writing to the department as follows:

7.5(1) and 7.5(2) No change.

7.5(3) File petition. A petition is deemed filed when it is received in the department's office. A petition should be sent to the Department of Corrections, ~~Policy and Legal Services Division, 420 Watson Powell Jr. Way~~ [510 E. 12th Street](#), Des Moines, Iowa 50309. The petition must conform to the form specified in rule [201—7.17\(904\)](#).

ITEM 5. Amend rule 201—7.12(904) as follows:

201—7.12(904) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ The department shall submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A within 60 days. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers. ~~Copies of this report shall be available for~~

CORRECTIONS DEPARTMENT[201](cont'd)

~~public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 6. Amend rule 201—7.17(904) as follows:

201—7.17(904) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF CORRECTIONS	
Petition by (name of petitioner) for the waiver/ variance of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER/ VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver ~~or variance~~). Also provide the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department and petitioner relating to the regulated activity that would be affected by the waiver.

6. Provide information known to the petitioner regarding the department’s action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver ~~or variance~~.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

ITEM 7. Amend rule **201—50.1(356,356A)**, definition of “Waiver/~~variance~~,” as follows:

“~~Waiver/~~variance~~” means a waiver of a specific standard granted by the Iowa department of corrections in accordance with 201—Chapter 7.~~

ITEM 8. Amend subrule 50.2(4) as follows:

50.2(4) Other standards. Nothing contained in these standards shall be construed to prohibit local officials from adopting standards and requirements governing their employees and facilities, provided such standards and requirements exceed and do not conflict with standards mandated in this chapter. These standards shall not be construed as authority to violate any state fire safety standard, building

CORRECTIONS DEPARTMENT[201](cont'd)

standard, health and safety code, or any constitutional requirement. No jail shall be operated without substantially meeting these rules, absent the granting of a waiver/~~variance~~.

ITEM 9. Amend subrule 50.24(6) as follows:

50.24(6) *Exemption from nonsecure hold standards.* Any requests for exemption from nonsecure hold standards shall be submitted according to the waiver and ~~variance~~ provisions under 201—Chapter 7, Iowa Administrative Code.

ITEM 10. Amend rule ~~201—51.1(356,356A)~~, definition of “Waiver/~~variance~~,” as follows:

“~~Waiver/~~variance~~”~~ means waiver of a specific standard granted by the jail inspection unit in accordance with these rules.

ARC 5382C**DENTAL BOARD[650]****Notice of Intended Action****Proposing rule making related to clinical examinations on manikins and providing an opportunity for public comment**

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

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 153.33A.

State or Federal Law Implemented

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

Purpose and Summary

The proposed amendments allow applicants for a dental hygiene license to complete clinical examinations on manikins for the purposes of licensure in Iowa.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 5, 2021. Comments should be directed to:

DENTAL BOARD[650](cont'd)

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 11.5(2) as follows:

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

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

b. Certification of good standing from dean or designee. Certification by the dean or other authorized representative of the school of dental hygiene that the applicant has been a student in good standing while attending that dental hygiene school.

c. Documentation of passage of national dental hygiene examination. Evidence of successful passage of the examination administered by the Joint Commission on National Dental Examinations.

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

~~(1) Successful passage of a patient-based regional clinical examination within the previous five-year period.~~

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

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

e. to i. No change.

DENTAL BOARD[650](cont'd)

ITEM 2. Amend rule 650—11.6(153) as follows:

650—11.6(153) Dental hygiene licensure by credentials. To be issued a license to practice dental hygiene in Iowa on the basis of credentials, an applicant shall meet the following requirements.

11.6(1) No change.

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

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

b. Evidence of successful passage of the examination of the Joint Commission on National Dental Examinations. Any dental hygienist who has lawfully practiced dental hygiene in another state or territory for five or more years may be exempted from presenting this evidence.

c. A statement of any dental hygiene examinations taken by the applicant, with indication of pass/fail for each examination taken. Any dental hygienist who has lawfully practiced dental hygiene in another state or territory for five or more years may be exempted from presenting this evidence.

d. Evidence of a current, valid license to practice dental hygiene in another state, territory or district of the United States issued under requirements equivalent or substantially equivalent to those of this state.

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

(1) Has less than three consecutive years of practice immediately prior to the filing of the application and evidence of successful passage of a regional clinical examination pursuant to subrule 11.5(2) within the previous five-year period. ~~The following regional examinations are approved by the board for purposes of licensure by examination: the Central Regional Dental Testing Service, Inc. examination as administered by the Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board examination as administered by the Western Regional Examining Board (WREB), the Southern Regional Testing Agency, Inc. examination as administered by the Southern Regional Testing Agency, Inc. (SRTA), and the American Board of Dental Examiners, Inc. examination as administered by the Commission on Dental Competency Assessments (CDCA) and the Council of Interstate Testing Agencies, Inc. (CITA); or~~

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

f. to k. No change.

11.6(3) to 11.6(6) No change.

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

ARC 5381C

DENTAL BOARD[650]

Notice of Intended Action

Proposing rule making related to training for placing sealants and providing an opportunity for public comment

The Dental Board hereby proposes to amend Chapter 23, “Expanded Functions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 153.33.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2267.

DENTAL BOARD[650](cont'd)

Purpose and Summary

The proposed amendments would allow dental assistants who complete expanded function training at the University of Iowa College of Dentistry or another program accredited by the Commission on Dental Accreditation to place sealants.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found because the individuals must be registered as dental assistants prior to completing the training and providing the additional service.

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 5, 2021. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 650—23.6(153) as follows:

650—23.6(153) Level 2 expanded function procedures for dental hygienists and dental assistants.

23.6(1) Level 2 expanded function procedures for dental hygienists and dental assistants include:

a. Placement and shaping of amalgam following preparation of a tooth by a dentist;

DENTAL BOARD[650](cont'd)

- b. Placement and shaping of adhesive restorative materials following preparation of a tooth by a dentist;
- c. Polishing of adhesive restorative material using a slow-speed handpiece;
- d. Fitting of stainless steel crowns on primary posterior teeth, and cementation after fit verification by the a dentist;
- e. Tissue conditioning (soft reline only);
- f. Extraoral adjustment to acrylic dentures without making any adjustments to the prosthetic teeth; and
- g. Placement of intracoronal temporary fillings following preparation of a tooth by a dentist.

23.6(2) Level 2 expanded function procedures for dental assistants include the placement of sealants. The placement of sealants is included in the scope of practice for dental hygienists and is not considered an expanded function for dental hygienists.

~~23.6(2)~~ **23.6(3)** These Level 2 expanded function procedures refer to both primary and permanent teeth except as otherwise noted.

ARC 5387C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to Accelerated Career Education (ACE) Program and providing an opportunity for public comment

The Economic Development Authority hereby proposes to amend Chapter 20, “Accelerated Career Education (ACE) Program,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 260G.

Purpose and Summary

The ACE Program administered pursuant to Iowa Code chapter 260G assists Iowa’s community colleges in establishing or expanding programs that train individuals in the occupations most needed by Iowa businesses. The proposed rule making clarifies the roles of the Authority and the community colleges and eliminates references to program components that have been repealed.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on February 2, 2021. 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 rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind **261—Chapter 20**, Division I to Division IV headings.

ITEM 2. Amend rule 261—20.1(260G) as follows:

261—20.1(260G) Purpose. ~~The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The economic development authority administers the program job credits component. The college student aid commission administers the career education grants portion of the ACE program as described in the commission’s administrative rules. The of education administers the capital costs component. The goal of the ACE accelerated career education (ACE) program is designed to provide businesses with an enhanced skilled workforce in Iowa. The program assists Iowa’s community colleges in establishing or expanding programs that train individuals in the occupations most needed by Iowa businesses.~~

ITEM 3. Amend rule 261—20.2(260G) as follows:

261—20.2(260G) Definitions.

“260G data system” means the data system established by the authority to record data, upload documentation, and track programs and agreements.

“Accelerated career education program” or “ACE program” means the program established pursuant to Iowa Code chapter 260G and administered by the authority.

“Agreement” means a program agreement referred to in Iowa Code section 260G.3 between an employer and a community college.

“Allotment” means the distribution of program job credits based upon need as determined by among the community colleges in accordance with Iowa Code section 260C.18C.

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Community college*” means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

“*Community college board*” means the governing board of a merged area as defined in Iowa Code section 260C.11.

“*Employee*” means a person employed in a program job.

“*Employer*” means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

“*Highly skilled job*” means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

“*Participant*” means an individual who is enrolled in an accelerated career education program at a community college.

“*Participant position*” means the individual student enrollment position available in an accelerated career education program.

“*Program*” means a program of instruction designed by a community college which has been designated by a community college board and approved by the authority as meeting the requirements of Iowa Code section 260G.4.

“*Program agreement*” means an agreement between an employer and a community college as described in Iowa Code section 260G.3.

~~“*Program capital cost*” means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.~~

“*Program job*” means a highly skilled job available from an employer pursuant to a program agreement.

“*Program job credit*” means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

“*Program job position*” means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

~~“*Program operating costs*” means all necessary and incidental costs of providing program services.~~

“*Program services*” means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

~~“*Vertical infrastructure*” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.~~

ITEM 4. Amend rule 261—20.3(260G) as follows:

261—20.3(260G) ACE program Program eligibility and designation.

20.3(1) In order to receive tax an allotment of program job credits, from withholding under the program job credits component or financial assistance through the college student aid commission’s accelerated career education grants program, a program must be designated by a community college as must designate an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

b. A credit-equivalent career or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) ~~By resolution of a~~ A community college board of directors, shall designate and approve an eligible program may be approved and designated as an ACE program by resolution. The respective community college board(s) board of directors shall ensure compliance with Iowa Code chapter 260G. ~~In designating ACE programs, the respective community college board(s) shall give priority to targeted industries as designated by the authority.~~

20.3(3) ~~A copy of the designated ACE program agreement shall be submitted to the authority. The agreement shall state which program component (job credits or education grants, or both if applicable) is included in the agreement. The authority will review and approve all program designations and maintain a record of all approved ACE programs.~~

20.3(4) ~~The authority will review the ACE job credits component of the program for issues of quality in accordance with rule 261—20.16(260G).~~

ITEM 5. Amend rule 261—20.4(260G) as follows:

261—20.4(260G) Funding allocation.

20.4(1) *Base allocation.* The authority shall allocate the total amount of program job credits authorized and available to each community college for each fiscal year based on the formula established in Iowa Code section 260C.18C. For purposes of such allocation, the applicable ratios shall be applied to commitments made by community colleges at the beginning of each fiscal year.

a. ~~Funds for ACE program job credits shall be allocated among the community colleges in the state for the fiscal years and in the amounts specified in Iowa Code chapter 260G and these rules.~~

b. ~~Community colleges shall submit program agreements to access allotted funds for program job credits. The program agreement shall document the findings of the community college that all ACE eligibility requirements have been met.~~

20.4(2) *Alternate allotment. Allotment of uncommitted funds.* ~~If a community college fails to commit any of its allotment by April 1 of the fiscal year, the funds for that community college will be allocated to other community colleges based upon need as described in these rules. Each community college shall commit its allotment of program job credits as of April 1 of each fiscal year. Program job credits are considered to be committed if there is a signed an executed program agreement in place or if there is a statement of intent in place that states that a signed program agreement will be in place executed by May 1 of the current fiscal year. Uncommitted funds shall be reallocated on a first-come, first-served basis to other community colleges with executed program agreements that have not received all of the program job credits required. Funds that remain uncommitted as of June 30 will be reallocated based on the formula established in Iowa Code section 260C.18C for use during the following fiscal year.~~

20.4(3) *Authority role.* The authority shall calculate and report to each community college its allotment. The authority may deny the allocation of program job credits to any program which fails to comply with Iowa Code chapter 260G. The authority shall maintain records of the proposed program job credits under each agreement for each fiscal year.

20.4(4) *Submission of program agreements.* A community college shall submit program agreements via the 260G data system to access its allotment of program job credits.

20.4(5) *Total amount of program job credits in any one fiscal year.* The total amount of program job credits from all employers which shall be allocated for all programs in any one fiscal year shall not exceed the amount specified in Iowa Code section 260G.4B(1).

ITEM 6. Rescind rule 261—20.5(260G) and adopt the following **new** rule in lieu thereof:

261—20.5(260G) Program job credits.

20.5(1) *Eligibility.* To be eligible to receive program job credits, an employer shall demonstrate it has met the following requirements:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

a. The program agreement must provide for pledged program positions paying at least 200 percent of the federal poverty level for a family of two as calculated at the time of approval of the agreement or any renewal. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time frames.

b. The program agreement must establish a 20 percent employer cash or in-kind match for program costs.

20.5(2) Determination of job credit amounts.

a. Program job credits shall be based upon the program job positions identified in the program agreement. No costs incurred prior to the effective date of a program agreement may be reimbursed or eligible for program job credits.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease. Any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.5(3) Certification to department of revenue.

a. The employer shall certify to the department of revenue that the program job credits are in accordance with the program agreement and shall provide other information the department may require.

b. The authority shall certify to the department of revenue that the amount of the program job credits is in accordance with each program agreement and shall provide other information the department may require.

ITEM 7. Amend rule 261—20.6(260G) as follows:

261—20.6(260G) Program agreements and administration.

20.6(1) Program agreements will be developed by an employer, and a community college and any employee of an employer representing a program job. The development of the program agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The program agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: ~~match~~

a. Match provided by the employer; ~~tuition~~

b. Tuition, student fees, or special charges fixed by the community college board of directors; ~~guarantee~~

c. Guarantee of employer payments; ~~type~~

d. Type and amount of funding sources that will be used to pay for program costs; ~~description~~

e. Description of program services and implementation schedule; ~~the~~

f. The term of the agreement, not to exceed five years; ~~the~~

g. The employer's agreement to interview graduates for full-time positions and provide hiring preference; ~~for~~

h. For employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; ~~an~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

i. An agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a

j. A provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a

k. A provision that the participants will agree to interview with the employer following completion of the program; and default

l. Default procedures.

20.6(3) Projects that cross community college boundaries, or projects that involve employers from multiple community college areas, must be conducted pursuant to an agreement or agreements with each college. Program agreements shall be submitted to the authority via the 260G data system. Program agreements shall document the findings of the community college that all program and employer eligibility requirements have been met. The authority will review agreements for issues of quality. The authority will maintain a record of all approved agreements.

20.6(4) Term, amendments, and renewals.

a. Term. The term of a program agreement shall not exceed five years from the effective date of the agreement. Once a program agreement is approved, the authority will obligate job credits, contingent upon the availability of funding, for each year of the term of the agreement.

b. Amendments. A program agreement shall be amended only with the consent of both parties and approval by the authority. A program agreement can be amended to extend the term of the agreement a maximum of two years.

c. Renewals. A program agreement may be renewed upon completion of its approved term. The community college must demonstrate the program meets the eligibility requirements in Iowa Code section 260G.4, including increased program capacity, as of the date of approval of renewal by the authority. A renewed agreement, including exhibits, shall be entered and uploaded into the 260G data system. In order to renew an agreement, the following budgeted items and employer commitments shall be updated:

- (1) Sponsored positions;
- (2) Program costs;
- (3) Changes in tuition;
- (4) Other fees;
- (5) Changes in salaries and expenses;
- (6) Federal poverty thresholds;
- (7) Income;
- (8) Employer match amounts;
- (9) Any other items identified by the authority.

20.6(5) The 260G data system will automatically assign a 12-digit agreement number once the agreement data is entered and approved. The agreement number will remain the same if an approved agreement is extended or otherwise amended. Program agreements that are renewed pursuant to paragraph 20.6(4) "c" will be assigned a new 12-digit number.

20.6(6) The authority shall provide information about the ACE program in accordance with its annual reporting requirements in Iowa Code section 15.107B.

20.6(7) Each community college shall establish a monitoring system which includes, at a minimum, a review of employers' compliance with Iowa Code, these rules, and the program agreement. Monitoring shall be conducted at least annually by community colleges with active program agreements. Each community college shall document its monitoring efforts and promptly notify the authority of any changes.

20.6(8) Coordination with other state agencies.

a. Department of revenue. When a program agreement is approved for funding, the community college shall notify the authority through the 260G data system, and the authority shall notify the department of revenue within 30 days of the date of its approval. Information to be provided to the department of revenue includes, but is not limited to, program agreement number, employer name, employer address, start and expiration dates, federal employer identification number, wages, sponsored

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

positions, and approved amount of program job credits. If, at any time after a program agreement is approved, changes are made that would affect the above reporting requirements, the department of revenue and the authority shall be notified within 30 days.

b. Iowa workforce development. Community colleges and the authority shall provide program data to Iowa workforce development as required.

c. Department of education. Community colleges and the authority shall provide program data to the department of education as required.

20.6(9) Program costs for new and renewal program agreements shall be calculated or recalculated based on the required program services for a specific number of participants. Program agreement updates reflecting this recalculation must be submitted to the authority to review compliance.

ITEM 8. Rescind and reserve rules 261—20.7(260G) to 261—20.9(260G).

ITEM 9. Rescind and reserve rules 261—20.13(260G) to 261—20.19(81GA, HF868, HF809).

ARC 5386C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to entrepreneur investment awards program and providing an opportunity for public comment

The Economic Development Authority hereby proposes to amend Chapter 102, “Entrepreneur Investment Awards Program,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15E.362.

Purpose and Summary

The Entrepreneur Investment Awards Program assists service providers that provide technical and financial assistance to entrepreneurs and startup companies seeking to create, locate, or expand a business in the state. Under the current rules for the program, applications are reviewed by the Iowa Innovation Corporation, which had been established pursuant to Iowa Code section 15.107. In 2019, the Legislature amended Iowa Code section 15.107, updating the mission of the corporation, which is now a bioscience development corporation. The proposed amendments streamline the application process by eliminating review by the Iowa Innovation Corporation and initial approval by the Technology and Commercialization Committee of the Iowa Economic Development Authority Board. Instead, a committee of reviewers appointed by the Director will review applications and make funding recommendations to the Board. The changes also provide the Authority more flexibility to announce an application filing window as funding is made available and provide for monitoring by the Authority, rather than by the Iowa Innovation Corporation.

Fiscal Impact

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

Jobs Impact

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on February 2, 2021. 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 rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 261—102.3(15E) as follows:

261—102.3(15E) Definitions. As used in this chapter, unless the context otherwise requires:

“*Applicant*” means a person applying to the authority for financial assistance under the program.

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

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Business development services*” includes but is not limited to corporate development services, business model development services, business planning services, marketing services, financial strategies and management services, mentoring and management coaching, and networking services.

“*Committee*” means ~~the technology commercialization committee established by the board pursuant to 261—Chapter 1~~ a committee of application reviewers appointed by the director.

“*Corporation*” means ~~the Iowa innovation corporation created pursuant to Iowa Code section 15.107.~~

“*Deliverables*” means the performance of duties or other obligations required of an applicant under a contract entered into with the authority in consideration for the receipt of financial assistance under the program. At a minimum, “deliverables” includes the continued maintenance of all initial eligibility requirements for the duration of a contract entered into under the program and may include such other terms and conditions as the authority deems necessary to effectuate the legislative intent of the program or to protect the interest of taxpayers.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“Director” means the director of the authority.

“Eligible entrepreneurial assistance provider” or “service provider” means a person meeting the requirements of rule 261—102.6(15E).

“Financial assistance” means the same as defined in Iowa Code section 15.327.

“Fund” means the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363.

“Iowa-based business” means a service provider whose principal place of operations is in Iowa and that is actively providing business development services in the state.

“Operating costs” means the expenses associated with administering a service provider’s activities on a day-to-day basis. “Operating costs” includes both fixed costs and variable costs. “Operating costs” does not include expenses associated with non-operating activities such as interest expenses, repayment of principal, or moneys invested by the service provider in clients’ businesses or in other ventures.

“Program” means the entrepreneur investment awards program established pursuant to Iowa Code section 15E.362.

ITEM 2. Amend subrule 102.4(2) as follows:

102.4(2) *Application and award procedures.* Eligible service providers may submit applications to the authority. The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on funding. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance during the annual filing window described in subrule ~~102.4(5)~~ 102.4(4). The amount of financial assistance awarded to a service provider is within the discretion of the authority as determined by the board. If the board approves an award of financial assistance for a service provider, the authority will prepare a required contract specifying the terms and conditions under which financial assistance is provided to the service provider.

ITEM 3. Amend subrule 102.4(3) as follows:

102.4(3) *Delegation of certain administrative functions to the corporation Review procedure.* The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

a. ~~The initial application review process, including an analysis of whether the service provider meets all requirements of eligibility under the program. In analyzing an applicant’s eligibility, the corporation~~ The committee shall verify that all objective criteria for eligibility are met as described in subrule 102.6(1) and shall provide an opinion as to whether and to what extent the applicant meets the subjective criteria described in subrule 102.6(2). The analysis of eligibility shall be compiled in report form and submitted to the committee for its use in making a recommendation and to the board for its use in making a final determination.

b. ~~The formulation of deliverables to be required under the contract.~~ The corporation The committee shall recommend to the authority the terms and conditions to be included in the contract in consideration for receipt of the grant funds.

c. ~~The tracking and monitoring of the service provider’s performance under a program contract, including an analysis of whether the service provider’s deliverables meet all requirements of the contract and including an evaluation of the value added by the service provider to the businesses of entrepreneurs. The evaluation shall be provided by the corporation in furtherance of the program review and report required of the authority pursuant to Iowa Code section 15E.362.~~

ITEM 4. Rescind subrule **102.4(4)**.

ITEM 5. Renumber subrules **102.4(5)** and **102.4(6)** as **102.4(4)** and **102.4(5)**.

ITEM 6. Amend renumbered subrule 102.4(4) as follows:

102.4(4) *Annual filing window.* In order to facilitate the competitive application and scoring process described in rule 261—102.6(15E), the authority and the corporation will accept applications for financial assistance only during the annual filing window. This filing window shall be from May 15 to June 1

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~of each calendar year. During the month of June, the authority and the corporation will process the applications and prepare them for consideration by the committee and the board at the first monthly meeting of the committee and the board following June 30 of each year. The authority may adjust the annual applications will be accepted only during the established application period, or periods, as identified by the authority on its website during each fiscal year in which funding is available. The authority may adjust the filing window dates under extenuating circumstances and will notify affected parties of such circumstances.~~

ITEM 7. Amend subrule 102.7(1) as follows:

102.7(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include certain deliverables in the contract as recommended by the ~~corporation and will delegate to the corporation the tracking and monitoring of~~ committee. The authority will track and monitor all contract provisions including an analysis of whether the service provider's deliverables meet all requirements of the contract and including an evaluation of the value added by the service provider to the businesses of entrepreneurs. ~~The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring.~~ The authority will make the final determination as to compliance with the terms of the contract and will make the final determination as to whether and when to disburse funds to the applicant.

ARC 5389C

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to review of rules and providing an opportunity for public comment

The Insurance Division hereby proposes to amend Chapter 2, "Public Records and Fair Information Practices," Chapter 5, "Regulation of Insurers—General Provisions," Chapter 40, "Health Maintenance Organizations," Chapter 41, "Limited Service Organizations," Chapter 44, "Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits," Chapter 45, "Insurance Holding Company Systems," Chapter 46, "Mutual Holding Companies," Chapter 48, "Viatical and Life Settlements," Chapter 99, "Limited Purpose Subsidiary Life Insurance Companies," and Chapter 100, "Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 505.8.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 22, 505, 507, 508, 508E, 514B, 521A and 523A.

Purpose and Summary

The proposed amendments, which are explained more specifically below, are a result of the Division's review of rules. The amendments to Chapters 2, 5, 40, 41, 44, 45, 46, 48, 99, and 100 generally update the chapters by removing duplicative definitions and unnecessary language, correcting statute references, conforming to current Iowa Code language, and reflecting current practices.

Subrule 2.5(3) concerns release of confidential records by the Division. The Division has determined that subrule 2.5(3) is unnecessary and that the procedure for records protected under Iowa Code chapter 22 is already comprehensively addressed in that Iowa Code chapter.

INSURANCE DIVISION[191](cont'd)

Subrule 2.12(16) is being amended to reflect the consolidation into one subrule of license sanctions as a result of noncompliance with child support or state debt.

Rule 191—5.1(505,507,508,515) is being rescinded and replaced with definitions, because existing rule 191—5.1(505,507,508,515) is inconsistent with Iowa Code section 507.10.

Rule 191—5.11(511) is being rescinded and reserved, because Iowa Code section 511.8 comprehensively addresses the issue.

Rules 191—5.23(507C) and 191—5.24(507C) are being rescinded and reserved, because the implementation of Chapter 110 covers insurance companies in hazardous financial condition. Specifically, rules 191—110.4(505) and 191—110.5(505) address this issue.

Subrule 15.13(1) is being amended to correct the appendix reference in paragraph 15.13(1)“b.”

Subrule 48.3(2) is being amended to be consistent with statute.

Subrule 100.19(1) is being amended to remove paragraph 100.19(1)“b” to conform to Iowa Code section 523A.203, which comprehensively addresses master trusts.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received no later than 12 noon on February 4, 2021. Comments should be directed to:

Tracy Swalwell
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6549
Email: tracy.swalwell@iid.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held electronically, with no in-person attendance, on February 4, 2021, at 9 a.m. Persons wishing to attend the electronic hearing should contact Tracy Swalwell. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at the conference call public hearing must submit a request to Tracy Swalwell prior to the hearing to facilitate an orderly hearing. Persons may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy Swalwell and advise of specific needs. The public hearing will be canceled without further notice if no public hearing is requested by 12 noon on February 2, 2021.

INSURANCE DIVISION[191](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind subrule **2.5(3)**.

ITEM 2. Amend subrule 2.12(16) as follows:

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J) or ~~191—10.23(82GA, SF2428)~~. Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.

ITEM 3. Rescind rule 191—5.1(507) and adopt the following new rule in lieu thereof:

191—5.1(505,507,508,515) Definitions. The definitions in rule 191—1.1(502,505) apply to this chapter. This rule is intended to implement Iowa Code chapters 505, 507, 508, and 515.

ITEM 4. Amend rule 191—5.2(505,507), introductory paragraph, as follows:

191—5.2(505,507) Examination for admission. Any foreign or alien insurance company seeking to be admitted to do business in the state of Iowa shall, at the discretion of the division of ~~insurance~~, be subject to either or both of the following:

ITEM 5. Amend rule 191—5.5(505,515,520) as follows:

191—5.5(505,515,520) Maximum allowable premium volume. A domestic property/casualty insurer shall not cause the ratio of its net written premiums to its surplus as regards policyholders to exceed three to one without the approval of the commissioner of ~~insurance~~.

ITEM 6. Amend subrule 5.6(3) as follows:

5.6(3) Bonds. At amortized cost, unless directed otherwise by the commissioner of ~~insurance~~.

ITEM 7. Rescind and reserve rule **191—5.11(511)**.

ITEM 8. Amend rule 191—5.12(515), introductory paragraph, as follows:

191—5.12(515) Collateral loans. The collateral pledged to secure a loan must qualify as a legal investment for insurance companies before the loan it secures may so qualify [~~section 515.35(7)~~ Iowa Code section 515.35(3)“a”(2)]. The statute provides that a company may not invest in excess of 30 percent of its capital and funds in stocks and not more than 10 percent of its capital and surplus in the stock or bonds, or both, of any one corporation.

ITEM 9. Rescind and reserve rule **191—5.23(507C)**.

ITEM 10. Rescind and reserve rule **191—5.24(507C)**.

ITEM 11. Amend rule 191—5.26(508,515) as follows:

191—5.26(508,515) Participation in the NAIC Insurance Regulatory Information System.

5.26(1) No change.

INSURANCE DIVISION[191](cont'd)

5.26(2) Each domestic, foreign and alien insurer, except entities organized under Iowa Code chapters 512A, 512B, 514, 514B, 518 and 518A and those which write only in this state, who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with such additional filings as prescribed by the insurance commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the NAIC.

Foreign insurers that are domiciled in a state which has a law substantially similar to the requirement in the previous sentence shall be deemed in compliance with this rule.

5.26(3) to 5.26(5) No change.

5.26(6) Electronic filing. The annual financial statement filings required of domestic insurers pursuant to Iowa Code sections 508.11 and 515.63 and the quarterly statement filings required pursuant to rule 191—5.3(507,508,515) must be filed electronically with the National Association of Insurance Commissioners. Electronic filing shall include filing via the Internet or by diskette. The electronic filing must be prepared in accordance with the NAIC Directive to Companies, Coding Conventions, Field Names and Definitions, Data Elements, and Reporting Requirements for Annual/Quarterly Statement Submission on Diskettes. Electronic filings are in addition to and due at the time of the filing of the annual/quarterly financial statement blank with the National Association of Insurance Commissioners. Diskette filings do not need to be filed with the insurance division unless the insurer is directed by the insurance commissioner to submit the filing(s) on diskette. This diskette filing requirement does not apply to entities organized pursuant to Iowa Code chapters 512A, 512B, 514, 514B, 518, and 518A.

This rule is intended to implement Iowa Code sections 508.11 and 515.63.

ITEM 12. Amend rule 191—5.28(508,515,520) as follows:

191—5.28(508,515,518,518A,520) Risk-based capital and surplus. Capital and surplus requirements in Iowa Code chapters 508, 515, 518, 518A and 520 are minimums. The commissioner retains the discretion to require greater amounts than set forth in those chapters when the risk-based circumstances of a particular insurer, including the type, nature and volume of business being written, require it.

ITEM 13. Amend subrule 5.32(1) as follows:

5.32(1) Reason for promulgation. The insurance division is concerned that changes in economic conditions and other market variables could adversely affect domestic insurers having a high concentration of these investments. Accordingly, the division has concluded that a limitation on the percentage of total admitted assets that a domestic insurer may prudently invest in such obligations is reasonable, necessary and required in order to carry out the division's responsibilities under relevant statutory law.

The division understands that medium grade and lower grade obligations can have a place in a well diversified portfolio. However, it is also understood that the special risks associated with these investments require a high degree of management even when they are held within an aggregate limit. While this rule will leave all domestic insurers with authority to invest a substantial portion of their assets in medium grade and lower grade obligations, the prudent management of the attendant risk will remain an essential element of such investing.

ITEM 14. Amend subparagraph **5.33(7)“b”(1)** as follows:

(1) The commissioner shall post notice on the division's ~~Web site~~ website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least 30 days after posting the notice required by this subparagraph.

INSURANCE DIVISION[191](cont'd)

ITEM 15. Amend subrule 5.34(2) as follows:

5.34(2) Authority. This rule is issued pursuant to the authority vested in the commissioner of insurance under Iowa Code section 508.36. This rule will take effect for annual statements for the year 2004.

ITEM 16. Amend subparagraph 5.34(7)“a”(1) as follows:

(1) In accordance with Iowa Code section 508.36, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be returned to the company after such examination and shall not be considered a record of the insurance division or subject to automatic filing with the commissioner.

ITEM 17. Amend rule 191—5.42(432) as follows:

191—5.42(432) Cash refund of premium tax. A cash refund of premium tax may be made to an insurance company that has paid a premium tax payment or prepayment and demonstrates an inability to recoup the funds paid via a credit, provided that the insurance division determines that a refund is appropriate. A claim for refund is a formal request made by the insurance company or its successor in interest to the insurance division for repayment of premium tax prepayments that were paid with the insurance company’s previously filed tax return. The claim for refund shall not be filed with a premium tax prepayment, annual tax payment, or with other documents or forms submitted to the division.

5.42(1) Eligibility criteria. Upon the written application of an insurance company or its successor in interest, the insurance division shall authorize the department of revenue to make a cash refund to an insurer if:

a. to d. No change.

5.42(2) Application procedure. An insurance company may file a claim for a cash refund with the insurance division by stating in detail the reasons and facts and including supporting documents with the claim for a cash refund. These documents shall include but not be limited to:

a. to c. No change.

d. A certification from the chief executive officer stating that the company has no plans for writing business in the state of Iowa and agrees to notify the insurance division before writing any business in this state if the claim for refund is made pursuant to 5.42(1)“b.”

5.42(3) Appeals. If the claim for refund is denied and the applicant wishes to appeal the denial, the insurance division will consider an appeal to be timely if filed not later than 30 days following the date of denial.

5.42(4) No change.

This rule is intended to implement Iowa Code section 432.1(6).

ITEM 18. Amend subrule 5.43(1) as follows:

5.43(1) The requirement that a domestic insurer submit its contracts with managing general agents for approval of the commissioner of insurance set forth in Iowa Code section 510.2 remains in effect after July 1, 1991.

ITEM 19. Amend subrule 5.43(5) as follows:

5.43(5) The amount of claims in excess of which a person is authorized to adjust or pay for purposes of the definition of “managing general agent” in Iowa Code section ~~510.2A(4)“a”(3)“a”~~ 510.1B(4)“a”(3)(a) is \$15,000 per claim.

ITEM 20. Amend subrule 5.52(1) as follows:

5.52(1) Every reporting financial institution shall file the reports required by rule 191—5.53(535A) with the director of the Iowa housing finance authority, ~~Des Moines, Iowa 50319,~~ and with the commissioner of insurance, ~~Des Moines, Iowa 50319, on or before January 15, 1980, and each year thereafter~~ by January 15, and shall maintain a copy of each report at the office where its principal financial records are maintained for a period of five years after it is filed.

INSURANCE DIVISION[191](cont'd)

ITEM 21. Amend subrule 5.54(1), introductory paragraph, as follows:

5.54(1) Reporting financial institutions shall file with the commissioner of insurance on or before March 15 of each year Disclosure Form B or a form similar thereto the following additional information with respect to loans for the purchase of residential property made during the preceding year:

ITEM 22. Amend subrule 5.54(2) as follows:

5.54(2) Reporting financial institutions are not required to file the additional information required by subrule 5.54(1) for any loan guaranteed in whole or part under any program of the United States or any of its agencies or instrumentalities, if:

a. to c. No change.

d. The reporting financial institution files with the commissioner of insurance on or before March 15 of each year its verified statement, signed by an officer of the reporting financial institution, that it has made loans under such a program and that it has filed the report required by ~~rule 5.54(2)~~ this subrule for each such loan not exempted by this rule.

ITEM 23. Amend rule 191—5.55(535A) as follows:

191—5.55(535A) Written complaints. Any person who has reason to believe that a financial institution has failed to comply with the provisions of Iowa Code chapter 535A or these rules may file a written complaint with the insurance division, Des Moines, Iowa 50319, or bring an action in the district court in accordance with Iowa Code chapter 535A.

ITEM 24. Amend rule 191—40.2(514B) as follows:

191—40.2(514B) Application. An application on forms provided by the insurance division accompanied by a filing fee of \$100 payable to State Treasurer, State of Iowa, shall be completed by an officer or authorized representative of the health maintenance organization. The application with copies in duplicate shall be verified and shall be accompanied by the information found in Iowa Code section 514B.3(1 to 14). An application shall not be deemed to be filed until all information necessary to properly process said application has been received by the commissioner. See ~~40.11(514B)~~ 191—40.11(514B).

An amendment to the application form shall be filed in the same manner as the application and approved by the commissioner before the change proposed by the amendment is effective.

ITEM 25. Amend paragraph **40.10(1)“e”** as follows:

e. Failure of the enrollee to pay deductible or coinsurance charges permitted under Iowa Code section ~~514B.5(3)~~. 514B.5(1)“c.”

ITEM 26. Amend rule 191—40.19(514B) as follows:

191—40.19(514B) Producers’ duties. In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in a health maintenance organization, a producer must comply with the licensing rules set forth in 191—Chapter 10 of the Iowa Administrative Code and in particular ~~submit to an examination to determine the applicant’s competence to sell accident and health insurance as described in rule 191—10.7(522), classification 6~~ pass the accident and health or sickness insurance lines of authority examination.

ITEM 27. Amend **191—Chapter 40**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 514B, 514C, 514F, 514J and ~~1999~~ Iowa Acts, Senate File 276 514K.

ITEM 28. Amend paragraph **41.9(1)“e”** as follows:

e. Failure of the enrollee to pay deductible or coinsurance charges permitted under Iowa Code section ~~514B.5(3)~~. 514B.5(1)“c.”

INSURANCE DIVISION[191](cont'd)

ITEM 29. Amend rule 191—41.17(514B) as follows:

191—41.17(514B) Producers' duties. In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in an LSO, a producer must comply with the licensing rules set forth in 191—Chapter 10 of the Iowa Administrative Code and in particular ~~submit to an examination to determine the applicant's competence to sell accident and health insurance as described in rule 191—10.7(522), qualification 6~~ pass the accident and health or sickness insurance line of authority examination.

ITEM 30. Amend rule 191—44.3(508) as follows:

191—44.3(508) Alternate tables.

44.3(1) In determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance delivered or issued for delivery in this state after the operative date of Iowa Code section ~~508.37(6) "k"~~ 508.37(7) "k" for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in rule ~~44.4(508)~~ 191—44.4(508):

a. and b. No change.

For any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits determined using the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured. Further, the substitution of the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables is available only if made for each policy of insurance on a policy form delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.

44.3(2) In determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance delivered or issued for delivery in this state after the operative date of Iowa Code section ~~508.37(6) "k"~~ 508.37(7) "k" for that policy form, at the option of the company and subject to the conditions stated in rule ~~44.4(508)~~ 191—44.4(508):

a. and b. No change.

ITEM 31. Amend rule 191—45.2(521A) as follows:

191—45.2(521A) Definitions. ~~As used in these rules~~ In addition to the definitions in Iowa Code section 521A.1 and 191—1.1(502,505), the following rules apply to this chapter, unless otherwise required by the context:

45.2(1) "*Executive officer*" means any individual charged with active management and control in an executive capacity (including a president, vice-president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers) of a person, whether incorporated or unincorporated.

45.2(2) "*Foreign insurer*" shall include an alien insurer except where clearly noted otherwise.

45.2(3) "*Ultimate controlling person*" means that person who is not controlled by any other person.

45.2(4) ~~Other terms found in these rules and in Iowa Code section 521A.1 entitled "Definitions" shall retain the meaning as found in such section.~~

ITEM 32. Amend **191—Chapter 45, Form A, Item 12, paragraph (c)**, as follows:

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto; any proposed employment, consultation, advisory or management contracts concerning the insurer; annual reports to the stockholders of the insurer and the applicant for the last two fiscal years; and any additional documents or papers required by Form A ~~or regulations sections 0.04 and 0.06.~~

ITEM 33. Amend **191—Chapter 45, Form A, Item 14, Signature**, as follows:

SIGNATURE

INSURANCE DIVISION[191](cont'd)

Pursuant to the requirements of Iowa Code section 521A.3 and Regulation 3.01,
 _____ has caused this application to be duly signed on its
 (Name of Applicant)
 behalf in the City of _____ and State of _____, on the _____ day
 of _____, 20 _____.

(SEAL)

 (Name of Applicant)
 By _____
 (Name) (Title)

Attest:

 (Signature of Officer)

 (Title)

ITEM 34. Amend rule 191—46.1(521A) as follows:

191—46.1(521A) Purpose. This chapter is intended to implement the provisions of Iowa Code Supplement section 521A.14 as amended by 1996 Iowa Acts, House File 2363, to provide for:

46.1(1) The formation of a mutual insurance holding company through an application process subject to regulation by the division of insurance. A domestic mutual insurance company may reorganize by forming a mutual insurance holding company based upon a mutual plan. The reorganized insurance company shall continue, without interruption, its corporate existence as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is subsidiary to the mutual insurance holding company.

46.1(2) The reorganization of a domestic mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company and continuing, without interruption, the corporate existence of the reorganized insurance company as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary to the mutual insurance holding company through an application process subject to regulation by the division of insurance.

46.1(3) An application process for the approval of an initial sale of the shares of the capital stock of a reorganized domestic insurance company or an intermediate holding company, subject to the approval of the division of insurance.

ITEM 35. Amend rule 191—46.2(521A) as follows:

191—46.2(521A) Definitions. ~~As used in~~ In addition to the definitions in 191—1.1(502,505), the following rules apply to this chapter:

"Affiliated person" of another person means:

1. Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person,
2. Any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person,
3. Any person directly or indirectly controlling, controlled by, or under common control with, such other person, or
4. Any officer, director, partner, copartner, or employee of such other person.

~~"Commissioner"~~ means the Iowa commissioner of insurance.

~~"Division"~~ means the Iowa insurance division.

"Domestic mutual insurance company" means an insurance company organized on a mutual plan and incorporated under the laws of Iowa.

INSURANCE DIVISION[191](cont'd)

“Interested person” of another person means:

1. Any affiliated person of such company,
2. Any member of the immediate family of any natural person who is an affiliated person of such company,
3. Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company, or
4. Any natural person whom the commissioner by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company.

“Intermediate holding company” means a holding company which is a subsidiary of a mutual insurance holding company or part of a holding company system controlled by a mutual insurance holding company pursuant to the provisions of Iowa Code chapter 521A.

“Limited application” means an application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which will hold, at all times, 100 percent of the stock of its insurance subsidiaries.

“Member of the immediate family” means any parent, spouse of a parent, child, spouse of a child, spouse, brother or sister, and includes step and adoptive relationships.

“Mutual insurance holding company” means a holding company organized on a mutual plan and incorporated under the laws of Iowa, resulting from the reorganization of a domestic mutual insurance company pursuant to the provisions of Iowa Code section 521A.14, with one or more stock insurance holding company subsidiaries or stock insurance company subsidiaries. A mutual insurance holding company shall be a person as defined in Iowa Code section ~~521A.1(7)~~ 521A.1 and shall be subject to the provisions of Iowa Code chapter 521A.

“Plan of reorganization” means a plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company.

~~*“Section 521A.14”* means section 44 of House File 247 as enacted by the 1995 session of the 76th General Assembly.~~

“Standard application” means an application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.

“Stock” means any security evidencing an equity interest in the issuing entity.

“Stock offering” means any proposed sale, exchange, transfer or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of these rules, “stock offering” shall not mean (1) an offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights or (2) a transfer of stock between any of the following:

- A mutual insurance holding company,
- An insurance company subsidiary of a mutual insurance holding company,
- An intermediate holding company subsidiary of a mutual insurance holding company, and
- An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.

ITEM 36. Amend rule 191—46.3(521A) as follows:

191—46.3(521A) Application—contents—process.

46.3(1) No change.

46.3(2) The application shall be filed in triplicate with the commissioner and shall include the following information:

- a. No change.
- b. A plan of reorganization as set forth in ~~46.4(521A)~~ 191—46.4(521A).
- c. to j. No change.

46.3(3) No change.

INSURANCE DIVISION[191](cont'd)

ITEM 37. Amend paragraph **46.4(2)“i”** as follows:

i. Describing the applicant's plan for a stock offering in accordance with the provisions of rule ~~46.109(521A)~~ 191—46.10(521A) below.

ITEM 38. Amend rule 191—46.7(521A) as follows:

191—46.7(521A) Reorganization of domestic mutual insurer with mutual insurance holding company. A domestic mutual insurance company may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the commissioner a joint application with the mutual insurance holding company complying with the provisions of ~~46.3(521A)~~ 191—46.3(521A).

ITEM 39. Amend rule 191—46.8(521A) as follows:

191—46.8(521A) Reorganization of foreign mutual insurer with mutual insurance holding company. A foreign mutual insurance company, or a foreign health service corporation, which if a domestic corporation would be organized under Iowa Code chapter 514, may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the commissioner a joint application with the mutual insurance holding company complying with the provisions of ~~46.3(521A)~~ 191—46.3(521A).

ITEM 40. Amend **191—Chapter 46**, implementation sentence, as follows:

These rules are intended to implement Iowa Code Supplement section 521A.14 as amended by 1996 Iowa Acts, chapter 1014.

ITEM 41. Amend subparagraph **48.3(2)“a”(1)** as follows:

(1) Has provided proof of one of the following:

~~1. The applicant is a licensed insurance producer with a life line of authority for at least the 12 months preceding the date of application; or~~

~~2. 1.~~ The applicant has taken and passed an examination on viatical and life settlement contracts required by another state insurance department and currently holds a license as a viatical settlement broker from that state; or

~~3. 2.~~ The applicant has passed the viatical settlement examination required by the commissioner. Examination results are valid for 90 days after the date of the examination. If the applicant fails to apply for licensure within 90 days after passing the examination, the examination results shall be void;

ITEM 42. Amend paragraph **48.3(4)“a”** as follows:

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to ~~rule 48.10(508E)~~ rule 191—48.10(508E), shall be issued a license.

ITEM 43. Amend paragraph **48.3(6)“d”** as follows:

d. If a viatical settlement provider or viatical settlement broker fails to comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of Iowa Code section 508E.3 and subrule 48.3(1) or to submit the reports required in rule ~~48.7(508E)~~ 191—48.7(508E), such nonpayment or failure shall result in lapse of the license.

ITEM 44. Amend subrule 48.10(1) as follows:

48.10(1) Unfair trade practices. Pursuant to Iowa Code section 508E.17, a violation of rule ~~48.4(508E)~~ 191—48.4(508E), ~~48.5(508E)~~ 191—48.5(508E), ~~48.6(508E)~~ 191—48.6(508E), ~~48.7(508E)~~ 191—48.7(508E) or ~~48.9(508E)~~ 191—48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.

INSURANCE DIVISION[191](cont'd)

ITEM 45. Amend rule 191—99.1(505,508) as follows:

191—99.1(505,508) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code ~~section sections~~ 505.8 and ~~2010 Iowa Acts, Senate File 2201, section 9~~ 508.33A.

ITEM 46. Amend rule **191—99.3(505,508)**, definitions of “Letters of credit,” “LPS” and “Organizing life insurance company,” as follows:

“*Letters of credit*” means clean, unconditional, irrevocable letters of credit issued or confirmed by a qualified United States financial institution as defined in Iowa Code section ~~521B.4, subsection 2,~~ 521B.103(2) “c.”

“*LPS*” means a limited purpose subsidiary life insurance company organized pursuant to ~~2010 Iowa Acts, Senate File 2201, section 9,~~ Iowa Code section 508.33A that is wholly owned by the organizing life insurance company and that is issued a certificate of authority by the commissioner pursuant to this chapter.

“*Organizing life insurance company*” means the domestic life insurance company that organizes the LPS pursuant to ~~2010 Iowa Acts, Senate File 2201, section 9~~ Iowa Code section 508.33A.

ITEM 47. Amend **191—Chapter 99**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section sections~~ 505.8 and ~~2010 Iowa Acts, Senate File 2201, section 9~~ 508.33A.

ITEM 48. Amend rule **191—100.2(523A)**, definition of “Commissioner’s Web site,” as follows:

“*Commissioner’s Web site website*” means the ~~Web site~~ website of the Iowa insurance division, www.iid.iowa.gov.

ITEM 49. Amend rule 191—100.3(523A) as follows:

191—100.3(523A) Contact and correspondence.

100.3(1) Contact information. All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315. Telephone inquiries may be made at (877)955-1212. Electronic submissions and correspondence may be made through the commissioner’s ~~Web site~~ website.

100.3(2) No change.

100.3(3) Forms and instructions. Copies of all required forms and instructions are available on the commissioner’s ~~Web site~~ website.

ITEM 50. Amend rule 191—100.11(523A), introductory paragraph, as follows:

191—100.11(523A) Application for license. To obtain a preneed seller license as required by Iowa Code section 523A.501 or a sales agent license as required by Iowa Code section 523A.502, a person must submit an application to the commissioner pursuant to this rule. A person shall not accept any payment or funding, including the assignment of ownership of or proceeds from insurance, related to the purchase of merchandise or services in Iowa, if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license. Application forms and instructions may be obtained from the commissioner’s ~~Web site~~ website.

ITEM 51. Amend subparagraph **100.14(4)“d”(1)** as follows:

(1) The following are examples of acceptable course topics:

1. to 5. No change.

6. Medicaid and the Iowa estate recovery law, Iowa Code section ~~249A.5(2) and 441—subrule 76.12(7)~~ 249.53.

7. and 8. No change.

ITEM 52. Amend subrule 100.15(1) as follows:

100.15(1) Procedure for renewal. The commissioner shall renew preneed sellers’ licenses, pursuant to Iowa Code section 523A.501(7), or sales agents’ licenses, pursuant to Iowa Code section 523A.502(5), for both active and restricted status licenses, if the preneed sellers or sales agents provide

INSURANCE DIVISION[191](cont'd)

to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

a. Annual report. A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. A preneed seller's report must include information on affiliated sales agents as provided in the instructions. The form and instructions may be obtained through the commissioner's ~~Web site~~ website.

b. Verification of completion of continuing education. A sales agent shall have completed the continuing education required by rule 191—100.14(523A) and shall attest to completion of the continuing education and compliance with all instructions on the commissioner's ~~Web site~~ website.

c. Renewal fee. A preneed seller or sales agent shall submit a renewal fee as set out in rule 191—100.18(523A). Failure to include the proper amount shall be cause for the renewal to be rejected.

ITEM 53. Amend subrule 100.17(2) as follows:

100.17(2) Application for reinstatement. Any preneed seller or sales agent whose license is restricted may request reinstatement by filing an application for reinstatement with the commissioner. Instructions can be found on the commissioner's ~~Web site~~ website. If the licensed person meets all conditions of licensure, the commissioner shall reinstate the license.

ITEM 54. Rescind and reserve paragraph **100.19(1)“b.”**

ITEM 55. Amend rule 191—100.20(523A), introductory paragraph, as follows:

191—100.20(523A) Trust interest or income. A preneed seller may withdraw interest or income, as defined by Iowa Code section ~~523A.102(16)~~ 523A.102, from trusts holding funds which are established pursuant to Iowa Code section 523A.201(8) and which are related to purchase agreements executed on or after July 1, 1987, in accordance with this rule.

ITEM 56. Amend subrule 100.23(1) as follows:

100.23(1) In lieu of the trust requirements of Iowa Code section 523A.405 ~~as amended by 2015 Iowa Acts, House File 632, section 36,~~ a preneed seller may file with the commissioner a surety bond. The surety bond shall be in the form as directed by the commissioner and as available on the commissioner's ~~Web site~~ website.

ITEM 57. Amend subparagraph **100.33(1)“c”(4)** as follows:

(4) Preneed sellers shall use the following numbering system, unless they receive written permission from the commissioner to use a different system.

1. to 4. No change.

An example of the numbering system is provided on the commissioner's ~~Web site~~ website.

ITEM 58. Amend subrule 100.33(2) as follows:

100.33(2) By sales agents. A sales agent shall maintain a sales log for a minimum of five years after the sale. The sales log shall include all of the information required for the sales agent's annual report. Instructions and an example are available on the commissioner's ~~Web site~~ website.

ITEM 59. Amend subparagraph **100.34(1)“c”(4)** as follows:

(4) If the funding change is from a trust account to an insurance account:

1. Confirm that the policy shall have an increasing benefit, as specified in Iowa Code section ~~523A.401(6)~~ 523A.401(5).

2. Record the amendment on the preneed seller's annual report as both a withdrawal from trust and an addition of insurance. Instructions are available on the commissioner's ~~Web site~~ website.

3. Comply with record-keeping and reporting requirements for the sale of new insurance in Iowa Code sections 523A.401 and 523A.402.

ITEM 60. Amend subparagraph **100.34(1)“c”(5)** as follows:

(5) If the change in funding is from one insurance company to another:

1. and 2. No change.

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3. Record the amendment on the preneed seller's annual report as a change in funding from one insurance company to another. Instructions are available on the commissioner's ~~Web site~~ website.

ITEM 61. Amend paragraph **100.41(3)“a,”** introductory paragraph, as follows:

a. Unless the lack of a mutual agreement has been appropriately documented in the preneed seller's preneed purchaser file records, a preneed seller has agreed “to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof” and received an “initial payment,” for purposes of establishing a “purchase agreement,” as defined by Iowa Code section 523A.102(23) 523A.102, if:

ITEM 62. Rescind and reserve paragraph **100.41(4)“a.”**

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INSURANCE DIVISION[191]

Notice of Intended Action

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

The Insurance Division hereby proposes to amend Chapter 5, “Regulation of Insurers—General Provisions,” and Chapter 112, “Term and Universal Life Insurance Reserve Financing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 505.8 and 2020 Iowa Acts, Senate File 2131, section 22.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 521B.

Purpose and Summary

The proposed rule making would amend the rules to reflect changes made pursuant to the provisions of 2020 Iowa Acts, Senate File 2131, eliminating the reinsurance collateral requirements for assuming insurers (reciprocal reinsurers) that have their head office or are domiciled in a reciprocal jurisdiction and that meet certain solvency requirements. Reciprocal jurisdictions include non-United States jurisdictions subject to an in-force covered agreement, United States jurisdictions accredited under the National Association of Insurance Commissioners Financial Standards and Accreditation Program, or qualified jurisdictions determined by the Iowa Insurance Division. The solvency requirements for reciprocal reinsurers include (1) maintaining a minimum capital and surplus; (2) maintaining a minimum solvency or capital ratio; (3) providing notice to the Division in the event of noncompliance with the minimum capital and surplus and minimum solvency requirements, serious noncompliance with applicable law, consent to service of process, consent to payment of final judgments, and nonparticipation in solvent schemes; (4) providing certain documentation specified by the Commissioner; and (5) maintaining a practice of prompt payment of claims.

Fiscal Impact

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

Jobs Impact

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

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Waivers

This rule does not provide for waivers.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4 p.m. on February 4, 2021. Comments should be directed to:

Bob Koppin
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Email: Robert.Koppin@iid.iowa.gov

Public Hearing

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

February 4, 2021
10 a.m.

Via Webex
Dial: 1.408.418.9388
Access code: 179 697 7254

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

Persons who wish to make oral comments at the conference call public hearing are asked to notify Tracy Swalwell prior to the hearing to facilitate an orderly hearing. Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy Swalwell and advise of specific needs. To request a link to the Webex meeting, interested persons can email Tracy Swalwell no later than 3 p.m. on February 3, 2021.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **5.33(7)“a,”** introductory paragraph, as follows:

a. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this subrule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with subrules ~~5.33(10)~~, 5.33(11), ~~and 5.33(12)~~, and 5.33(13) of this rule and ~~2013 Iowa Acts, Senate File 182, sections 2(5) and 3~~ Iowa Code sections 521B.102(5) and 521B.103. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

INSURANCE DIVISION[191](cont'd)

ITEM 2. Amend subparagraph 5.33(7)“b”(4) as follows:

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

1. No change.

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

2. to 7. No change.

8. For certified reinsurers not domiciled in the United States, audited financial statements (~~audited United States GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis; or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's non-United States jurisdiction supervisor.

9. to 11. No change.

ITEM 3. Amend subparagraph 5.33(7)“b”(7) as follows:

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under Iowa Code chapter 22 and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

1. to 3. No change.

4. Annually, the most recent audited financial statements (~~audited United States GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis; or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor.

5. to 7. No change.

ITEM 4. Amend subparagraph 5.33(7)“b”(8) as follows:

(8) Change in rating or revocation of certification.

1. to 3. No change.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with subrule ~~5.33(9)~~ 5.33(10) of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with subrule 5.33(6) of this rule, the commissioner may allow

INSURANCE DIVISION[191](cont'd)

additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

ITEM 5. Amend paragraph **5.33(7)“e”** as follows:

e. Mandatory funding clause. In addition to the clauses required under subrule ~~5.33(13)~~ **5.33(14)** of this rule, reinsurance contracts entered into or renewed under this subrule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this subrule for reinsurance ceded to the certified reinsurer.

ITEM 6. Renumber subrules **5.33(8)** to **5.33(15)** as **5.33(9)** to **5.33(16)**.

ITEM 7. Adopt the following **new** subrule 5.33(8):

5.33(8) Credit for reinsurance—reciprocal jurisdictions.

a. Pursuant to Iowa Code section 521B.102(5A), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this subrule.

b. A “reciprocal jurisdiction” is a jurisdiction, as designated by the commissioner pursuant to paragraph 5.33(8)“*d*,” that meets one of the following:

(1) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For the purposes of this subrule, a “covered agreement” is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(2) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program.

(3) A qualified jurisdiction, as determined by the commissioner pursuant to Iowa Code section 521B.102(5)“*c*” and paragraph 5.33(7)“*c*,” which is not otherwise described in subparagraph 5.33(8)“*b*”(1) or (2) and which the commissioner determines meets all of the following additional requirements:

1. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction.

2. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance.

3. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

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4. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

c. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(1) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subparagraph 5.33(8) "c"(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

1. No less than \$250 million; or

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, meets both of the following:

- Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250 million.

- A central fund containing a balance of the equivalent of at least \$250 million.

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, one of the following:

1. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8) "b"(1), the ratio specified in the applicable covered agreement.

2. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8) "b"(2), a risk-based capital (RBC) ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC.

3. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8) "b"(3), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction Form RJ-1, of its agreement to all of the following:

1. The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subparagraph 5.33(8) "c"(2) or (3), or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. The assuming insurer must consent in writing to the jurisdiction of the courts in this state and to the appointment of the commissioner as agent for service of process.

- The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

- Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

3. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly

INSURANCE DIVISION[191](cont'd)

enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

5. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Iowa Code section 521B.103 and subrules 5.33(11), 5.33(12) and 5.33(13). For purposes of this subrule, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

6. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subparagraph 5.33(8) "c"(5).

(5) The assuming insurer or its legal successor must provide, if required by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

1. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor.

3. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subparagraph 5.33(8) "c"(6).

(6) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

1. More than 15 percent of the reinsurance recoverable from the assuming insurer is overdue and in dispute as reported to the commissioner.

2. More than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement.

3. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50 million, or as otherwise specified in a covered agreement.

(7) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in subparagraphs 5.33(8) "c"(2) and (3).

(8) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

d. The commissioner shall timely create and publish a list of Reciprocal Jurisdictions.

(1) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any reciprocal jurisdiction as defined under subparagraphs 5.33(8) "b"(1) and (2), and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, rule, or in accordance with criteria published through the NAIC Committee Process.

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(2) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subparagraphs 5.33(8)“b”(1) and (2). Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Iowa Code chapter 521B or rule 191—5.33(510).

e. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(1) If an NAIC accredited jurisdiction has determined that the conditions set forth in paragraph 5.33(8)“c” have been met, the commissioner has the discretion to defer to that jurisdiction’s determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of paragraph 5.33(8)“c.”

(2) When requesting that the commissioner defer to another NAIC accredited jurisdiction’s determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

f. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(1) While an assuming insurer’s eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer’s obligations under the contract are secured in accordance with subrule 5.33(10).

(2) If an assuming insurer’s eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer’s obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of subrule 5.33(10).

g. Before denying statement credit or imposing a requirement to post security with respect to paragraph 5.33(8)“f” or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(1) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer’s supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in paragraph 5.33(8)“c.”

(2) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection.

(3) After the expiration of 90 days or less, as set out in subparagraph 5.33(8)“g”(2), if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subrule.

(4) Provide a written explanation to the assuming insurer of any of the requirements set out in this subrule.

h. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the

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proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

ITEM 8. Amend renumbered paragraph **5.33(10)“b”** as follows:

b. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and those securities qualifying as admitted assets.

ITEM 9. Amend subrule 5.33(11), introductory paragraph, as follows:

5.33(11) *Letters of credit qualified under subrule ~~5.33(9)~~ 5.33(10).*

ITEM 10. Amend renumbered subparagraph **5.33(11)“b”(3)** as follows:

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this subrule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph ~~5.33(10)“b”(4)~~ 5.33(11)“b”(4) must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

ITEM 11. Amend renumbered subparagraph **5.33(11)“b”(4)** as follows:(4) The trust agreement shall provide that:

1. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
2. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
3. It is not subject to any conditions or qualifications outside of the trust agreement;
4. It shall not contain references to any other agreements or documents except as provided for under subparagraph ~~5.33(10)“b”(11)~~ 5.33(11)“b”(11).

ITEM 12. Amend renumbered subparagraph **5.33(11)“b”(11)** as follows:

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

1. and 2. No change.
3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph ~~5.33(10)“d”(1)~~ 5.33(11)“d”(1) as may remain executory after such withdrawal and for any period after the termination date.

ITEM 13. Amend renumbered subparagraph **5.33(11)“b”(12)** as follows:

(12) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subparagraph ~~5.33(10)“d”(1)~~ 5.33(11)“d”(1) so long as these required conditions are included in the trust agreement.

ITEM 14. Amend renumbered paragraph **5.33(11)“c”** as follows:

c. Permitted conditions.

- (1) and (2) No change.
- (3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the

INSURANCE DIVISION[191](cont'd)

beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in ~~5.33(10)“d”(1)“2.”~~ 5.33(11)“d”(1)“2.”

(4) and (5) No change.

ITEM 15. Amend renumbered subparagraph **5.33(11)“d”(2)** as follows:

(2) The reinsurance agreement may also contain provisions that:

1. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

- The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
- After withdrawal and transfer, the market value of the trust account is not less than 102 percent of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

2. Provide for:

• The return of any amount withdrawn in excess of the actual amounts required to comply with ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” first three bulleted paragraphs, or in the case of ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” fourth bulleted paragraph, any amounts that are subsequently determined not to be due; and

• Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” third bulleted paragraph.

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

- Interest at a rate different from that provided in ~~5.33(10)“d”(2)“2”~~ 5.33(11)“d”(2)“2”;
- Court of arbitration costs;
- Attorney’s fees;
- Any other reasonable expenses.

ITEM 16. Amend renumbered subparagraph **5.33(11)“d”(5)** as follows:

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in paragraph ~~5.33(10)“a”~~ 5.33(11)“a” shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

ITEM 17. Amend renumbered subrule 5.33(12) as follows:

5.33(12) *Letters of credit qualified under subrule ~~5.33(9)~~ 5.33(10).*

a. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subparagraph ~~5.33(11)“i”(1)~~ 5.33(12)“i”(1). As used in this paragraph, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

b. to j. No change.

ITEM 18. Amend renumbered subparagraph **5.33(12)“i”(1)** as follows:

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

1. and 2. No change.

INSURANCE DIVISION[191](cont'd)

3. All of the provisions required by paragraph ~~5.33(11)“i”~~ 5.33(12)“i” should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

ITEM 19. Amend renumbered subparagraph 5.33(12)“i”(2) as follows:

(2) Nothing contained in this paragraph shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” third bulleted paragraph.

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the event ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” fourth bulleted paragraph, is applicable, any amounts that are subsequently determined not to be due.

ITEM 20. Amend renumbered subparagraph ~~5.33(12)“i”(3)~~ as follows:

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” require that the parties enter into a “Trust Agreement” which may be incorporated into the reinsurance agreement or be a separate document.

ITEM 21. Amend renumbered subrule 5.33(14) as follows:

5.33(14) Reinsurance contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of ~~subrules~~ subrule 5.33(4), 5.33(5), 5.33(6), 5.33(7), ~~5.33(8)~~ 5.33(9), or ~~5.33(10)~~ 5.33(11) after the adoption of this rule unless the reinsurance agreement:

a. to c. No change.

ITEM 22. Amend paragraph **112.7(1)“e”** as follows:

e. Any trust used to satisfy the requirements of rule 191—112.7(521B) shall comply with all of the conditions and qualifications of 191—subrule ~~5.33(10)~~ 5.33(11), except that:

(1) to (3) No change.

(4) The determination of reserve credit under 191—subparagraphs ~~5.33(10)“d”(3)~~ 5.33(11)“d”(3) to ~~5.33(10)“d”(5)~~ 5.33(11)“d”(5) shall be determined according to the valuation rules set forth in subrule 112.6(2), as applicable; and

ARC 5377C

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

**Proposing rule making related to delegation of advisory opinions
and providing an opportunity for public comment**

The Iowa Public Information Board (IPIB) hereby proposes to amend Chapter 1, “Organization and General Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 23.6(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 23.6(3).

Purpose and Summary

The purpose of this proposed rule making is to allow the IPIB Executive Director to delegate preparation of an advisory opinion. Currently, only the IPIB Executive Director is allowed to prepare an advisory opinion.

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IPIB for a waiver of the discretionary provisions, if any, pursuant to 497—Chapter 9.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the IPIB no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Zach Goodrich
Iowa Public Information Board
Wallace State Office Building
502 East 9th Street, Third Floor
Des Moines, Iowa 50319
Phone: 515.725.1782
Email: zach.goodrich@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 1.3(2) as follows:

1.3(2) After receiving an opinion request, the board’s executive director shall ~~prepare~~ prepare cause to be prepared a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general’s opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a subsequent complaint that is based on the same facts and circumstances. Board staff may also provide written advice on routine matters. However, such advice is not an advisory opinion of the board.

ARC 5380C**NATURAL RESOURCES DEPARTMENT[561]****Notice of Intended Action****Proposing rule making related to waivers
and providing an opportunity for public comment**

The Natural Resources Department hereby proposes to amend Chapter 10, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 17A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

Chapter 10 outlines a uniform process for the granting of waivers or variances from rules adopted by the Department. This proposed rule making seeks to align the chapter with the Iowa Administrative Procedure Act as amended by 2020 Iowa Acts, House File 2389. The legislation amended Iowa Code section 17A.9A to remove the term “variance.” The section now refers only to “waivers,” rather than to “waivers or variances.” House File 2389 was passed as a technical edit to simplify the law’s language. Neither the Iowa Code section nor the Department’s associated rules contain any substantive distinction between a waiver or a variance. Therefore, the Department is proposing to strike “variance” in all instances from Chapter 10. There are no other changes proposed.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Tamara McIntosh
Department of Natural Resources
Wallace State Office Building
502 East Ninth Street, Fourth Floor
Des Moines, Iowa 50319
Email: tamara.mcintosh@dnr.iowa.gov

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **561—Chapter 10**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

ITEM 2. Amend rule 561—10.1(17A,455A) as follows:

561—10.1(17A,455A) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the department. As used in this chapter, the term “director” includes the director’s designee. As used in this chapter, “waiver ~~or variance~~” means an action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

ITEM 3. Amend rule 561—10.2(17A,455A) as follows:

561—10.2(17A,455A) Authority. A waiver ~~or variance~~ from rules adopted by the department may be granted in accordance with this chapter if:

10.2(1) The department has exclusive rule-making authority to promulgate the rule from which waiver ~~or variance~~ is requested or has final decision-making authority over a contested case in which a waiver ~~or variance~~ is requested; and

10.2(2) The waiver ~~or variance~~ is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this subrule does not authorize the department to waive ~~or vary~~ any requirement created or duty imposed by statute.

ITEM 4. Amend rule 561—10.4(17A,455A) as follows:

561—10.4(17A,455A) Criteria for waiver ~~or variance~~. Upon petition of any person and at the sole discretion of the department, the department may issue a waiver ~~or variance~~ from the requirements of a rule if the director or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the following:

10.4(1) The application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested.

10.4(2) The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

10.4(3) The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law.

10.4(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

ITEM 5. Amend rule 561—10.5(17A,455A) as follows:

561—10.5(17A,455A) Burden of persuasion. The burden of persuasion rests with the person who petitions the department for the waiver ~~or variance~~ of a rule. Each petition for a waiver ~~or variance~~ shall be evaluated by the department based on the unique, individual circumstances set out in the petition. A waiver ~~or variance~~, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule. The department may place any condition on a waiver ~~or a variance~~ that the department finds desirable to protect the public health, safety, and welfare. A waiver ~~or variance~~ shall not be permanent unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable, and, in any event, shall not exceed one year in accordance with the provisions of Iowa Code section 455B.143. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver ~~or variance~~ may be renewed if the department finds all of the factors set out in rule 561—10.4(17A,455A) remain valid.

ITEM 6. Amend rule 561—10.6(17A,455A) as follows:

561—10.6(17A,455A) Special waiver ~~or variance~~ rules not precluded. This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

ITEM 7. Amend rule 561—10.7(17A,455A) as follows:

561—10.7(17A,455A) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.

ITEM 8. Amend rule 561—10.8(17A,455A), introductory paragraph, as follows:

561—10.8(17A,455A) Filing of petition. A petition for a waiver ~~or variance~~ shall be submitted in writing to the department as follows:

ITEM 9. Amend rule 561—10.9(17A,455A) as follows:

561—10.9(17A,455A) Contents of petition. A petition for waiver ~~or variance~~ shall include the following information when applicable and known to the petitioner:

10.9(1) The name, address, and telephone number of the entity or person for whom a waiver ~~or variance~~ is requested, and the case number of any related contested case.

10.9(2) A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.

10.9(3) The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.

10.9(4) The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. 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 ~~or variance~~.

10.9(5) and 10.9(6) No change.

10.9(7) The name, address, and telephone number of any public agency or political subdivision of the state or federal government which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.

10.9(8) No change.

10.9(9) The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver ~~or variance~~.

10.9(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

ITEM 10. Amend rule 561—10.10(17A,455A) as follows:

561—10.10(17A,455A) Additional information. Prior to issuing a decision granting or denying a waiver ~~or variance~~, the department 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 director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

ITEM 11. Amend rule 561—10.12(17A,455A) as follows:

561—10.12(17A,455A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver ~~or variance~~ of a rule filed within a contested case and shall otherwise apply to department proceedings for a waiver ~~or variance~~ only when the department so provides by rule or order or is required to do so by statute.

ITEM 12. Amend rule 561—10.13(17A,455A) as follows:

561—10.13(17A,455A) Ruling. A decision granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the decision pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

ITEM 13. Amend rule 561—10.14(17A,455A) as follows:

561—10.14(17A,455A) Conditions. The department may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

ITEM 14. Amend rule 561—10.15(17A,455A) as follows:

561—10.15(17A,455A) Time for ruling. The department shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of receipt of the petition, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

ITEM 15. Amend rule 561—10.18(17A,455A) as follows:

561—10.18(17A,455A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) "e," the department shall maintain a record of all decisions granting and denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public.

ITEM 16. Amend rule 561—10.19(17A,455A) as follows:

561—10.19(17A,455A) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The department may at any time cancel a waiver ~~or variance~~ if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver ~~or variance~~.

ITEM 17. Amend rule 561—10.20(17A,455A) as follows:

561—10.20(17A,455A) Violations. Violation of conditions of the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

ITEM 18. Amend rule 561—10.21(17A,455A) as follows:

561—10.21(17A,455A) Defense. After the department issues a decision granting a waiver or ~~variance~~, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.

ARC 5379C

NATURAL RESOURCES DEPARTMENT[561]

Notice of Intended Action

Proposing rule making related to special nonresident deer and turkey hunting licenses and providing an opportunity for public comment

The Natural Resources Department hereby proposes to amend Chapter 12, “Special Nonresident Deer and Turkey Licenses,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 483A.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 483A.24(3)“a” and 483A.24(4)“a.”

Purpose and Summary

The purpose of this proposed rule making is to align Chapter 12 with its recently amended authorizing statute. Chapter 12 sets forth the application, review, and issuance process for special nonresident deer and turkey licenses. These special licenses exist to allow state officials and local development groups to promote Iowa and its natural resources to nonresident guests and dignitaries. Iowa Code sections 483A.24(3)“a” and 483A.24(4)“a” were amended by 2020 Iowa Acts, House File 2627 (signed by Governor Reynolds on June 25, 2020), to remove references to a legislative committee as the final body with primary license issuance authority. This rule making strikes references to the Legislative Committee from the chapter to reflect this change, and inserts the Director or the Director’s designee into that role. No other changes are proposed.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Brian Smith
 Department of Natural Resources
 Cold Springs State Park
 Lewis Road
 Lewis, Iowa 51544
 Email: brian.smith@dnr.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **561—12.2(483A)**, definition of “Internal committee,” as follows:

“*Internal committee*” means the committee that ranks certain requests for special licenses for consideration by the ~~legislative committee~~ director or the director’s designee and consists of the coordinator, the administrator of the conservation and recreation division, the chief of the wildlife bureau, and the chief of the law enforcement bureau.

ITEM 2. Rescind the definition of “Legislative committee” in rule **561—12.2(483A)**.

ITEM 3. Amend rule 561—12.4(483A) as follows:

561—12.4(483A) Coordinator duties. The coordinator of the program shall:

12.4(1) Assist the internal ~~and legislative committees~~ committee in the evaluation and selection of hunters who may receive special licenses.

12.4(2) and 12.4(3) No change.

12.4(4) Summarize each request received and distribute the summaries to the internal committee and ~~legislative committee~~ the director or the director’s designee.

~~**12.4(5)** Provide additional information regarding requesters as needed to aid the legislative committee in the selection process.~~

~~**12.4(6)**~~ **12.4(5)** Establish the date on which applications for special licenses for disabled veterans and disabled active military personnel are due, establish the dates on which the ~~legislative committee~~ director or the director’s designee will select the conservation organizations and hunters who will receive special licenses, and inform the conservation organizations, the approved organizations and the hunters of their selection.

ITEM 4. Amend subrule 12.5(2) as follows:

12.5(2) Review. The internal committee shall review the summaries prepared by the coordinator, rank the hunters according to criteria in rule 561—12.7(483A), and forward the rankings to the

NATURAL RESOURCES DEPARTMENT[561](cont'd)

~~legislative committee~~ director or the director's designee for consideration and final selection. The internal committee shall exercise its discretion and, in addition to the criteria in rule 561—12.7(483A), shall also consider the following:

a. Requests that demonstrate little or no promotion of the state of Iowa or its natural resources shall not be included in the rankings forwarded to or considered by the ~~legislative committee~~ director or the director's designee.

b. and *c.* No change.

ITEM 5. Amend rule 561—12.6(483A), introductory paragraph, as follows:

561—12.6(483A) Consideration of requests for promotional special licenses. The internal committee will recommend to the ~~legislative committee~~ director or the director's designee which conservation organizations are best qualified to promote the state and its natural resources. In making recommendations to the ~~legislative committee~~ director or the director's designee, the internal committee will base its recommendations on the expected ability of hunters to promote the state and its natural resources and, if applicable, based on the degree of success special license holders have had in previous years or seasons in promoting the state and its natural resources. By way of illustration, the committee may consider requests from the following:

ITEM 6. Amend subrules 12.6(2) and 12.6(3) as follows:

12.6(2) A conservation organization that will use the special nonresident deer license as a ~~fund-raiser~~ fundraiser for that organization. A conservation organization shall be limited to one special nonresident deer license per year, whether the organization is a local or state chapter or division of a national or international conservation organization. The organization shall return to the department the greater amount of either one-half of the proceeds from its sale of the special nonresident deer license or the fee for a nonresident deer license as set forth in Iowa Code section 483A.1. The department's proceeds shall cover the cost of the special nonresident deer license. A license made available to a conservation organization in accordance with this subrule may be valid for up to two years after selection of the organization by the ~~legislative committee~~ director or the director's designee. The sponsoring conservation organization shall notify the coordinator by July 1 or immediately following the sale of the special nonresident deer license of which year and for what season the special nonresident deer license will be used. The conservation organization shall specifically explain how and during what period the organization will market the special nonresident deer license for auction or some other legal ~~fund-raiser~~ fundraiser.

12.6(3) A hunter nominated by the governor, or a member of the Iowa legislature ~~or a member of the legislative committee~~.

ITEM 7. Amend subrule 12.7(1), introductory paragraph, as follows:

12.7(1) The following criteria shall be used by the internal committee to rank individual hunters as identified in subrules 12.6(1), 12.6(4) and 12.6(5). The rankings shall be determined as the average of the following rating points and will be provided to the ~~legislative committee~~ director or the director's designee as an aid in determining the selection of hunters.

ITEM 8. Amend subrules 12.7(2) and 12.7(3) as follows:

12.7(2) A conservation organization's request shall be forwarded to the ~~legislative committee~~ director or the director's designee if the conservation organization meets the definition in rule 561—12.2(483A) and approval shall be based on evaluation of the organization's prior performance, if any, in selling the special nonresident deer license.

12.7(3) Hunters as identified in subrule 12.6(3) shall not be ranked by the internal committee, and their requests will be forwarded to the ~~legislative committee~~ director or the director's designee for its ~~determination~~ consideration.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

ITEM 9. Amend rule 561—12.10(483A) as follows:

561—12.10(483A) Reporting by recipients of promotional special licenses. Within eight months after a hunter's participation in a hunt with a license issued pursuant to this chapter, the sponsor or hunter shall provide to the coordinator information about the hunt to demonstrate how the hunt will provide or has provided promotion of the state and its natural resources. This information may be in the form of testimonials of the participants, a completed DVD available for retail sale, a DVD copy of the actual television broadcast, an article in a periodical, or other verifiable means that demonstrate the promotional benefits. ~~The legislative committee~~ the director or the director's designee may consider compliance with this reporting requirement in evaluating future requests.

ARC 5373C

PHARMACY BOARD[657]

Notice of Intended Action

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

The Board of Pharmacy hereby proposes to amend Chapter 3, "Pharmacy Technicians," and Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 155A.6A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.80 and 155A.6A.

Purpose and Summary

The proposed amendments are a result of an overall five-year review as required by Iowa Code section 17A.7(2). The proposed amendments:

- Require technicians to be registered prior to commencing employment in a pharmacy or as part of a technician training program;
- Modify the renewal period for certified pharmacy technicians to match their national certification period and to align with the renewal process for other licenses and registrations;
- Allow the Board to assess a \$15 fee for written verification of a registration;
- Provide broader language relating to the delegation of nonclinical pharmacy functions to a pharmacy technician beyond those related solely to dispensing;
- Prohibit a pharmacy license holder from requiring a supervising pharmacist to delegate functions to a technician against the pharmacist's professional judgment;
- Require a pharmacy technician to report to the Board, within 30 days, any criminal conviction or disciplinary action taken;
- Simplify, clarify, and condense rules;
- Incorporate language reflecting the Board's new online application process;
- Update references.

Fiscal Impact

It is unknown how many pharmacy technicians will request written verification of their registration when the Board's online verification system is free of charge. Also, while it is inherent that the Board will continue to process untimely renewal applications that result in the collection of late penalty fees or reactivation fees (except at this time due to the Governor's proclamations), an estimate of the number of late renewals or reactivations cannot be determined. For renewal applications that are submitted within

PHARMACY BOARD[657](cont'd)

the first month after the registration has expired, the renewal fee and late penalty fee do not change from those that are currently assessed. Under the proposed amendments, renewal applications received beyond the first month following expiration would include a fee of \$160 instead of the current fee range of \$90 to \$110. It is estimated that the Board will have an increased annual revenue of between \$600 and \$840 as a result of this rule making.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **657—3.1(155A)**, definition of “Pharmacy technician,” as follows:
“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in ~~rules 657—3.22(155A) through 657—3.24(155A)~~ [rule 657—3.21\(155A\)](#), and includes a certified pharmacy technician and a pharmacy technician trainee.

ITEM 2. Amend rule 657—3.3(155A) as follows:

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician, ~~except a pharmacist intern whose pharmacist intern registration is in good standing with the board,~~ shall obtain and maintain during such employment a current registration as a certified pharmacy technician or pharmacy technician trainee pursuant to these rules. An individual ~~accepting~~ [commencing](#) employment

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as a pharmacy technician in Iowa who fails to register as a certified pharmacy technician or pharmacy technician trainee as provided by these rules may be subject to disciplinary sanctions. A certified pharmacy technician ~~accepting~~ commencing employment as a certified pharmacy technician in Iowa who fails to register as a certified pharmacy technician or who fails to maintain national certification may be subject to disciplinary sanctions. A pharmacist-intern with a current registration or a pharmacist with a current license is not required to obtain a pharmacy technician registration to work as a pharmacy technician.

3.3(1) No change.

3.3(2) ~~*Original application*~~ Application required. Any person not currently registered with the board as a pharmacy technician shall complete the appropriate application for registration ~~within 30 days of accepting~~ prior to commencement of employment in an Iowa pharmacy as a pharmacy technician. ~~Such application shall be received in the board office before the expiration of this 30-day period.~~

3.3(3) *Technician training.* A person who is enrolled in a college-based or American Society of Health-System Pharmacists (ASHP)-accredited technician training program shall obtain a pharmacy technician trainee registration prior to beginning on-site practical experience. A person who is employed in a pharmacy and who is receiving pharmacy technician training through work experience shall obtain a pharmacy technician trainee registration ~~within 30 days of~~ prior to the commencement of pharmacy technician training.

3.3(4) No change.

ITEM 3. Rescind rule 657—3.8(155A) and adopt the following **new** rule in lieu thereof:

657—3.8(155A) Application.

3.8(1) An applicant shall submit a completed application along with the appropriate nonrefundable application fee pursuant to rule 657—3.9(155A) or 657—3.10(155A).

3.8(2) The application shall include:

- a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;
- b. Current place or places of employment;
- c. Criminal or disciplinary action history;
- d. If the application is for certified pharmacy technician registration, documentation of current national pharmacy technician certification; and
- e. Any other information deemed necessary by the board.

ITEM 4. Rescind rule 657—3.9(155A) and adopt the following **new** rule in lieu thereof:

657—3.9(155A) Registration fee and term—technician trainee.

3.9(1) *Fee.* The nonrefundable application fee for a pharmacy technician trainee registration shall be \$20. The nonrefundable application fee for a pharmacy technician trainee registration shall be submitted in the form of a personal check, certified check, cashier's check, or money order made payable to the Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application.

3.9(2) *Term.* A pharmacy technician trainee registration shall expire on the last day of the registration month 12 months following the date of registration. A pharmacy technician trainee registration shall not be renewed.

a. *National certification completed.* When the registered pharmacy technician trainee completes national certification, and no later than the expiration of the pharmacy technician trainee registration, the technician shall submit a completed application and nonrefundable application fee for certified pharmacy technician registration.

b. *Expiration of registration.* The registration of a pharmacy technician trainee who fails to complete national certification prior to the expiration of the registration shall expire and the technician shall cease practice as a pharmacy technician.

PHARMACY BOARD[657](cont'd)

ITEM 5. Rescind rule 657—3.10(155A) and adopt the following **new** rule in lieu thereof:

657—3.10(155A) Registration fee, term, and renewal—certified pharmacy technician.

3.10(1) Fee. The nonrefundable application fee for a certified pharmacy technician registration shall be \$40 per biennium. The nonrefundable application fee for a certified pharmacy technician registration shall be submitted in the form of a personal check, certified check, cashier's check, or money order made payable to the Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application.

3.10(2) Term. A certified pharmacy technician registration shall expire on the date that the technician's national certification expires.

3.10(3) Renewal. A certified pharmacy technician registration shall be renewed prior to the expiration of the registration.

a. Delinquent registration grace period. A certified pharmacy technician registration which is not renewed prior to the expiration of the registration shall be considered delinquent. Renewal during the month following the expiration date of the registration shall include the nonrefundable registration fee pursuant to subrule 3.10(1) and a nonrefundable late penalty fee of \$40. A registered certified pharmacy technician who renews during the month following the expiration date of the registration shall not be subject to disciplinary action for continuing to practice as a pharmacy technician during the delinquency of the registration.

b. Registration reactivation beyond grace period. If the registration is not renewed prior to the expiration of the one-month grace period identified in paragraph 3.10(3) "a," the technician shall cease the practice as a pharmacy technician until the registration is reactivated. A certified pharmacy technician without a current registration may apply for registration reactivation by submitting a completed application for reactivation and a nonrefundable reactivation fee of \$160. An individual who continues employment as a pharmacy technician without a current registration, in addition to the pharmacy and the pharmacist in charge that allow the individual to continue practice as a pharmacy technician, may be subject to disciplinary sanctions.

c. Voluntary cancellation. A registered certified pharmacy technician who ceases practice as a pharmacy technician and does not intend to renew the registration prior to its expiration may request that the board cancel the registration. If the certified pharmacy technician later seeks registration as a certified pharmacy technician, the technician shall not be assessed a late penalty fee or reactivation fee for renewal of the registration.

ITEM 6. Rescind rule 657—3.11(155A) and adopt the following **new** rule in lieu thereof:

657—3.11(155A) Verification fee. The board may require the submission of a nonrefundable fee of \$15 for written verification of a registration.

ITEM 7. Rescind and reserve rule **657—3.12(155A)**.

ITEM 8. Amend rule 657—3.20(155A) as follows:

657—3.20(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy technician shall remain with the supervising pharmacist. A pharmacy license holder shall not infringe on the authority of a supervising pharmacist to delegate or decline to delegate specific functions to a pharmacy technician based on the supervising pharmacist's professional judgment regarding the knowledge and training of the technician.

ITEM 9. Amend rule 657—3.21(155A) as follows:

657—3.21(155A) Delegation of functions.

3.21(1) Technical dispensing functions. A Pursuant to established policies and procedures and the supervising pharmacist's professional judgment, a supervising pharmacist may delegate any technical dispensing or nontechnical functions in the operation of the pharmacy, except those which are prohibited pursuant to rule 657—3.23(155A), to an appropriately trained and registered pharmacy technician, but

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only if the pharmacist is on site and available to supervise the pharmacy technician when delegated functions are performed, except as provided in rule 657—6.7(124,155A) or 657—7.6(155A), as appropriate, or as provided for telepharmacy in 657—Chapter 13. Except as provided for an approved technician product verification program pursuant to 657—Chapter 40, the pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative. A pharmacy technician shall not delegate technical functions to a pharmacy support person.

~~3.21(2) *Nontechnical functions.* A pharmacist may delegate nontechnical functions to a pharmacy technician or a pharmacy support person only if the pharmacist is present to supervise the pharmacy technician or pharmacy support person when delegated nontechnical functions are performed, except as provided in rule 657—6.7(124,155A) or 657—7.6(155A), as appropriate, or as provided for telepharmacy in 657—Chapter 13.~~

ITEM 10. Rescind and reserve rule **657—3.22(155A)**.

ITEM 11. Amend rule 657—3.23(155A) as follows:

657—3.23(155A) Tasks Functions a pharmacy technician shall not perform.

3.23(1) *Prohibited functions for all pharmacy technicians.* A pharmacy technician shall not be authorized to perform any of the following ~~judgmental tasks~~ functions:

~~1. a.~~ Except for a certified pharmacy technician participating in an approved technician product verification program pursuant to 657—Chapter 40, provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order;

~~2. b.~~ Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A);

~~3. c.~~ Provide patient counseling, consultation, or patient-specific drug information, tender an offer of patient counseling on behalf of a pharmacist, or accept a refusal of patient counseling from a patient or patient's agent;

4. d. Make decisions that require a pharmacist's professional judgment, such as interpreting prescription drug orders or applying information;

~~5. e.~~ Transfer a prescription drug order for a controlled substance to another pharmacy or receive the transfer of a prescription drug order for a controlled substance from another pharmacy;

~~6. f.~~ Delegate technical functions to a pharmacy support person.

3.23(2) *Prohibited functions for technician trainees.* In addition to the prohibited functions in subrule 3.23(1), a technician trainee shall not be authorized to perform any of the following functions:

a. Accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or the prescriber's agent.

b. Transfer or receive by transfer by any means the original prescription drug order information or prescription refill information of a prescription for any substance.

ITEM 12. Rescind and reserve rule **657—3.24(155A)**.

ITEM 13. Amend rule 657—3.28(147,155A), introductory paragraph, as follows:

657—3.28(147,155A) Unethical conduct or practice. Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule ~~657—3.30(155A)~~ 657—3.31(155A).

ITEM 14. Renumber rule ~~657—3.30(155A)~~ as **657—3.31(155A)**.

ITEM 15. Adopt the following new rule 657—3.30(155A):

657—3.30(155A) Reporting discipline and criminal convictions. A registered pharmacy technician shall provide to the board written notice of and unredacted documents related to any disciplinary or enforcement action imposed by any licensing agency or regulatory authority on any license or registration

PHARMACY BOARD[657](cont'd)

held by the registered pharmacy technician no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registered pharmacy technician shall provide written notice to the board of any criminal conviction that is related to the practice of pharmacy or controlled substances no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

ITEM 16. Amend **657—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.72, 147.80, 147.107, 155A.6A, 155A.23, 155A.33, 155A.34, and 155A.39.

ITEM 17. Amend subrule 6.9(3) as follows:

6.9(3) Authorized individuals and means of transmission. Individuals authorized to engage in the transfer of prescriptions include a pharmacist, a pharmacist-intern under the direct supervision of a pharmacist, and a certified pharmacy technician ~~only as authorized in rule 657—3.22(155A)~~, except as prohibited in 657—subrule 3.23(1). The transferring individual may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via electronic means pursuant to subrule 6.9(8) or, following direct communication between authorized individuals, via oral or facsimile transmission. The receiving individual shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule 6.9(7).

ARC 5374C

PHARMACY BOARD[657]

Notice of Intended Action

Proposing rule making related to pharmacy support persons and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 5, “Pharmacy Support Persons,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 155A.6B.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 155A.6B.

Purpose and Summary

The proposed amendments are a result of an overall five-year review as required by Iowa Code section 17A.7(2). The proposed amendments:

- Require pharmacy support persons to be registered prior to commencing employment in a pharmacy;
- Modify the structure of late renewal and reactivation processes and penalties to match the structure implemented for other licenses and registrations of the Board;
- Allow the Board to assess a \$15 fee for written verification of a registration;
- Provide broader language relating to the delegation of nontechnical pharmacy functions to a pharmacy support person beyond those related solely to dispensing;
- Prohibit a license holder from requiring a supervising pharmacist to delegate function to a support person against the pharmacist’s professional judgment;
- Require support persons to report to the Board, within 30 days, any criminal conviction or disciplinary action taken;
- Simplify, clarify, and condense rules;

PHARMACY BOARD[657](cont'd)

- Incorporate language reflecting the Board's new online application process;
- Update references.

Fiscal Impact

It cannot be determined how many pharmacy support persons will request written verification of their registration when the Board's online verification system is free of charge. Also, while it is inherent that the Board will continue to process untimely renewal applications which result in the collection of late penalty fees or reactivation fees (except at this time due to the Governor's proclamations), an estimate of the number of late renewals or reactivations cannot be determined. For renewal applications that are submitted within the first month after the registration has expired, the renewal fee and late penalty fee do not change from those that are currently assessed. Under the proposed amendments, renewal applications that are submitted beyond the first month following expiration would include a fee of \$100 instead of the current fee of \$50.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

PHARMACY BOARD[657](cont'd)

ITEM 1. Amend rule 657—5.4(155A) as follows:

657—5.4(155A) Registration required. Unless exempt in rule 657—5.5(155A), any individual employed by a pharmacy who has direct access to prescription drugs or confidential patient information must be registered as a pharmacy support person. Prior to commencing employment in an Iowa pharmacy as a pharmacy support person, an individual shall obtain registration as a pharmacy support person. Any registered pharmacy support person who discontinues employment as a pharmacy support person shall not be required to maintain a registration and shall request cancellation of the registration as provided in rule 657—5.14(155A).

~~5.4(1) Effective date.~~ Beginning June 1, 2010, a pharmacy support person shall register with the board pursuant to the requirements of this chapter.

~~5.4(2) Registration number.~~ Each pharmacy support person registered with the board will be assigned a unique registration number.

~~5.4(3) Original application required.~~ Any person required to register and not previously registered with the board as a pharmacy support person shall complete an application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy support person. Such application shall be received in the board office before the expiration of this 30-day period.

~~5.4(4) Employment terminated.~~ A registered pharmacy support person who discontinues employment as a pharmacy support person shall not be required to maintain a registration and shall request cancellation of the registration as provided in rule 657—5.14(155A).

ITEM 2. Amend rule 657—5.5(155A) as follows:

657—5.5(155A) Exempt from registration. Unless a person has direct access to prescription drugs, the following shall be exempt from registration as a pharmacy support person:

1. Delivery person. A licensed pharmacist, registered pharmacist-intern, or registered pharmacy technician.

~~2. Billing clerk, including a person who processes claims for third-party payments.~~

~~3. Data processing support, maintenance, or programming personnel.~~

4. 2. Facility maintenance personnel including but not necessarily limited to cleaning, sanitation, structural, and mechanical maintenance personnel. Facility maintenance personnel deemed exempt from registration shall be directly supervised by a pharmacist or a certified pharmacy technician who is responsible for the maintenance person's activities within the pharmacy department to ensure medication security and patient privacy.

~~5. 3. Any person not directly employed by or under contract to the pharmacy, and not under the direct supervision of a pharmacist, who provides data processing, data processing support, programming, maintenance, billing, maintenance, delivery, or administrative support functions outside the pharmacy department.~~

~~6. A registered pharmacist-intern or a registered pharmacy technician.~~

ITEM 3. Rescind paragraph 5.7(1)“b.”

ITEM 4. Reletter paragraphs 5.7(1)“c” to “e” as 5.7(1)“b” to “d.”

ITEM 5. Amend subrule 5.7(5) as follows:

5.7(5) Sworn signature. The applicant shall sign the application under penalty of perjury and shall submit the application to the board with the appropriate nonrefundable fees pursuant to ~~rules~~ rule 657—5.9(155A) and 657—5.11(155A).

ITEM 6. Rescind rule 657—5.9(155A) and adopt the following new rule in lieu thereof:

657—5.9(155A) Registration fee, term, and renewal.

5.9(1) Fee. The nonrefundable application fee for a pharmacy support person registration shall be \$25. The nonrefundable application fee for a pharmacy support person registration shall be submitted in the form of a personal check, certified check, cashier's check, or money order made payable to the

PHARMACY BOARD[657](cont'd)

Iowa Board of Pharmacy when submitted with a written application or by acceptable debit or credit card when submitted with an online application.

5.9(2) Term. A pharmacy support person registration shall expire on the second last day of the birth month following initial registration. Registration shall not require continuing education for renewal.

5.9(3) Renewal. A pharmacy support person registration shall be renewed prior to the expiration of the registration.

a. Delinquent registration grace period. A pharmacy support person registration which is not renewed prior to the expiration of the registration shall be considered delinquent. Renewal during the month following the expiration date of the registration shall include the nonrefundable registration fee pursuant to subrule 5.9(1) and a nonrefundable late penalty fee of \$25. A registered pharmacy support person who renews during the month following the expiration date of the registration shall not be subject to disciplinary action for continuing to practice as a pharmacy support person during the delinquency of the registration.

b. Registration reactivation beyond grace period. If the registration is not renewed prior to the expiration of the one-month grace period identified in paragraph 5.9(3) "a," the individual shall cease practice as a pharmacy support person until the registration is reactivated. A pharmacy support person with an expired registration may apply for registration reactivation by submitting a completed application for reactivation and a nonrefundable reactivation fee of \$100. An individual who continues employment as a pharmacy support person with an expired registration, in addition to the pharmacy and the pharmacist in charge that allow the individual to continue practice as a pharmacy support person, may be subject to disciplinary sanctions.

c. Voluntary cancellation. A registered pharmacy support person who ceases practice as a pharmacy support person and does not intend to renew the registration prior to its expiration may request that the board cancel the registration. If the pharmacy support person later seeks registration as a pharmacy support person, the individual shall not be assessed a late penalty fee or reactivation fee for renewal of the registration.

ITEM 7. Rescind and reserve rules **657—5.10(155A)** and **657—5.11(155A)**.

ITEM 8. Amend rule 657—5.13(155A) as follows:

657—5.13(155A) Registration certificates verification. ~~The original registration certificate issued by the board to a pharmacy support person shall be maintained by the pharmacy support person. Verification of current registration shall be maintained in each pharmacy where the pharmacy support person is employed in that capacity and shall be available for inspection by the board. The board may require the submission of a nonrefundable fee of \$15 for written verification of a registration.~~

ITEM 9. Amend rule 657—5.14(155A) as follows:

657—5.14(155A) Notifications to the board. A registered pharmacy support person shall report to the board within ten days a change of name, address, place of employment, or employment status.

ITEM 10. Amend rule 657—5.17(155A) as follows:

657—5.17(155A) Tasks a pharmacy support person shall not perform. A pharmacy support person shall not perform any of the following judgmental or technical functions. Performance of any of these tasks by a pharmacy support person shall constitute the practice of pharmacy without a license in violation of Iowa Code section 155A.7. A pharmacy support person shall not:

1. to 8. No change.

9. Process or enter, including entry into the pharmacy computer system, pertinent clinical patient or prescription information, including entry of that information into the pharmacy computer system, except as provided in rule 657—5.18(155A) allergies and disease state information.

10. to 14. No change.

15. Perform any of the duties identified in 657—Chapter 3 as technical functions pursuant to 657—Chapter 3 that may be delegated to a pharmacy technician.

PHARMACY BOARD[657](cont'd)

ITEM 11. Rescind and reserve rule **657—5.18(155A)**.

ITEM 12. Rescind rule 657—5.21(155A) and adopt the following **new** rule in lieu thereof:

657—5.21(155A) Delegation of functions and responsibility of supervising pharmacist. Pursuant to established policies and procedures and the supervising pharmacist's professional judgment, a supervising pharmacist may delegate nontechnical functions in the operation of the pharmacy, except those which are prohibited pursuant to rule 657—5.17(155A), to an appropriately trained and registered pharmacy support person, but only if the pharmacist is on site and available to supervise the pharmacy support person when delegated functions are performed, except as provided in rule 657—6.7(124,155A) or 657—7.6(155A), as appropriate. The ultimate responsibility for the actions of a pharmacy support person shall remain with the supervising pharmacist. A pharmacy license holder shall not infringe on the authority of a supervising pharmacist to delegate or decline to delegate specific nontechnical functions to a pharmacy support person based on the supervising pharmacist's professional judgment regarding the knowledge and training of the pharmacy support person.

ITEM 13. Amend rule 657—5.25(147,155A), introductory paragraph, as follows:

657—5.25(147,155A) Unethical conduct or practice. Violation by a pharmacy support person of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—5.26(155A) 657—5.27(155A).

ITEM 14. Renumber rule **657—5.26(155A)** as **657—5.27(155A)**.

ITEM 15. Adopt the following **new** rule 657—5.26(155A):

657—5.26(155A) Reporting discipline and criminal convictions. A registered pharmacy support person shall provide to the board written notice of and unredacted documents related to any disciplinary or enforcement action imposed by any licensing agency or regulatory authority on any license or registration held by the registered pharmacy support person no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registered pharmacy support person shall provide written notice and unredacted documents to the board of any criminal conviction that is related to the practice of pharmacy or controlled substances no later than 30 days after the conviction. The term "criminal conviction" includes instances when the judgment of conviction or sentence is deferred.

ITEM 16. Amend **657—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.55, 147.80, 155A.3, 155A.6B, 155A.18 and 155A.23 and ~~2009 Iowa Code Supplement section 155A.6B.~~

ARC 5383C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rule making related to use of injectables by licensed optometrists
and providing an opportunity for public comment**

The Board of Optometry hereby proposes to amend Chapter 182, "Practice of Optometrists," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 272C.2 and 272C.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 154.1(3).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Purpose and Summary

These amendments are proposed pursuant to 2020 Iowa Acts, House File 310, allowing optometrists to administer injectables if the optometrists are certified by the Board of Optometry. This rule making states the prescribed injections and establishes the educational training requirements that must be completed by a licensed optometrist for approval to use injectables.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Sharon Dozier
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.6352
Email: sharon.dozier@idph.iowa.gov

Public Hearing

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

February 2, 2021
10 to 10:30 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** rule 645—182.5(154):

645—182.5(154) Use of injectables. A licensed optometrist shall not administer any injection prior to receiving approval from the board. Upon approval from the board, a licensed optometrist may administer only the following injections:

182.5(1) Subconjunctival injections for the medical treatment of the eye.

182.5(2) Intralesional injections for the treatment of chalazia.

182.5(3) Botulinum toxin to the muscles of facial expression innervated by the facial nerve, including for cosmetic purposes.

182.5(4) Injections to counteract an anaphylactic reaction.

ITEM 2. Adopt the following **new** rule 645—182.6(154):

645—182.6(154) Education and training approval.

182.6(1) The board shall not approve the use of injections other than to counteract an anaphylactic reaction unless the licensed optometrist demonstrates to the board sufficient educational or clinical training from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council for higher education accreditation or by the United States Department of Education, or clinical training equivalent to clinical training offered by such an institution.

182.6(2) A licensed optometrist who completes the requirements of rule 645—182.7(154) is deemed approved by the board for use of injectables as outlined in this chapter.

ITEM 3. Adopt the following **new** rule 645—182.7(154):

645—182.7(154) Education and training. In order to use injections, a licensed optometrist shall meet the following requirements for board approval:

182.7(1) Be fully licensed and in good standing within the state of Iowa as a licensed optometrist.

182.7(2) Have completed a total of 24 hours of approved educational training pertaining to injections.

a. At least 4 hours of the 24 hours must be clinical training.

b. At least 5 hours of the 24 hours must pertain to the administration and side effects of injection treatment for botulinum toxin and chalazia.

182.7(3) Any practitioner exercising injection privileges must be able to produce proof of completion of requirements at the request of the board.

ARC 5375C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to the definition of “vertical infrastructure”
and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 180, “Public Improvement Quotation Process for Governmental Entities for Vertical Infrastructure,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 314.1A.

TRANSPORTATION DEPARTMENT[761](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 26.2.

Purpose and Summary

This proposed rule making updates Chapter 180 to comply with 2020 Iowa Acts, House File 2412, which made changes to the definition of “public improvement” within Iowa Code section 26.2 to amend the exclusions included within the definition. The proposed rule making modifies the definition of “vertical infrastructure” to be consistent with House File 2412 and all of the other exclusions included within the definition of “public improvement.”

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

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

Public Hearing

If requested, a public hearing to hear oral presentations will be held on February 4, 2021, via conference call from 1 to 2 p.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on February 2, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—180.2(314) as follows:

761—180.2(314) Contact information. Questions regarding this chapter may be directed to the Office of Support Services Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1299.

ITEM 2. Amend rule **761—180.3(26,314)**, definition of “Vertical infrastructure,” as follows:

“*Vertical infrastructure*” means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include any work constructed in conjunction with ~~or ancillary to highway, street, bridge or culvert projects, including but not limited to utilities and sidewalks~~ those matters excluded from the definition of “public improvement” in Iowa Code section 26.2(3) “b”(1) to (6).

ARC 5384C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to driver’s license issuance and examination and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 602, “Classes of Driver’s Licenses,” Chapter 604, “License Examination,” Chapter 605, “License Issuance,” and Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 321.180B, 321.188, 321.189 and 321.196.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.180B, 321.186, 321.188, 321.189, 321.194 and 321.196.

Purpose and Summary

This proposed rule making implements several efficiencies regarding the driver’s license issuance and examination process and aligns with existing legal authority and Department practice.

The proposed amendments conform the Department’s rules to 2020 Iowa Acts, House File 2360, section 1, which amended Iowa Code section 321.196 to increase the driver’s license expiration dates for customers aged 66 and older, thus allowing an eight-year credential to be issued, provided that it does not expire past the customer’s 80th birthday. Once a person reaches the age of 78, the person is eligible for a driver’s license that is effective for a period of two years. The amendments also align with Iowa Code section 321.186 to provide that a special reexamination may consist of the requirement to provide a medical report or a vision report or screening, in addition to or instead of the other testing and screening requirements.

A new subrule is proposed to address license extensions authorized under Iowa Code section 321.196 to specify that the six-month driver’s license extension period applies to a noncommercial driver’s license. However, federal regulation 49 CFR Section 383.153 allows for a 60-day extension if the person is a commercial driver’s license (CDL) holder. A person whose Iowa driver’s license

TRANSPORTATION DEPARTMENT[761](cont'd)

expires is automatically afforded a 60-day grace period under Iowa Code section 321.196, but the Iowa grace period is not always recognized by other states, which can make the driver's license extension an important option for customers, especially for CDL holders traveling across state lines.

The proposed amendments implement an online license upgrade process for persons subject to the graduated driver's license (GDL) requirements under Iowa Code section 321.180B. The GDL program covers drivers younger than 18 years of age and requires them to progress through a series of license class privileges before being issued a full driver's license. Currently, even though progressing to the next license class privilege under the GDL program is an upgrade, and is not a new license issuance or renewal, the upgrade to an intermediate license or full license still requires an in-person visit. However, with this rule change, the upgrade will be able to occur online if the applicant meets the eligibility criteria, including that the applicant was issued an intermediate license or minor's school license in person. To comply with federal REAL ID regulations, if the person upgrades the license under the online process to a full driver's license with an eight-year expiration date, the person will not be eligible to electronically renew the driver's license at the next renewal period because the federal regulations require an in-person renewal and a new driver's license photograph at least once every 16 years. Finally, the proposed amendments provide that if the person is upgrading from a minor's school license and the person has a secondary address on the driver's license because the person's parents are separated or divorced, the person will not be prevented from using the online system.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond the impact estimated by the Legislative Services Agency for 2020 Iowa Acts, House File 2360.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

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

Public Hearing

If requested, a public hearing to hear oral presentations will be held on February 4, 2021, via conference call from 9 to 10 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on February 2, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **602.11(1)“b”** as follows:

b. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 17 years, 11 months of age but not yet ~~72~~ 78 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's ~~74th~~ 80th birthday.

(2) A two-year license shall be issued to a qualified applicant who is under 17 years, 11 months of age or who is ~~72~~ 78 years of age or older.

(3) No change.

ITEM 2. Amend paragraph **602.12(1)“c”** as follows:

c. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 18 years of age but not yet ~~72~~ 78 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's ~~74th~~ 80th birthday.

(2) A two-year license shall be issued to a qualified applicant who is ~~72~~ 78 years of age or older.

(3) No change.

ITEM 3. Amend paragraph **602.13(1)“b”** as follows:

b. The license is issued for either two years or eight years.

(1) A qualified applicant who is at least 17 years, 11 months of age but not yet ~~72~~ 78 years of age shall be issued an eight-year license. However, the expiration date of the license issued shall not exceed the licensee's ~~74th~~ 80th birthday.

(2) A two-year license shall be issued to a qualified applicant who is under 17 years, 11 months of age or who is ~~72~~ 78 years of age or older.

(3) No change.

ITEM 4. Amend rule 761—604.50(321) as follows:

761—604.50(321) Special reexaminations.

604.50(1) The As provided in Iowa Code section 321.186, the department may require a special reexamination consisting of a vision of any licensee. The reexamination may consist of one or more of the following:

a. Medical report.

b. Vision report.

c. Vision screening, ~~cognitive.~~

d. Cognitive screening, ~~knowledge.~~

e. Knowledge test ~~and driving.~~

f. Driving test ~~of any licensee.~~

~~604.50(1)~~ **604.50(2)** The department may require a special reexamination when a licensee has been involved in a fatal motor vehicle accident and the investigating officer's report of the accident indicates the licensee contributed to the accident.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~604.50(2)~~ **604.50(3)** The department may require a special reexamination when a licensee has been involved in two accidents within a three-year period and the investigating officer's report of each accident lists one of the following "Driver/Vehicle Related Contributing Circumstances" for the licensee:

a. to j. No change.

~~604.50(3)~~ **604.50(4)** The department may require a special reexamination when a licensee has been involved in an accident and the investigating officer's report lists a driver condition for the licensee of "fatigue or asleep."

~~604.50(4)~~ **604.50(5)** The department may require a special reexamination when a licensee who is 65 years of age or older has been involved in an accident and information in the investigating officer's or the person's own report of the accident indicates the need for reexamination. A circumstance that may indicate a need for reexamination includes, but is not limited to, any one of the following:

a. to i. No change.

~~604.50(5)~~ **604.50(6)** The department may require a special reexamination when the department receives an accident report or a recommendation by a peace officer, a court, or a properly documented citizen's request. A factor that may indicate a need for reexamination includes, but is not limited to, any one of the following:

a. to g. No change.

This rule is intended to implement Iowa Code sections 321.177, 321.186 and 321.210.

ITEM 5. Amend subrule 605.15(1), introductory paragraph, as follows:

605.15(1) *Six-month extension.* An Iowa resident may apply for a noncommercial six-month extension of a license if the resident:

ITEM 6. Adopt the following new rule 761—605.26(321):

761—605.26(321) Graduated driver's license upgrades. An applicant subject to the graduated driver's license requirements under Iowa Code section 321.180B who is otherwise eligible for a driver's license is eligible to electronically apply to upgrade the applicant's driver's license under this rule.

605.26(1) Except for the requirements in subparagraphs 605.25(7) "a"(1) and 605.25(7) "a"(2), the applicant must meet the eligibility requirements listed in paragraph 605.25(7) "a" to upgrade the license electronically and must also meet the following criteria:

a. The applicant must have been issued an intermediate license under Iowa Code section 321.180B(2) or a minor's school license under Iowa Code section 321.194 in person.

b. The applicant must otherwise be eligible to upgrade a license class privilege under Iowa Code section 321.180B or 321.194.

605.26(2) The requirements in paragraphs 605.25(7) "c" and 605.25(7) "d" shall also apply to a license issued under this rule.

605.26(3) If an applicant upgrades the applicant's driver's license electronically under this rule to a driver's license with an eight-year expiration date, the applicant is ineligible to electronically renew the applicant's full driver's license at the next renewal period.

605.26(4) Notwithstanding any other provision of this rule to the contrary, the department may accept an electronic application to upgrade a license containing a "J" restriction if the "J" restriction is related only to a secondary address.

This rule is intended to implement Iowa Code sections 321.180B and 321.194.

ITEM 7. Amend paragraph **607.16(2)"e"** as follows:

e. A commercial driver's license valid for eight years shall be issued to a qualified applicant who is at least 18 years of age but not yet ~~72~~ 78 years of age. However, the expiration date of the license issued shall not exceed the licensee's ~~74th~~ 80th birthday.

ITEM 8. Amend paragraph **607.16(2)"f"** as follows:

f. A commercial driver's license valid for two years shall be issued to a qualified applicant ~~72~~ 78 years of age or older. A two-year license may also be issued, at the discretion of the department, to an applicant whose license is restricted due to vision or other physical disabilities.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 9. Adopt the following **new** subrule 607.16(5):

607.16(5) License extension.

a. As provided in 49 CFR Section 383.153, a person may apply for a 60-day extension of a commercial driver's license if the person:

- (1) Has a valid license,
- (2) Is eligible for further licensing, and
- (3) Is temporarily absent from Iowa or is temporarily incapacitated at the time for renewal.

b. The person shall apply for an extension by submitting Form 430027 to the department. The form may be obtained from and submitted to a driver's license service center. The person may also apply by letter to the address in 761—paragraph 605.12(1)“a.”

c. A 60-day extension shall be added to the expiration date on the license. When the person appears to renew the license, the expiration date of the renewed license will be computed from the expiration date of the original license, notwithstanding the extension.

d. The department shall allow only one 60-day extension.

ARC 5385C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to driver's license sanctions
and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 615, “Sanctions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.210.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.210, 321.215, 321.216C, 321.555 and 321J.17.

Purpose and Summary

This proposed rule making conforms Chapter 615 with current Department practice and legal authority and aligns the rules with 2020 Iowa Acts, Senate File 2268, which amended Iowa Code section 321.216C, and 2020 Iowa Acts, Senate File 457, section 54, which repealed two Iowa Code sections. Senate File 2268 raised from 18 years to 21 years old the age at which it is illegal for a person to possess fraudulent identification for the purposes of purchasing tobacco products. Senate File 457, section 54, repealed Iowa Code sections 321.218A and 321A.32A to eliminate the civil penalty for non-operating while intoxicated (OWI) driver's license sanctions.

The proposed amendments add a nonpublic school authority to the list of persons authorized to report a violation of a minor's school license because that is the person authorized to certify the need for a minor's school license for a student attending private school.

The proposed amendments specify that the driver improvement program provider schedules a person's attendance at a driver improvement program, which is current Department practice, and also clarify that if a person assigned to a driver improvement program fails to attend, that person will be issued a driver's license suspension equal to the required suspension length for the underlying offense. The current rule requires a 90-day suspension for a person who fails to attend a driver improvement program, but a 90-day suspension could result in a longer or shorter suspension period than what the original underlying offense would have otherwise required. Making the suspension period after a person fails to attend a driver

TRANSPORTATION DEPARTMENT[761](cont'd)

improvement program equal to the length of the original suspension is more equitable than requiring a longer or shorter suspension period than that required for the original offense.

This proposed rule making rescinds the rule which authorizes the Department to conduct a driver improvement interview because that process is no longer used by the Department and was replaced with the informal administrative appeal process.

The proposed amendments addressing temporary restricted licenses (TRLs) issued under Iowa Code section 321.215 align with current Department practice to allow a TRL unless prohibited by Iowa Code section 321.215 or by another Iowa Code section. The proposed amendments more clearly reflect the Department's existing practice of allowing a TRL when a license is suspended because of nonpayment of court fines, violations of the nonresident violator compact or habitual offender bars if the person's habitual offender status is determined under Iowa Code section 321.555(1)“c” or 321.555(2). The changes allow a person whose driver's license is suspended or revoked for driving while under suspension or revocation to be eligible for a TRL if the person's underlying offense qualifies for a TRL. Allowing a TRL in this case is consistent with how sanctions for driving with a revoked license are treated under Iowa Code chapter 321J when the underlying offense is an OWI.

Finally, the proposed amendments strike outdated requirements related to requesting an interview with a driver's license hearing officer and appearing before a driver's license examiner to obtain a TRL. Current Department practice does not require an interview or personal appearance before a specific classification of employee to obtain a TRL.

Fiscal Impact

There is no fiscal impact to the State of Iowa because of this rule making beyond what was estimated in the fiscal note for 2020 Iowa Acts, Senate File 457.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

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

Public Hearing

If requested, a public hearing to hear oral presentations will be held on February 4, 2021, via conference call from 10:30 to 11:30 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on February 2, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

TRANSPORTATION DEPARTMENT[761](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 rule making.

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—615.3(17A) as follows:

761—615.3(17A) Information and address. Applications, forms and information concerning license sanctions are available at any driver's license service center. Assistance is also available by mail from the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; by facsimile at (515)239-1837; or on the department's website at www.iowadot.gov.

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

ITEM 2. Amend rule 761—615.15(321) as follows:

761—615.15(321) Suspension for unlawful use of a license.

615.15(1) The department may suspend a person's license when the person has been convicted of unlawful or fraudulent use of the license or if the department has received other evidence that the person has violated Iowa Code section 321.216, 321.216A₂ ~~or~~ 321.216B or 321.216C.

615.15(2) and **615.15(3)** No change.

This rule is intended to implement Iowa Code sections 321.210, 321.212, 321.216, 321.216A₂ ~~and~~ 321.216B and 321.216C.

ITEM 3. Amend paragraph **615.21(1)“b”** as follows:

b. The department may also suspend a minor's school license when the department receives written notice from a peace officer, parent, custodian or guardian, school superintendent, ~~or~~ superintendent's designee or nonpublic school authority that the licensee has violated the restrictions of the license.

ITEM 4. Amend rule 761—615.26(321) as follows:

761—615.26(321) Suspension ~~or revocation~~ for violation of a license restriction. The department may suspend ~~or revoke~~ a person's license when the department receives satisfactory evidence of a violation of a restriction imposed on the license. The suspension ~~or revocation~~ period shall be at least 30 days.

This rule is intended to implement Iowa Code section 321.193.

ITEM 5. Amend paragraph **615.38(2)“b”** as follows:

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

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 6. Amend paragraph **615.38(3)“c,”** introductory paragraph, as follows:

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

ITEM 7. Amend subrule 615.40(2) as follows:

615.40(2) Paid the civil penalty when required by Iowa Code section 321J.17. ~~The civil penalty is specified in Iowa Code section 321.218A or 321A.32A.~~

ITEM 8. Amend rule **761—615.40(321)**, implementation sentence, as follows:

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

ITEM 9. Amend subrule 615.43(2) as follows:

615.43(2) *Scheduling.* The department shall ~~schedule attendance at a program nearest~~ forward the person's contact information to the approved driver improvement program provider nearest the person's last known address. ~~The provider will schedule the person's attendance at the provider's next available program opening.~~

a. One request for rescheduling may be granted by the provider if the program begins within 30 days of the originally scheduled date and if space is available.

b. No change.

ITEM 10. Amend subrule 615.43(4) as follows:

615.43(4) *Failure to attend.* The department shall suspend the license of a person who is required to attend a driver improvement program and who does not attend, or does not successfully complete, the program. The suspension period shall be ~~at least 90 days~~ for the length of the original underlying suspension.

ITEM 11. Rescind and reserve rule **761—615.44(321)**.

ITEM 12. Amend rule 761—615.45(321) as follows:

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

615.45(1) *Ineligibility.* The department shall not issue a temporary restricted license under Iowa Code section ~~321.215(1)~~ 321.215 to an applicant:

a. to d. No change.

~~*e.* Whose license has been suspended for failure to pay a fine, penalty, surcharge or court costs.~~

f. e. Whose period of suspension or revocation has been extended for operating a motor vehicle while under suspension or revocation unless the underlying suspension or revocation qualifies for issuance of a temporary restricted license.

~~*g. f.* Whose license has been mandatorily revoked under Iowa Code section 321.209, subsections 1 to 5~~ *4* or subsection 7, or for a second or subsequent conviction for drag racing.

~~*h.* Whose license has been suspended under the nonresident violator compact.~~

~~*i. g.* Who~~ Whose license is barred under Iowa Code section 321.560 unless the applicant is declared to be a habitual offender under Iowa Code section 321.555(1)“c” or 321.555(2).

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

~~*k.* Reserved.~~

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

~~*m. j.* Who~~ Whose license has been suspended under Iowa Code section 321.180B(3).

615.45(2) *Application.*

a. To obtain a temporary restricted license, an applicant shall complete and submit a written request for an interview with a driver's license hearing officer. ~~The request shall be submitted~~ Form 430100 and any supporting documentation to the driver and identification services bureau at the address in rule 761—615.3(17A).

TRANSPORTATION DEPARTMENT[761](cont'd)

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

~~e. b.~~ A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

615.45(3) No change.

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

a. and b. No change.

c. Pay the ~~required~~ civil penalty ~~specified in~~ when required by Iowa Code section ~~321.218A or 321A.32A~~ 321J.17.

615.45(5) *Issuance and restrictions.*

a. When the application is approved and all requirements are met, the applicant shall be notified by the department ~~to appear before a driver's license examiner.~~ The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.

b. No change.

615.45(6) No change.

This rule is intended to implement Iowa Code chapter 321A and sections 252J.8, 321.177, 321.178, 321.184, 321.185, 321.186, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.209, 321.210, 321.210A, 321.212, 321.213A, 321.213B, 321.215, 321.218, ~~321.218A,~~ 321.513, ~~and~~ 321.560 and 321J.17.

ARC 5390C

REVENUE DEPARTMENT[701]

Adopted and Filed Emergency After Notice

Rule making related to collection of court debt

The Revenue Department hereby adopts new Chapter 155, “Collection of Court Debt,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 602.8107(3)“a”(2) as enacted by 2020 Iowa Acts, Senate File 457.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 602.8107(3) as amended by 2020 Iowa Acts, Senate File 457, section 87.

Purpose and Summary

This rule making is intended to implement statutory changes to the collection of court debt. Specifically, this rule making sets forth the Department’s imposition of a fee to reflect the cost of processing for the collection of court debt under Iowa Code section 602.8107(3) as amended by 2020 Iowa Acts, Senate File 457, division XIV.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5272C**. A virtual public hearing was held on December 8, 2020, at 1 p.m. Iowa Legal Aid Litigation Director and General Counsel Alex Kornya provided additional context and support for Iowa Legal Aid’s written comment described below. The individual mentioned below also commented, reiterating the same concerns as expressed in the individual’s written comments.

The Department received comments from Iowa Legal Aid, the Iowa-Nebraska NAACP State Area Conference of Branches, the Iowa Judicial Branch, and one individual.

Iowa Legal Aid comment: Iowa Legal Aid commented through its Litigation Director and General Counsel Alex Kornya. Iowa Legal Aid recommended that (1) the rule exclude indigent defense recoupment fees and jail fees from the basis upon which the collection fee is calculated; (2) the rule provide for a waiver of the fee upon a showing of financial hardship; and (3) collection of court debt be undertaken in accordance with constitutional and statutory protections for court debtors.

The Department did not make any changes to the rule making based on these comments. The Legislature has granted the Department the authority to “impose a fee established by rule to reflect the cost of processing” pursuant to Iowa Code section 602.8107(3)“a”(2). If the Department were to exclude certain debts from the fee imposed under this rule making based on grounds other than the cost of processing, the Department would arguably be promulgating a rule beyond the authority delegated to the Department by the Legislature. That is, the Legislature did not grant the Department the authority to consider factors other than the cost of processing in promulgating the rule establishing the fee. The Legislature is empowered to exclude certain debts from the calculation of the collection fee if it chooses.

Regarding the request to include a waiver of the fee in the case of financial hardship, Iowa Code section 910.2A provides a “reasonable ability to pay” determination process for certain court debt. The Legislature is empowered to amend this provision or adopt a different waiver process based on financial hardship if it chooses. Additionally, any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions pursuant to rule 701—7.28(17A).

REVENUE DEPARTMENT[701](cont'd)

While not specifically related to any suggested changes in the rule making, the Department has taken note of the concerns expressed by Iowa Legal Aid regarding the lawful collection of court debt.

Iowa-Nebraska NAACP State Area Conference of Branches comment: The NAACP concurred with and strongly endorsed the comments submitted by Iowa Legal Aid. Specifically, the NAACP concurred with Iowa Legal Aid's suggestions that 1) jail fees and court-appointed attorney fees should not be factored into the collection fee; and 2) the Department should allow full or partial hardship waivers of the collection fee. In support of its concurrence with Iowa Legal Aid, the NAACP stated that jail fees and court-appointed attorney fee debt will work a hardship on a disproportionate number of African Americans in Iowa and provided statistics in support of its position.

For the same reasons as stated above, the Department has not made any changes to its rule making based on the above comment. The Legislature is empowered to exclude certain debts from the calculation of the collection fee and to provide for a waiver based on hardship. Additionally, the Department only has the authority to consider the cost of processing in establishing a rule to impose a fee. Iowa Code section 910.2A provides a "reasonable ability to pay" determination process for certain court debt. The Legislature is empowered to amend this provision or adopt a different waiver process based on financial hardship if it chooses. Finally, the petition for waiver process under rule 701—7.28(17A) is available for any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person.

Iowa Judicial Branch comment: The Iowa Judicial Branch submitted a comment stating that the Iowa Judicial Branch already imposes a fee for a dishonored payment and would require technology changes to accommodate the proposed dishonored payment fee.

After discussion with the Iowa Judicial Branch, and to ensure that no "double billing" occurs, the Department has removed the portion of the rule related to the dishonored payment, which stated: "In the event a payment is returned as dishonored for any reason, an additional fee shall be imposed in the amount of 15 percent of the amount of the dishonored payment."

Individual comment: One individual provided a comment expressing concern that his court debt would increase as a result of the fee proposed. This individual also stated some complaints about the criminal justice system. The Department did not make any changes to its rule making based on this comment.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on January 1, 2021, because the rule making confers a benefit on the public of the State of Iowa. The normal effective date of this rule making would result in an effective date after January 1. The Department begins collecting court debt on January 1. If the rule were to take effect after January 1, the Department would arguably be unable to collect a fee to reflect the cost of processing until the effective date of the new rule. The Department will be able to more efficiently collect court debt with a rule allowing for a fee to reflect the cost of processing, benefitting the public.

Adoption of Rule Making

This rule making was adopted by the Department on December 23, 2020.

Fiscal Impact

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

Jobs Impact

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

REVENUE DEPARTMENT[701](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on January 1, 2021.

The following rule-making action is adopted:

Adopt the following **new** 701—Chapter 155:

CHAPTER 155
COLLECTION OF COURT DEBT

701—155.1(602) Fee for collection of court debt.

155.1(1) A fee of 15 percent of the amount of each court debt is imposed on each court debt that has been assigned to the department for collection under Iowa Code section 602.8107(3). The total balance of the court debt shall be adjusted to include the fee. Notwithstanding the foregoing, no fee shall be imposed on any amount of a court debt that is collected by setoff or is reduced or adjusted by the court as a result of community service, a reasonable ability to pay determination, or any other reason.

155.1(2) The fee imposed by this rule shall be payable to the department to reimburse the department's cost of processing.

This rule is intended to implement Iowa Code section 602.8107.

[Filed Emergency After Notice 12/23/20, effective 1/1/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5391C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to waivers

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5243C**. A public hearing was held on November 24, 2020, at 10 a.m., via Google Meet. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on December 11, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

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

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

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

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

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

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

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

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

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

- a. The request is made prior to the issuance of a notice of intent to award a contract or the finalization of a sale.
- b. The waiver or variance will tend to promote competition rather than inhibit or reduce competition.
- c. The waiver or variance will not materially alter the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.
- d. The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.
- e. No other person who submits an offer, a response to an invitation to bid or a response to a request for proposals is materially or substantially harmed by the waiver or variance. A person shall not be deemed to have been harmed if the waiver or variance merely increases competition.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

f. Fundamental notions of good faith and fair dealing favor the issuance of a waiver ~~or variance~~.

g. The waiver ~~or variance~~ will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

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

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

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

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

1. to 9. No change.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

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

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

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

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

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

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

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

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

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

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

11—9.13(17A,8A) ~~Summary reports~~ Submission of waiver information. ~~Semiannually~~ Within 60 days of granting or denying a waiver, the director shall ~~prepare a summary report identifying~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

provisions implemented by these rules, and a general summary of the reasons justifying the director's actions on waiver requests. If practicable, the ~~report~~ submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

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

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

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

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

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

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

[Filed 12/11/20, effective 2/17/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5392C

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Rule making related to administrative actions unit

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These amendments update rules related to the policies and procedures of the Division's Administrative Actions Unit and are intended to increase the effectiveness and efficiency of the Unit. These amendments remove the requirement that a licensee or permittee petition the Division for a waiver in addition to petitioning the Department of Inspections and Appeals for a waiver when the licensee's or permittee's business establishment does not meet the bathroom requirements of 481—subrule 31.1(11). These amendments also clarify which entities have authority to file hearing complaints against licensees, permittees, or certificate of compliance holders found to be in violation of applicable laws or rules. These amendments extend the statute of limitations on requesting a contested case from one year to three years. Finally, these amendments clarify the allowable means of filing or

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

delivering certain documents in a contested case. Other nonsubstantive clarifying amendments are also adopted.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5242C**. No public comments were received. One change from the Notice has been made in Item 1 to correct the Iowa Code reference in subparagraph 4.2(4)“b”(8).

Adoption of Rule Making

This rule making was adopted by the Administrator, with the approval of the Alcoholic Beverages Commission, on December 11, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

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

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

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

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Sales to intoxicated persons, licensee.

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

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

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

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

(8) A pattern or practice by the licensee or permittee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(1) "b"(3).

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

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

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

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case ~~under 1998 Iowa Acts, chapter 1202, section 14~~ pursuant to Iowa Code section 17A.10A.

“Division” means the alcoholic beverages division of the department of commerce.

“Hearing complaint” means a statement in writing filed by, or on behalf of, the division, a local authority having jurisdiction, or the department of public safety that sets forth the acts or omissions with which the respondent is charged, including the statute(s) and rule(s) which are alleged to have been violated. The hearing complaint shall be in sufficient detail to enable the preparation of the respondent’s defense.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

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

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

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

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

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

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

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

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

10.5(1) Any person claiming an entitlement to a contested case proceeding shall file a written request within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

10.5(2) The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

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

10.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- ~~c. First-class mail; or~~
- ~~d. c.~~ Publication, as provided in the Iowa Rules of Civil Procedure.

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

185—10.7(17A) Presiding officer.

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

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

10.7(3) No change.

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

10.10(2) *Personally investigated.* The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202, section 19,~~ and subrules 10.10(3) and 10.23(9).

10.10(4) *Motion asserting disqualification.*

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

b. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

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

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

185—10.12(17A) Pleadings.

10.12(1) No change.

10.12(2) *Petition Hearing complaint.*

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

(1) A violation of Iowa Code chapter 123.

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

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

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

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

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

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

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

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

10.12(3) *Answer.*

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

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

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

d. Any allegation in the ~~petition~~ hearing complaint not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

10.12(4) Amendment. Any notice of hearing, ~~petition~~, hearing complaint, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

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

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

10.13(1) No change.

10.13(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

10.13(3) No change.

10.13(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing. Parties may file documents with the division by electronic transmission. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the division.

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

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

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

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

10.16(5) Motions for summary judgment.

a. Motions for summary judgment shall comply with the requirements of Iowa ~~Rule~~ Rules of Civil Procedure ~~237~~ 1.981, 1.982, and 1.983 and shall be subject to disposition according to the requirements of ~~that rule~~ those rules to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

b. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

c. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 185—10.28(17A) and appeal pursuant to rule 185—10.27(17A).

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

10.21(4) Admission and examination. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

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

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

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

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

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

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

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

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

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

10.31(2) Issuance of order.

a. No change.

b. Service. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency; or

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

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

~~(5)~~ (3) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. No change.

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

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

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

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

10.32(3) A proposed settlement which is not accepted or signed by the parties and the administrator or the administrator’s designee shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such

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as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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

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

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

[Filed 12/14/20, effective 2/17/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5393C

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Rule making related to waivers

The Alcoholic Beverages Division hereby amends Chapter 19, “Waivers from Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5241C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Administrator, with approval of the Alcoholic Beverages Commission, on December 11, 2020.

Fiscal Impact

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

Jobs Impact

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making action is adopted:

Amend rule 185—19.1(17A) as follows:

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

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

19.1(2) No change.

[Filed 12/14/20, effective 2/17/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5394C

BANKING DIVISION[187]**Adopted and Filed****Rule making related to waivers**

The Iowa Division of Banking hereby amends Chapter 12, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 524.213.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A and 524.

Purpose and Summary

These amendments revise the Division's rules regarding uniform waiver and variance procedures. In 2020, the Legislature enacted House File 2389, which amends Iowa Code chapter 17A to remove

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the term “variance” and ensures that chapters about waiver procedures refer only to “waivers.” These amendments respond to the changes made by House File 2389 and revise the Division’s existing rules for waiver and variance to refer only to waivers of administrative rules. These amendments also remove a provision authorizing the Superintendent of Banking to propose a waiver on the Superintendent’s own motion.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 7, 2020, as **ARC 5211C**. No public comments were received.

A change from the Notice has been made in subrule 12.2(1) to strike a provision that authorized the Superintendent of Banking to propose a waiver on the Superintendent’s own motion. The Division is striking this provision because the Iowa Supreme Court has held that this language exceeds the statutory authority delegated to agencies.

Additionally, a change from the Notice has been made to update the catchwords of rule 187—12.11(17A,524) to better reflect the content of the rule.

Adoption of Rule Making

This rule making was adopted by the Superintendent of Banking on December 17, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **187—Chapter 12**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rules 187—12.1(17A,524) to 187—12.3(17A,524) as follows:

187—12.1(17A,524) Scope of chapter. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the superintendent. This chapter shall not apply to rules

BANKING DIVISION[187](cont'd)

that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. 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.

12.1(1) Definitions.

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

“*Superintendent*” means the superintendent of banking appointed by the governor to direct and regulate banks pursuant to Iowa Code chapter 524.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

12.1(2) Applicability.

a. The superintendent may grant a waiver or variance from a rule adopted by the superintendent only if (1) the superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver or variance may be granted from a requirement which is imposed by statute.

187—12.2(17A,524) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

12.2(1) Criteria for waiver or variance. The superintendent may, in response to a completed petition or on the superintendent’s own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver or variance is requested;

b. The waiver or variance from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

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

12.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the superintendent from granting waivers or variances in other contexts if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

187—12.3(17A,524) Requester’s responsibilities in filing a waiver or variance petition.

12.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Banking Division, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

12.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

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- b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~ under each of the four criteria specified in subrule 12.2(1).
- d. 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 ~~or variance~~.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver ~~or variance~~, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver ~~or variance~~.

12.3(3) *Burden of persuasion.* When a petition is filed for a waiver ~~or variance~~ from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent's discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 3. Amend rules 187—12.5(17A,524) to 187—12.11(17A,524) as follows:

187—12.5(17A,524) Superintendent's responsibilities regarding petition for waiver ~~or variance~~.

12.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver ~~or variance~~, the superintendent 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 superintendent may, on the superintendent's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent's designee.

12.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver ~~or variance~~ of a rule filed within a contested case; (b) when the superintendent so provides by rule or order; or (c) when a statute so requires.

12.5(3) *Ruling.* An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

12.5(4) *Conditions.* The superintendent may place any condition on a waiver ~~or variance~~ that the superintendent finds desirable to protect the public health, safety, and welfare.

12.5(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

12.5(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the superintendent, a waiver may be renewed if the superintendent finds that grounds for a waiver continue to exist.

12.5(7) *Time for ruling.* The superintendent shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner

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agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

12.5(8) *When deemed denied.* Failure of the superintendent to grant or deny a petition within the required time period shall be deemed a denial of that petition by the superintendent.

12.5(9) *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.

187—12.6(17A,524) Public availability. All orders granting or denying waivers ~~and variances~~ under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver ~~or variance~~ and orders granting or denying a waiver ~~or variance~~ petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

187—12.7(17A,524) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent 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; or
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 any conditions contained in the order.

187—12.8(17A,524) Violations. Violation of conditions in the waiver ~~or variance~~ order is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

187—12.9(17A,524) Defense. After the superintendent issues an order granting a waiver ~~or variance~~, 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.

187—12.10(17A,524) Appeals. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

187—12.11(17A,524) ~~Summary reports~~ Submission of waiver information. ~~Semiannually~~ Within 60 days of granting or denying a waiver, the superintendent shall prepare a summary report identifying make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the superintendent's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE SUPERINTENDENT OF BANKING

Petition by (insert name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).



PETITION FOR
WAIVER

A request for waiver or variance from a rule adopted by the superintendent shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.
b. Describe and cite the specific rule from which a waiver or variance is requested.
c. Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.
d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
e. Provide a history of prior contacts between the superintendent and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
f. Provide information known to the petitioner regarding the treatment by the superintendent of similar cases.
g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.
i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

- 1. The petitioner has the burden of proving to the superintendent, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how

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substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

2. The superintendent may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver ~~or variance~~.

3. All petitions for waiver ~~or variance~~ must be submitted in writing to the Banking Division, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

[Filed 12/17/20, effective 2/17/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5395C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to commercial explosive contractors and blasters licensing

The State Fire Marshal hereby amends Chapter 235, "Commercial Explosive Licensing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 101A.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 101A.

Purpose and Summary

The purposes of amending Chapter 235 are to add definitions, update the application process, add continuing education requirements, and comply with 2020 Iowa Acts, House File 2627, which makes changes to Iowa Code chapter 272C.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5280C**. No public comments were received. Minor changes from the Notice were made for internal consistency.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on December 23, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the

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discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **661—Chapter 235**, title, as follows:
LICENSING FOR COMMERCIAL EXPLOSIVE LICENSING CONTRACTORS AND BLASTERS

ITEM 2. Amend rule 661—235.1(101A) as follows:

661—235.1(101A) Licensing program established. A commercial explosive licensing program is hereby established in the state fire marshal division. The program shall issue licenses to commercial explosive firms and to individual blasters as provided in this chapter.

235.1(1) The commercial explosive licensing program is located at the following address:

~~Commercial Explosive Licensing Program~~

~~State Fire Marshal Division~~

~~Iowa Department of Public Safety~~

~~Attn: SFM Licensing Administration~~

~~215 East 7th Street~~

~~Des Moines, Iowa 50319~~

~~The program may be contacted by mail or in person at this address.~~

235.1(2) The program may be contacted by telephone at ~~(515)725-6145~~, by fax at ~~(515)725-6172~~, or by electronic mail at ~~fminfo@dps.state.ia.us~~ sfmlicense@dps.state.ia.us or by the United States Postal Service.

ITEM 3. Renumber existing rules **661—235.2(101A)** to **661—235.5(101A)** as **661—235.3(101A)** to **661—235.6(101A)**.

ITEM 4. Adopt the following **new** rule 661—235.2(101A):

661—235.2(101A) Definitions. The following definitions apply to rules 661—235.1(101A) to 661—235.12(101A):

“*Actual possession*” means when a person is in immediate possession or control of explosive materials (e.g., an employee who physically handles explosive materials as part of the production process; or an employee, such as a blaster, who actually uses explosive materials).

“*Applicant*” means an individual employed by a commercial explosive contractor or person associated with a commercial explosive contractor who meets the definition of “employee possessor” or “responsible person” as defined in this chapter.

“*Blasting agent*” means any material or mixture consisting of a fuel and oxidizer, intended for blasting but not otherwise classified as an explosive, in which none of the finished products as mixed and packaged for use or shipment can be detonated by means of a number eight test blasting cap when unconfined.

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“Commercial explosive blaster” or *“blaster”* means any individual who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material.

“Commercial explosive contractor” or *“contractor”* means any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment.

“Commercial license” or *“license”* means a license issued by the state fire marshal pursuant to this chapter.

“Constructive possession” means when an employee lacks direct physical control over explosive materials but exercises dominion and control over the explosive materials, either directly or indirectly through others (e.g., an employee at a construction site who keeps keys for magazines in which explosive materials are stored, or who directs the use of explosive materials by other employees; or an employee transporting explosive materials from a licensee to a purchaser).

“Employee possessor” means an individual who has actual or constructive possession of explosive materials during the course of the individual’s employment.

“Explosive” means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term “explosive” includes all materials which are classified as a class 1, division 1.1, 1.2, 1.3, or 1.4 explosive by the United States Department of Transportation, under 49 CFR Section 173.50, and all materials classified as explosive materials under 18 U.S.C. §841, and includes but is not limited to dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices, cartridges for industrial guns, and overpressure devices but does not include “consumer fireworks,” “display fireworks,” or “novelties” as those terms are defined in Iowa Code section 727.2 or ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

“Explosive materials” means explosives or blasting agents.

“Import” or *“importation”* means transfer into the state of Iowa.

“Licensee” means a person holding a commercial license issued by the state fire marshal pursuant to this chapter.

“Magazine” means any building or structure, other than an explosives manufacturing building, approved for the storage of explosive materials.

“Offense directly relates” refers to either of the following:

1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.
2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.

“Overpressure device” means any device constructed of a container or improvised container which is filled with a mixture of chemicals or sublimating materials or gases that generate an expanding gas, which is designed or constructed to cause the container to break, fracture, or rupture in a violent manner capable of causing death, serious injury, or property damage.

“Person” means any individual, corporation, partnership, or association.

“Responsible person” means an individual who has the power to direct the management and policies of the commercial explosive contractor pertaining to explosive materials. For example, responsible persons generally include sole proprietors and explosives facility site managers. In the case of a corporation, association, or similar organization, responsible persons generally include corporate directors and officers, as well as stockholders who have the power to direct management and policies.

ITEM 5. Amend renumbered rules 661—235.3(101A) to 661—235.6(101A) as follows:

661—235.3(101A) Licenses required. Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution,

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sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive ~~business contractor~~ license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material shall be required to hold a current ~~individual~~ commercial explosive blaster license issued pursuant to this chapter. ~~An individual~~ A commercial explosive blaster license shall not be required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives.

NOTE: Iowa Code section 101A.1 excludes “fireworks” from the definition of “explosive.” Consequently, working with fireworks does not require a blaster license, nor does the manufacture, importation, distribution, sale, or commercial use of fireworks require a commercial explosive license.

661—235.4(101A,272C) License application process.

235.4(1) Application for commercial explosive contractor or commercial explosive blaster license. Anyone wishing to obtain an application for a commercial explosive ~~business contractor~~ license or ~~an individual~~ a commercial explosive blaster license may obtain a copy of the required application by contacting the ~~commercial explosive licensing program as specified in rule 661—235.1(101A)~~ state fire marshal or visiting the state fire marshal’s website. The application shall be filed no later than 30 days prior to the date of beginning work in this state or on which an existing license expires.

NOTE: The website for the commercial explosive licensing program is: dps.iowa.gov/divisions/state-fire-marshal/licensing/commercial-explosives.

235.4(2) Submission of application and required information. A completed application for a license shall be submitted to the commercial explosive licensing program at the address specified in subrule 235.1(1) or on the state fire marshal’s website. All information requested on the application shall be provided prior to the processing of the application. An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

235.4(3) License fee. Each license application shall be accompanied by a \$60 fee for each license for which application is being made, paid electronically or by check or money order made payable to the Iowa Department of Public Safety State Fire Marshal Division. Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 235.1(1). If the application is being submitted later than January 31 of a given year, then the fee for each license shall be ~~\$5 per month~~ prorated for each month remaining in the ~~calendar year~~ period of issue, including the month in which the application is submitted.

The state fire marshal shall waive any fee charged to an applicant for a license if the applicant’s household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

235.4(4) License duration. ~~Each license issued~~ Licensure shall normally be for three years and shall expire on December 31 of the third year in which after it is issued, except that a license issued in December of any year shall expire on December 31 ~~of the following year~~ after two years have passed from the date on which the license was issued.

235.4(5) Criminal history. An applicant shall be subject to a national criminal history check through the Federal Bureau of Investigation. Each applicant for a commercial explosive contractor or blaster shall submit fingerprints and the applicable fee at the time of application for a new or renewal license. The results of a criminal history check conducted pursuant to this subrule shall be considered a confidential record under Iowa Code chapter 22.

235.4(6) Attachments. Required attachments to the application for license include, but are not limited to, the following:

a. Documentation that the applicant has met the applicable licensure requirements.

b. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:

(1) Proof of residency in this state.

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(2) Proof all conditions are met as established in rule 661—235.7(272C).

1. Copy of a license from other issuing jurisdiction.

2. Evidence the applicant met issuing jurisdiction's educational requirements, and if applicable, work experience.

3. Evidence the applicant passed the issuing jurisdiction's required examination, if applicable.

4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.

5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.

235.4(7) Veterans, military service members, and certain survivor beneficiaries. Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a commercial explosive contractor or blaster shall apply for licensure following 661—Chapter 278.

661—235.5(101A) Issuance of commercial explosive business contractor license. A commercial explosive business contractor license shall be issued only if all of the following conditions have been satisfied:

235.5(1) All items required on the application have been completed, and any items the state fire marshal deems necessary to verify have been verified and found to be true.

~~**235.5(2)** For purposes of this rule, "responsible person" means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Generally, "responsible person" includes partners, sole proprietors, site managers, corporate officers, directors and majority shareholders.~~

~~**235.5(3)** **235.5(2)** No responsible person or manager of the business applicant for which whom commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective business contractor licensee may:~~

~~a. Has Have been convicted of a ~~felony~~ or any offense involving explosives or firearms;~~

~~b. Has Have been previously disqualified from being licensed to handle explosives in this or any other state. The state fire marshal may grant a license to a person previously disqualified if the state fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;~~

~~c. Is Be an unlawful user of or is be addicted to controlled substances;~~

~~d. Has Have been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely, both toward themselves and others.~~

~~**235.5(4)** **235.5(3)** The business applicant has at least one responsible person or employee licensed as an ~~individual~~ a commercial explosive blaster.~~

661—235.6(101A) Issuance of individual a commercial explosive blaster license. An ~~individual~~ A commercial explosive blaster license shall be issued only if all of the following conditions have been satisfied:

235.6(1) The applicant is an employee of a licensed commercial explosive business contractor.

a. If, after an ~~individual~~ a commercial explosive blaster license is issued, such employment ceases, the employing business contractor and the ~~individual~~ commercial explosive blaster shall each notify the state fire marshal within three business days of the final day of employment that the employment has ceased, and the ~~individual~~ commercial explosive blaster license shall be suspended until the ~~individual~~ commercial explosive blaster is again employed with a licensed commercial explosive business contractor.

b. Upon reemployment, the employer shall notify the state fire marshal that the ~~individual~~ commercial explosive blaster is again employed with a licensed commercial explosive business contractor, and the state fire marshal shall reinstate the ~~individual~~ commercial explosive blaster license

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as soon as practical, provided that the ~~individual~~ commercial explosive blaster is not disqualified from holding a license pursuant to any provision of this chapter.

c. If the state fire marshal finds that an ~~individual~~ commercial explosive blaster is disqualified from holding a license, the state fire marshal shall revoke the license.

235.6(2) All items required on the application have been completed and any items the state fire marshal deems necessary to verify have been verified and found to be true.

235.6(3) The applicant is not or has not been:

- a. Convicted of a ~~felony~~ or any offense involving explosives or firearms;
- b. Previously disqualified from being licensed to handle explosives in this or any other state. The state fire marshal may grant a license to a person previously disqualified if the state fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c. An unlawful user of or addicted to controlled substances;
- d. Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution; or
- e. A recipient of inpatient treatment for any mental illness in the past three years or a recipient of treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely toward themselves or others.

235.6(4) The applicant has satisfactorily completed training approved by the state fire marshal for the handling and use of explosives. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The state fire marshal may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive ~~business~~ contractor licensee.

EXCEPTION: The state fire marshal may issue an ~~individual~~ commercial explosive blaster license to a person licensed or certified as a blaster in another state, provided that the state fire marshal finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

235.6(5) An applicant for a renewal license has completed continuing education from a nationally recognized institution in professional explosives storage, handling, and use.

~~235.6(5)~~ **235.6(6)** The applicant is 21 years of age or older.

ITEM 6. Renumber existing rule **661—235.6(101A)** as **661—235.8(101A)**.

ITEM 7. Adopt the following new rule 661—235.7(272C):

661—235.7(272C) Licensure of persons licensed in other jurisdictions.

235.7(1) For the purposes of this rule, “issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

235.7(2) Notwithstanding any other provision of law, a commercial explosive contractor license or commercial blaster license shall be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

- a. The person is currently licensed by at least one other issuing jurisdiction as a commercial explosive contractor or commercial blaster with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.
- b. The person has been licensed by another issuing jurisdiction for at least one year.
- c. When the person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.
- d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.
- e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

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f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the state fire marshal shall determine if the cause for the action was corrected and the matter resolved. If the state fire marshal determines that the matter has not been resolved by the jurisdiction imposing discipline, the state fire marshal shall not issue or deny a license to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the state fire marshal shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees.

i. The person does not have a criminal history that would prevent the person from holding the commercial explosive contractor license or commercial blaster license applied for in this state.

235.7(3) A person licensed pursuant to this rule is subject to the laws regulating the person's practice in this state and is subject to the jurisdiction of the state fire marshal.

235.7(4) This rule does not apply to any of the following:

a. The ability of the state fire marshal to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the state fire marshal to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the state fire marshal requires an application to take and pass an examination specific to the laws of this state, the state fire marshal shall issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

235.7(5) Except as provided in subrule 235.7(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as a commercial explosive contractor or commercial blaster may be considered to have met any education, training, or work experience requirements imposed by the state fire marshal in this state if the person has three or more years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the state fire marshal.

235.7(6) A person applying for a license in this state under the requirements of this subrule shall submit the request in writing to the state fire marshal as established in subrule 235.1(1) providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

ITEM 8. Renumber existing rules **661—235.7(101A,252J)** to **661—235.9(101A,272D)** as **661—235.10(101A,252J)** to **661—235.12(101A,272D)**.

ITEM 9. Amend renumbered rule 661—235.8(101A) as follows:

661—235.8(101A) Inventory and records. Each licensed commercial explosive business shall maintain records as referenced in the National Fire Protection Association (NFA) chapter 495 "Explosive Material Code" as adopted by reference in rule 661—231.1(101A).

~~**235.8(1)** Each licensed commercial explosive business shall maintain records to show amounts of explosive material on hand at the beginning and end of each working day and quantities dispensed and to whom. The business shall conduct physical inventories at least once annually. Anytime a shortage appears that is in excess of limits established by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the shortage shall be reported within 24 hours to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal Form 4712 (Department of Treasury, Internal Revenue Service) to be completed, a copy of which shall be sent to the commercial explosive licensing program, as specified in rule 661—235.1(101A). Inventory records shall be retained for five years after the date for which the activity is recorded and shall be made available upon request of the fire marshal.~~

~~**235.8(2)** Each licensed individual blaster shall maintain a daily record of all explosive materials received and fired or otherwise disposed of by the individual blaster. Such records are the property of the business license holder, who shall retain them for five years and make them available to the fire marshal upon request.~~

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~~235.8(3) Any loss, theft, or unlawful removal of explosive materials shall be reported within 24 hours to the Bureau of Alcohol, Tobacco, Firearms and Explosives, to the fire marshal and to the local law enforcement agency having jurisdiction.~~

~~235.8(4) Any accident involving explosive materials that causes an injury to a person which requires medical attention or that causes damage to property beyond the limits of the property on which the blasting is being conducted or to property for which the responsible person has not provided a written waiver to the blasting operation shall be reported promptly to the fire marshal.~~

ITEM 10. Adopt the following new rule 661—235.9(100C):

661—235.9(100C) Complaints. Complaints regarding the performance of any licensed contractor or blaster, failure of a licensed contractor or blaster to meet any of the requirements established in Iowa Code chapter 101A or this chapter or any other provision of law, or operation as a commercial explosive contractor or commercial blaster without licensure may be filed with the state fire marshal. Complaints should be addressed as follows:

State Fire Marshal Division
Iowa Department of Public Safety
Attn: SFM Licensing Administration
215 East 7th Street
Des Moines, Iowa 50319

Complaints may be submitted by electronic mail to sfmlicense@dps.state.ia.us or by the United States Postal Service.

Complaints should be as specific as possible and shall clearly identify the contractor or blaster against whom the complaint is filed. Complaints shall be submitted in writing to the state fire marshal. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

ITEM 11. Amend renumbered rules 661—235.10(101A,252J) to 661—235.12(101A,272D) as follows:

661—235.10(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.

235.10(1) The state fire marshal may refuse to issue a commercial contractor or individual blaster license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

a. Finding that the applicant or licensee is not of good moral character and sound judgment. “Not of good moral character and sound judgment” means disqualified by any provision of federal or Iowa law from possessing explosives, firearms, or offensive weapons.

b. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.

c. Finding that the applicant or licensee falsified information in the current or any previous license application.

d. Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

e. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A, this chapter, or 661—Chapter 231.

f. Receipt of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

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g. Receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue, pursuant to Iowa Code chapter 272D.

h. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the applicant, in the courts of this state or another state, territory or country. Conviction as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

i. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the applicant's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

j. Willful or repeated violations of the provisions of this chapter.

235.10(2) An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child support recovery unit or a certificate of noncompliance from the department of revenue may appeal that action pursuant to 661—Chapter 10, except that wherever “commissioner of public safety” or “department of public safety” appears, “state fire marshal” shall be substituted. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit or the department of revenue shall be subject to the provisions of rule ~~661—235.7(101A,252J)~~ 661—235.10(101A,252J). Procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

235.10(3) The state fire marshal shall notify the employing commercial explosive ~~business~~ contractor licensee of the denial, suspension, or revocation of ~~an individual~~ a commercial explosive blaster license.

235.10(4) Disqualifications for criminal convictions limited.

a. Notwithstanding any other provision of law to the contrary, a person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the state fire marshal does not grant an exception pursuant to paragraph 235.10(4)“d.”

b. The state fire marshal shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

c. The state fire marshal shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on other similar basis.

d. The state fire marshal shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

(1) The nature and seriousness of the crime for which the applicant was convicted.

(2) The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, a forcible felony as defined in Iowa Code section 702.11, or domestic abuse assault in violation of Iowa Code section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.

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

(4) The age of the applicant at the time the offense was committed.

(5) Any treatment undertaken by the applicant.

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(6) Whether a certification of employability has been issued to the applicant pursuant to Iowa Code section 906.19.

(7) Any letters of reference submitted on behalf of the applicant.

(8) All other relevant evidence of rehabilitation and present fitness of the applicant.

e. An applicant may petition the state fire marshal in writing as specified in 661—subrule 275.1(4) for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license. The state fire marshal shall issue such a determination within 30 days of receiving the petition. The state fire marshal shall determine whether an applicant's criminal record will prevent the applicant from receiving a license and while determining whether to deny an applicant's application on the basis of an applicant's criminal conviction. The state fire marshal may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed \$25.

f. When the state fire marshal denies an applicant a license solely or partly because of the applicant's prior conviction of a crime, the state fire marshal shall notify the applicant in writing of all of the following:

(1) The grounds for the denial or disqualification.

(2) That the applicant has the right to a hearing to challenge the state fire marshal's decision.

(3) The earliest date the applicant may submit a new application.

(4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

g. A determination by the state fire marshal that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in paragraph 235.10(4) "d" sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this rule or Iowa Code chapter 17A, the state fire marshal shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.

i. The state fire marshal may require an applicant with a criminal record to submit the applicant's complete criminal record detailing an applicant's offenses with an application. The state fire marshal may also require an applicant with a criminal record to submit a personal statement regarding whether each offense directly relates to the duties and performance of the applicant's occupation. For the purposes of this subrule, "complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

661—235.11(101A,252J) Child support collection procedures. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

235.11(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

235.11(2) The effective date of revocation or suspension of a license or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee or applicant.

235.11(3) Licensees and applicants for licensure shall keep the state fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

235.11(4) All fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

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235.11(5) In the event a licensee or applicant files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation, suspension or denial of the issuance or renewal of a license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

NOTE: The procedures established in this rule implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensure program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

661—235.12(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

235.12(1) The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

235.12(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service of the notice upon the licensee.

235.12(3) Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

235.12(4) All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

235.12(5) In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

235.12(6) Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in ~~rule 661—235.9(101A,272D)~~ this rule implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

[Filed 12/23/20, effective 2/17/21]

[Published 1/13/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

ARC 5396C**PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed****Rule making related to licensing of fire protection and alarm systems contractors and technicians**

The State Fire Marshal hereby amends Chapter 275, “Certification of Automatic Fire Extinguishing System Contractors,” Chapter 276, “Licensing of Fire Protection System Installers and Maintenance Workers,” and Chapter 277, “Certification of Alarm System Contractors and Installers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 100C.7 and 100D.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 100C and 100D.

Purpose and Summary

The purposes of amending Chapters 275, 276, and 277 are to remove provisional language that no longer applies, to add updated language for new qualifications that are now accepted by the State Fire Marshal’s office, and to comply with changes passed in 2020 Iowa Acts, House File 2627, for Iowa Code chapter 272C. Included in the updates are references to the current titles for licensure within the industry. Provisional language that has been removed related to dates ten years or more in the past that were specifically referenced within the rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5273C**. No public comments were received. Minor changes from the Notice were made for internal consistency.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on December 23, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

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Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **661—Chapter 275**, title, as follows:

CERTIFICATION LICENSING OF AUTOMATIC FIRE EXTINGUISHING PROTECTION SYSTEM CONTRACTORS

ITEM 2. Amend rules 661—275.1(100C) to 661—275.4(100C) as follows:

661—275.1(100C) Establishment of program. There is established within the state fire marshal division a fire extinguishing system contractors ~~certification licensure~~ program called the fire protection system contractor license. The program is established pursuant to Iowa Code chapter 100C.

275.1(1) Certification Licensure required. No person shall act as a fire extinguishing system contractor without being currently ~~certified licensed~~ as a fire extinguishing protection system contractor by the state fire marshal, except as provided in subrule 275.1(3).

275.1(2) Endorsement. The ~~certification licensure~~ of each contractor shall carry an endorsement for one or more of the following:

- a. ~~Automatic sprinkler system layout; installation.~~
- b. ~~Special hazards suppression systems; installation.~~
- c. ~~Installation of preengineered~~ Preengineered dry chemical or wet agent fire suppression systems; installation.
- d. ~~Installation of preengineered~~ Preengineered water-based fire suppression systems in one- and two-family dwellings; installation.
- e. ~~Testing and inspection of water-based systems; or Automatic sprinkler system maintenance inspection.~~
- f. ~~Any combination thereof~~ Special hazards system maintenance inspection.
- g. Preengineered dry chemical or wet agent fire suppression systems maintenance inspection.
- h. Preengineered water-based fire suppression systems in one- and two-family dwellings maintenance inspection.

Any person acting as a fire extinguishing system contractor shall do so only in relation to systems covered by the endorsements on the contractor's ~~certification licensure~~.

275.1(3) Length of certification licensure. ~~Certification~~ A license shall normally be for one year and shall expire on March 31 each year. A ~~certification licensure~~ which is effective on a date other than April 1 shall be effective on the date on which the ~~certification licensure~~ is issued and shall expire on the following March 31.

a. ~~Certification between July 1, 2006, and October 1, 2006. A contractor may operate without certification between July 1, 2006, and September 30, 2006, as follows:~~

(1) ~~Prior to August 15, 2006, the contractor may operate as a contractor only if the contractor intends to apply for certification by August 15, 2006; a contractor operating under this subparagraph may perform contracting work only within the scope of certification for which the contractor intends to apply.~~

(2) ~~On or after August 15, 2006, and before October 1, 2006, the contractor may operate as a contractor subject to this chapter only if the contractor has applied for certification under this chapter.~~

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~~A contractor operating under this subparagraph may perform contracting work only within the scope of certification for which the contractor has applied.~~

~~b. Any certification for which application is made by August 15, 2006, and accepted, shall be effective retroactive to July 1, 2006, and appropriate fees shall be collected pursuant to rule 661—275.5(100C).~~

~~275.1(4) Inquiries. Inquires Inquiries regarding the fire extinguishing system contractors certification program protection system contractor license may be addressed to:~~

~~Fire Extinguishing System Contractors Certification Program
State Fire Marshal Division
Iowa Department of Public Safety
State Public Safety Headquarters Building Attn: SFM Licensing Administration
215 East 7th Street
Des Moines, Iowa 50319~~

~~Inquiries may be addressed by electronic mail to fescep@dps.state.ia.us, by telephone to (515)725-6145, or by facsimile to (515)725-6172 sfmlicense@dps.state.ia.us or by the United States Postal Service.~~

~~661—275.2(100C) Definitions. The following definitions apply to rules 661—275.1(100C) through 661—275.7(100C) 661—275.9(100C):~~

~~“Aerosol fire extinguishing system” means a system that uses a combination of microparticles and gaseous matter to flood the protected area. The particles are in a vapor state until discharged from the device. On release, a chain reaction produces solid particles and gaseous matter to suppress the fire.~~

~~“Automatic dry-chemical extinguishing system” means a system supplying a powder composed of small particles, usually of sodium bicarbonate, potassium bicarbonate, urea-potassium-based bicarbonate, potassium chloride, or monoammonium phosphate, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption, and the proper flow capabilities.~~

~~“Automatic fire extinguishing system” means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems, aerosol systems, hybrid-inert water mist systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors and alarm systems advisory board.~~

~~“Automatic sprinkler system” means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.~~

~~“Carbon dioxide extinguishing system” means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.~~

~~“Clean agent” means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.~~

~~“Deluge system” means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.~~

~~“Dry chemical” means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.~~

~~“Dry pipe sprinkler system” means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from~~

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the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, which allows the water to flow into the piping system and out the opened sprinklers.

“Fire extinguishing system contractor,” “fire protection system contractor,” or “contractor” means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

“Foam extinguishing system” means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

“Halogenated extinguishing system” means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

“Hybrid-inert water mist system” means a system that combines the benefits of inert gas systems and water mist systems to extinguish fires. These systems provide both extinguishment and cooling to prevent reignition utilizing nontoxic, non-ozone-depleting hybrid media.

“Layout” means drawings, calculations and component specifications to achieve the specified system design installation. “Layout” does not include design.

“Listed” means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

“Maintenance inspection” means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, “maintenance inspection” does not include an inspection completed by a local building official, fire inspector, or insurance inspector, when acting in an official capacity.

“Offense directly relates” refers to either of the following:

1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.
2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.

“Preengineered dry chemical or wet agent fire suppression system” means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards against which these systems protect are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected against by these systems are contained in the manufacturer’s installation manual, which is referenced as part of the listing.

“Preengineered water-based system” means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

“Responsible managing employee” means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who is designated as a responsible managing employee for a fire extinguishing system contractor and who meets the requirements for a responsible managing employee established in rule 661—275.3(100C).

“Special hazards ~~suppression~~ system” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

“Wet agent” or *“wet chemical”* means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

661—275.3(100C) Responsible managing employee. Each fire extinguishing system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 275.1(2). If

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more than one responsible managing employee is designated, the contractor shall indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

275.3(1) The responsible managing employee or employees shall be designated in the application for ~~certification~~; licensure, and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the fire marshal, in writing, within 30 calendar days, ~~on a form designated by the fire marshal as provided in subrule 275.1(4).~~

275.3(2) If a responsible managing employee is no longer acting in that role and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the state fire marshal, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the state fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

275.3(3) If a responsible managing employee designated by a fire extinguishing system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the state fire marshal, in writing as provided in subrule 275.1(4), of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity, ~~on a form designated by the fire marshal~~. If the state fire marshal has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the state fire marshal shall suspend the ~~certification~~ license of the fire extinguishing protection system contractor.

275.3(4) A responsible managing employee or an alternate responsible managing employee shall meet one of the ~~following~~ requirements for the following endorsements:

a. ~~Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design.~~ Automatic sprinkler system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level III or above in water-based systems layout, or

(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

b. ~~Current certification by the National Institute for Certification in Engineering Technologies at level III or above in fire protection technology, for automatic sprinkler system layout, special hazards suppression systems, or both.~~ Special hazards system installation:

(1) ~~Prior to April 1, 2008, a fire extinguishing system contractor may receive provisional certification if the person designated as the contractor's responsible managing employee has initiated procedures for obtaining certification by the National Institute for Certification in Engineering Technologies at level III in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both, and has satisfactorily completed testing which is offered by a third party and has been approved by the fire marshal, for competency in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. The contractor shall provide the fire marshal with notification and documentation of the satisfactory completion of required third party testing within 30 days after the date on which the contractor's provisional certification was initially issued.~~ Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design, or

~~After one year of provisional certification of the contractor, the responsible managing employee shall have current certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. Documentation that this requirement has been met shall be provided by~~

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~~the contractor to the fire marshal within 30 days after the one-year anniversary of the effective date of the initial provisional certification.~~

~~Provisional certification shall not be recognized on or after April 1, 2009.~~

~~(2) Reserved. Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level III or above in special hazard systems, or~~

~~(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~c. A contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets the requirements specified in subparagraph (1). Until April 1, 2009, a contractor may install preengineered dry chemical or wet agent fire suppression systems, if the responsible managing employee meets the requirements specified in subparagraph (2), and the contractor has received provisional certification prior to April 1, 2008. Preengineered dry chemical or wet agent fire suppression system installation:~~

~~(1) Certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology, for special hazards suppression systems; certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems; or satisfactory completion of an applicable training or testing program which has been approved by the fire marshal. Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in special hazard systems, or~~

~~(2) On or prior to April 1, 2008, a contractor may receive provisional certification with endorsement for installation of preengineered dry chemical or wet agent systems if the responsible managing employee has completed training required by a manufacturer of at least one system which the contractor installs or maintains. A contractor who is applying for provisional certification on or after April 1, 2007, shall provide documentation to the fire marshal of such training. A contractor who has received provisional certification prior to April 1, 2007, shall, by April 1, 2007, provide documentation of either training required by a manufacturer of at least one system which the contractor installs or maintains or of the training described in subparagraph (1). If satisfactory documentation is provided of the training required in subparagraph (1), the provisional status of the certification shall be removed at no cost to the contractor. Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire suppression systems, preengineered industrial fire suppression systems, or both, or~~

~~Provisional certification shall not be recognized on or after April 1, 2009.~~

~~(3) Satisfactory completion of any training required by the manufacturer for the installation of any system the contractor installs, or~~

~~(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~d. A contractor may install preengineered water-based systems in one or two family dwellings if the responsible managing employee meets the following requirements Preengineered water-based fire suppression system in one- and two-family dwellings installation:~~

~~(1) Satisfactory completion of any training required by the manufacturer for the installation of any system the contractor installs; and Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in special hazard systems, or~~

~~(2) Satisfactory completion of an applicable training or testing program which has been approved by the fire marshal. any training required by the manufacturer for the installation of any system the contractor installs, or~~

~~(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~Until April 1, 2008, a contractor may receive provisional certification if the responsible managing employee has satisfactorily completed training required by the manufacturer for the installation of each system which the contractor installs. The provisional certification shall not be recognized on or after April 1, 2009.~~

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~~e. A contractor may inspect and test water-based fire extinguishing systems if the responsible managing employee has current certification from the National Institute for Certification in Engineering Technologies at level III in fire protection technology, inspection and testing of water-based systems. Automatic sprinkler system maintenance inspection:~~

~~(1) Prior to April 1, 2008, a contractor may receive provisional certification with an endorsement for inspection and testing of water-based fire extinguishing systems if the responsible managing employee has initiated procedures for obtaining certification from the National Institute for Certification in Engineering Technologies at level III in fire protection technology, inspection and testing of water-based systems. After one year of provisional certification with an endorsement for inspection and testing of water-based fire extinguishing systems, the responsible managing employee shall have certification from the National Institute for Certification in Engineering Technologies at level II in fire protection technology, inspection and testing of water-based systems. Current certification from the National Institute for Certification in Engineering Technologies (NICET) at level II in water-based system layout, or~~

~~Provisional certification shall not be recognized on or after April 1, 2009.~~

~~(2) Reserved. Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in inspection and testing of water-based systems, or~~

~~(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~f. Special hazards system maintenance inspection:~~

~~(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in special hazard systems, or~~

~~(2) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~g. Preengineered dry chemical or wet agent fire suppression system maintenance inspection:~~

~~(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or~~

~~(2) Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire suppression systems, preengineered industrial fire suppression systems, or both, or~~

~~(3) Satisfactory completion of any training required by the manufacturer for the maintenance and inspection of any system the contractor inspects, or~~

~~(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~h. Preengineered water-based fire suppression system maintenance inspection:~~

~~(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or~~

~~(2) Satisfactory completion of any training required by the manufacturer for the maintenance and inspection of any system the contractor inspects, or~~

~~(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

275.3(5) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the state fire marshal, such approval is required prior to acceptance of the training or testing to meet certification licensure requirements. Approval by the state fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the state fire marshal. Any individual, firm or organization seeking to obtain such approval may shall apply to the state fire marshal no later than July 1, 2021, and no later than July 1 every two years thereafter. An application form for approval of a testing or training program may be obtained by contacting the fire extinguishing system contractors certification program Program information and any other documentation requested by the state fire marshal for consideration shall be submitted to the state fire marshal as specified in subrule 275.1(4). Training and testing approved by the state fire marshal will be listed on the state fire marshal's licensing website.

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275.3(6) Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification ~~or certifications~~ or other training requirements met by the responsible managing employee. Work performed in the state shall not begin prior to:

- a. Receipt of new or renewed license issued by the state fire marshal to the applicant, or
- b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the state fire marshal to the applicant.

275.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the state fire marshal or local fire ordinance or standard adopted by reference therein.

661—275.4(100C) Certification License requirements. A fire extinguishing system contractor shall meet all of the following requirements in order to receive ~~certification licensure~~ licensure from the state fire marshal and shall continue to meet all requirements throughout the period of ~~certification licensure~~. The contractor shall notify the state fire marshal, in writing, ~~on a form designated by the fire marshal as specified in subrule 275.1(4)~~, within 30 calendar days if the contractor fails to meet any requirement for ~~certification licensure~~.

275.4(1) No change.

275.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the state fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of a fire extinguishing system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

275.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code. The contractor shall provide a copy of the contractor's current registration from the Iowa workforce development department with the contractor's application for licensure.

EXCEPTION: A contractor shall not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of “contractor” for purposes of Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code. Written documentation of such exemption must be provided to the state fire marshal at the time of application for licensure as a fire protection system contractor.

275.4(4) No change.

275.4(5) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsements for which the licensee is renewing.

ITEM 3. Renumber rules **661—275.5(100C)** to **661—275.7(100C)** as **661—275.6(100C)** to **661—275.8(100C)**.

ITEM 4. Adopt the following new rule 661—275.5(272C):

661—275.5(272C) Licensure of persons licensed in other jurisdictions.

275.5(1) For the purposes of this rule, “issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

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275.5(2) Notwithstanding any other provision of law, a fire protection system contractor license shall be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

a. The person is currently licensed by at least one other issuing jurisdiction as a fire protection system contractor with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.

b. The person has been licensed by another issuing jurisdiction for at least one year.

c. When the person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience requirements, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.

d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.

e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the state fire marshal shall determine if the cause for the action was corrected and the matter resolved. If the state fire marshal determines that the matter has not been resolved by the jurisdiction imposing discipline, the state fire marshal shall not issue or deny a license to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the state fire marshal shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees.

i. The person does not have a criminal history that would prevent the person from holding the fire protection system contractor license applied for in this state.

275.5(3) A person licensed pursuant to this rule is subject to the laws regulating the person's practice in this state and is subject to the jurisdiction of the state fire marshal.

275.5(4) This rule does not apply to any of the following:

a. The ability of the state fire marshal to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the state fire marshal to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the state fire marshal requires an application to take and pass an examination specific to the laws of this state, the state fire marshal shall issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

275.5(5) Except as provided in subrule 275.5(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as a fire protection system contractor may be considered to have met any education, training, or work experience requirements imposed by the state fire marshal in this state if the person has three or more years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the state fire marshal.

275.5(6) A person applying for a license in this state under the requirements of this subrule shall submit a request in writing to the state fire marshal as established in subrule 275.1(4) providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

ITEM 5. Amend renumbered rules 661—275.6(100C) to 661—275.8(100C) as follows:

661—275.6(100C) Application and fees.

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275.6(1) Application. Any contractor seeking certification licensure as a fire extinguishing protection system contractor shall submit a completed application form to the state fire marshal. The application shall be filed no later than 30 days prior to the date ~~on which certification is required of beginning work in this state or the date on which an existing certification license expires~~. An application form may be obtained from the state fire marshal or from the Web site of the fire extinguishing system contractors certification program state fire marshal's website. The application form shall be submitted with all required attachments and the required application fee established in subrule ~~275.5(2)~~ 275.6(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The ~~Web site~~ website for the fire ~~extinguishing system contractors certification protection system contractor license program~~ is: <http://www.dps.state.ia.us/fm/fescep/index.shtml>
[dps.iowa.gov/divisions/state-fire-marshal/licensing/fire-protection](http://www.dps.state.ia.us/divisions/state-fire-marshal/licensing/fire-protection).

275.6(2) Certification License fee.

a. The ~~certification license fee~~ shall be \$500 per year. ~~If an application is denied, all except \$100 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.~~

b. If an application for certification licensure provides for more than one responsible managing employee pursuant to rule 661—275.3(100C), there shall be an additional fee of \$50 for each responsible managing employee beyond the first. If an application for certification licensure provides for more than one endorsement as provided in subrule 275.1(2), there shall be an additional fee of \$50 for each endorsement beyond the first.

c. The state fire marshal shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

~~EXCEPTION: If a certification is effective after April 1 and no later than June 30, the certification fee shall be \$500. The certification fee for a certification which becomes effective between July 1 and September 30 shall be \$400. The certification fee for a certification which becomes effective between October 1 and December 31 shall be \$300. The certification fee for a certification which becomes effective between January 1 and March 31 shall be \$200. If an application for certification provides for more than one responsible managing employee pursuant to rule 661—275.3(100C), there shall be an additional fee of \$50 for each responsible managing employee beyond the first. If an application for certification provides for more than one endorsement as provided in subrule 275.1(2), there shall be an additional fee of \$50 for each endorsement beyond the first.~~

275.6(3) Payment. The ~~certification license fee~~ shall be submitted electronically or by draft, check, or money order in the applicable amount payable to the Fire Extinguishing System Contractors Certification Program Iowa State Fire Marshal Division. ~~Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 275.1(4). If the application is denied, the certification fee less \$100 shall be returned to the applicant, except as provided in subrule 275.5(2). Payment shall not be made in cash.~~

275.6(4) Amended certification licensure fee. The fee for issuance of an amended certification license is \$100 the difference between the original license fee paid and changes in endorsement(s) or responsible managing employee(s), if applicable. The fee shall be submitted with the request for an amended certification license. A contractor shall request and the fire marshal shall issue an amended certificate license for any of the items listed in paragraphs "*a*," "*b*," and "*c*" below, and a fee does not apply:

- a.* A change in the designation of a responsible managing employee;
- b.* A change in insurance coverage; or
- c.* A change in any other material information included in or with the initial or renewal application. A change in the address of the business is a material change. However, if the request for an amended certificate license is solely a change of business address, the address of the business to which the certificate license being amended was sent is in an area subject to a disaster emergency proclamation

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issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended ~~certificate~~ license shall be issued.

d. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended ~~certification~~ license or payment of the amended ~~certification~~ license fee.

275.6(5) Attachments. Required attachments to the application for ~~certification~~ licensure include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 275.4(2). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the contractor within the scope of ~~certification~~ licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable ~~certification~~ licensure requirements.

c. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:

- (1) Proof of residency in this state.
- (2) Proof all conditions are met as established in rule 661—275.5(272C).
 1. Copy of a license from other issuing jurisdiction.
 2. Evidence the applicant met the issuing jurisdiction's educational requirements and, if applicable, work experience requirements.
 3. Evidence the applicant passed the issuing jurisdiction's required examination, if applicable.
 4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.
 5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.

661—275.7(100C) Complaints. Complaints regarding the performance of any ~~certified~~ licensed contractor, failure of a ~~certified~~ licensed contractor to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as a fire extinguishing system contractor without ~~certification~~ licensure may be filed with the state fire marshal. Complaints should be addressed as follows:

~~Fire Extinguishing System Contractors Certification Program~~
 State Fire Marshal Division
 Iowa Department of Public Safety
 State Public Safety Headquarters Building Attn: SFM Licensing Administration
 215 East 7th Street
 Des Moines, Iowa 50319

Complaints may be submitted by electronic mail to ~~fescep@dps.state.ia.us~~ or by facsimile to (515)725-6172 ~~sfmlicense@dps.state.ia.us~~ or by the United States Postal Service.

Complaints should be as specific as possible and shall clearly identify the contractor against whom the complaint is filed. ~~A form which may be used to file complaints is available on the Web site of the fire extinguishing system contractors certification program. Complaints may be filed without using the complaint form provided, but shall be submitted in writing.~~ Complaints shall be submitted in writing to the state fire marshal. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

NOTE: ~~The Web site for the fire extinguishing system contractors certification program is:~~ <http://www.dps.state.ia.us/fm/fescep/index.shtml>

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661—275.8(100C) Denial, suspension, or revocation of ~~certification~~ licensure; civil penalties; and appeals. The state fire marshal may deny, suspend or revoke the ~~certification~~ license of a contractor, or assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as a fire extinguishing system contractor is violated.

275.8(1) Denial. The state fire marshal may deny an application for ~~certification~~ licensure for reasons including, but not limited to:

a. If the applicant makes a false statement on the application form or in any other submission of information required for ~~certification~~ license. “False statement” means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for ~~certification~~ licensure established in this chapter.

c. If the applicant is currently barred for cause from acting as a fire extinguishing system contractor in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire extinguishing system contractor and if the basis of that action reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have been previously barred for cause from operating as a fire extinguishing system contractor in another jurisdiction and is no longer barred from doing so, the state fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a certified licensed contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

~~e. If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a certified contractor.~~ Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. “Conviction” as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee’s profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

275.8(2) Suspension. A suspension of a ~~certification~~ license may be imposed by the state fire marshal for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as a fire extinguishing system contractor in this state. Failure to provide any notice to the state fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the ~~certification~~ license even after the period of the suspension.

275.8(3) Revocation. A revocation is a termination of a ~~certification~~ license. A ~~certification~~ license may be revoked by the state fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire extinguishing system incorrectly installed by a certified licensed contractor or when information comes to the attention of the state fire marshal which, if known to the state fire marshal when the application was being considered, would have resulted in denial of the ~~certification~~ license.

A new application for ~~certification~~ licensure from a contractor whose ~~certification~~ license had previously been revoked shall not be considered for a period of one year after the effective date of

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the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The state fire marshal may specify in the revocation order a longer period than one year before a new application for certification licensure may be considered. When a new application for certification licensure from a contractor whose certification license was previously revoked is being considered, the applicant may be denied certification licensure based upon the same information which was the basis for revocation even after any such period established by the state fire marshal has expired.

275.8(4) Disqualifications for criminal convictions limited.

a. Notwithstanding any other provision of law to the contrary, a person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the state fire marshal does not grant an exception pursuant to paragraph 275.9(4) "d."

b. The state fire marshal shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

c. The state fire marshal shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on another similar basis.

d. The state fire marshal shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

(1) The nature and seriousness of the crime for which the applicant was convicted.

(2) The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, a forcible felony as defined in Iowa Code section 702.11, or domestic abuse assault in violation of Iowa Code section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.

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

(4) The age of the applicant at the time the offense was committed.

(5) Any treatment undertaken by the applicant.

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

(7) Any letters of reference submitted on behalf of the applicant.

(8) All other relevant evidence of rehabilitation and present fitness of the applicant.

e. An applicant may petition the state fire marshal in writing as specified in subrule 275.1(4) for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license. The state fire marshal shall issue such a determination within 30 days of receiving the petition. The state fire marshal shall determine whether an applicant's criminal record will prevent the applicant from receiving a license while determining whether to deny an applicant's application on the basis of an applicant's criminal conviction. The state fire marshal may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed \$25.

f. When the state fire marshal denies an applicant a license solely or partly because of the applicant's prior conviction of a crime, the state fire marshal shall notify the applicant in writing of all of the following:

(1) The grounds for the denial or disqualification.

(2) That the applicant has the right to a hearing to challenge the state fire marshal's decision.

(3) The earliest date the applicant may submit a new application.

(4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

g. A determination by the state fire marshal that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of

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the applicant's profession must be documented in written findings for each factor specified in paragraph 275.8(4) "d" sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this rule or Iowa Code chapter 17A, the state fire marshal shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.

i. The state fire marshal may require an applicant with a criminal record to submit the applicant's complete criminal record detailing an applicant's offenses with an application. The state fire marshal may also require an applicant with a criminal record to submit a personal statement regarding whether each offense directly relates to the duties and performance of the applicant's occupation. For the purposes of this subrule, "complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

~~275.8(4)~~ 275.8(5) *Civil penalties.* The state fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

~~275.8(5)~~ 275.8(6) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the ~~certified~~ licensed contractor by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of ~~certification~~ licensure of a contractor, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor.

c. Contractors shall keep the state fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the state fire marshal with copies, within ~~7~~ seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor before a ~~certificate~~ license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a ~~certification~~ license or has suspended or revoked a ~~certification~~ license pursuant to Iowa Code chapter 252J.

e. In the event a contractor files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the ~~certification~~ license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule ~~275.7(5)~~ 275.8(6) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a ~~certification~~ licensure program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

275.8(7) Suspension or revocation for nonpayment of debts owed state or local government. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D:

a. The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

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b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

c. Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the state fire marshal with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

d. All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

e. In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 275.8(7) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

275.8(6) Appeals. Any denial, suspension, or revocation of a ~~certification~~ license, or any civil penalty imposed upon a ~~certified~~ licensed contractor under this rule, other than one imposed pursuant to subrule ~~275.7(5)~~ 275.8(6) or 275.8(7), may be appealed by the contractor within 14 days of receipt of the notice. Appeals of actions taken by the state fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

ITEM 6. Adopt the following new rule 661—275.9(272C):

661—275.9(272C) Veterans, military service members, and certain survivor beneficiaries. Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a fire protection system contractor shall apply for licensure following 661—Chapter 278.

ITEM 7. Amend **661—Chapter 276**, title, as follows:

~~LICENSING OF FIRE PROTECTION SYSTEM INSTALLERS AND
MAINTENANCE WORKERS TECHNICIANS~~

ITEM 8. Amend rules 661—276.1(100D) to 661—276.3(100D) as follows:

661—276.1(100D) Establishment of program. There is established within the state fire marshal division a fire protection system installer and maintenance worker licensing program called the fire protection system technician license. The program is established pursuant to ~~2009~~ Iowa Code Supplement chapter 100D ~~as amended by 2010 Iowa Acts, Senate File 2355~~.

276.1(1) Licensing required. A person shall not act as a fire protection system installer and maintenance worker without being currently licensed as a fire protection system ~~installer and maintenance worker~~ technician by the state fire marshal, except for the following ~~as provided in 2009 Iowa Code Supplement section 100D.11 as amended by 2010 Iowa Acts, Senate File 2355~~:

a. A person licensed as a professional engineer pursuant to Iowa Code chapter 542B who is providing consultation or develops plans or other work concerning the installation or design of fire protection systems shall not be required to be licensed pursuant to this chapter.

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b. A person whose work on fire protection systems is limited to routine maintenance shall not be required to be licensed pursuant to this chapter.

c. A person who is licensed as a plumber pursuant to Iowa Code chapter 105 and whose work is within the scope of that license shall not be required to be licensed pursuant to this chapter.

d. A person who is working as an apprentice fire protection system ~~installer and maintenance worker~~ technician under the direct supervision of a responsible managing employee or under the direct supervision of a licensed fire ~~sprinkler installer and maintenance worker~~ protection system technician who is on site while the work is being performed shall not be required to be licensed pursuant to this chapter. For purposes of this rule, "direct supervision" means that the person supervising the person performing the work shall be on the job site while the work being supervised is performed.

e. A person who demolishes fire protection system components shall not be required to be licensed pursuant to this chapter when the work involves the demolition of a complete fire protection system or if the work results in ~~placing a fire protection system's being placed~~ system out of service. If a fire protection system has been placed out of service, work required to place it into service must be performed by a person licensed to perform such work pursuant to this chapter. A person who demolishes a fire protection system or components thereof shall comply with any local ordinance, statute or administrative rule which requires notification to a local fire authority or the state fire marshal.

f. A person who is a responsible managing employee of a fire extinguishing system contractor ~~certified~~ licensed pursuant to Iowa Code chapter 100C shall not be required to be licensed pursuant to this chapter, provided that the work performed which is subject to the provisions of this chapter is within the scope of the endorsement or endorsements of the ~~certification~~ licensure of the ~~certified~~ licensed contractor employing the responsible managing employee.

276.1(2) Endorsement. Any person acting as a fire protection system installer and maintenance worker shall do so only in relation to systems and work covered by the endorsements on the person's license. The license of each ~~installer and maintenance worker~~ technician shall carry an endorsement for one or more of the following:

- a. Automatic sprinkler system installation ~~and maintenance;~~
- b. Special hazards ~~fire suppression~~ system installation ~~and maintenance;~~
- c. ~~Installation of preengineered~~ Preengineered dry chemical or wet agent fire protection systems; installation.
- d. ~~Maintenance of preengineered dry chemical or wet agent fire protection systems;~~ Preengineered water-based fire protection systems in one- and two-family dwellings installation.
- e. ~~Installation of preengineered water-based fire protection systems in one- and two-family dwellings;~~ Automatic sprinkler system maintenance inspection.
- f. ~~Maintenance of preengineered water-based fire protection systems in one- and two-family dwellings;~~ Special hazards system maintenance inspection.
- g. ~~Any combination thereof~~ Preengineered dry chemical or wet agent fire protection systems maintenance inspection.
- h. Preengineered water-based fire protection systems in one- and two-family dwellings maintenance inspection, or
- i. Fire protection technician trainee.

276.1(3) Length of licensure. Licensure shall normally be for two years and shall expire on ~~December~~ March 31 of the ~~second~~ year following the issuance of the license after the license has been issued. A license which is effective on a date other than ~~January~~ April 1 shall be effective on the date on which the license is issued and shall expire on ~~December 31 of the year following the year in the next~~ March, after one year has passed from the date on which the license is was issued. The fee for licenses issued for less than a full two-year period shall be prorated on the basis of the number of quarters for which the license shall be in effect. A technician trainee license may be renewed once and a person may work as a technician trainee for a maximum of four years.

EXCEPTION: Any license issued before January 1, 2011, shall expire on December 31, 2012 currently issued with an expiration date of December 31 shall automatically be extended to expire the following March 31 without first requiring prior application for renewal or additional fees.

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276.1(4) Inquiries. Inquiries regarding the fire protection system ~~installer and maintenance worker technician~~ licensing program may be addressed to:

Fire Protection System Installer and Maintenance Worker Licensing Program
State Fire Marshal Division
Iowa Department of Public Safety
Attn: SFM Licensing Administration
215 East 7th Street
Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to ~~fesecep@dps.state.ia.us~~; by telephone to (515)725-6145; or by facsimile to (515)725-6172 ~~sfmlicense@dps.state.ia.us~~ or by the United States Postal Service.

661—276.2(100D) Definitions. The following definitions apply to rules 661—276.1(100D) through 661—276.6(100D) 661—276.8(100D):

“Aerosol fire extinguishing system” means a system that uses a combination of microparticles and gaseous matter to flood the protected area. The particles are in a vapor state until discharged from the device. On release, a chain reaction produces solid particles and gaseous matter to suppress the fire.

“Apprentice fire protection system installer and maintenance worker” means a person, other than a fire protection system technician trainee, who is registered in an apprenticeship program approved by the United States Department of Labor and who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee of a certified licensed fire extinguishing protection system contractor or licensed fire protection system ~~installer and maintenance worker technician~~.

“Automatic fire extinguishing system” means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, halogenated extinguishing systems, aerosol systems, hybrid-inert water mist systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors and alarm systems advisory board.

“Automatic sprinkler system” means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

“Carbon dioxide extinguishing system” means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

“Clean agent” means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.

“Deluge system” means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.

“Department” means the department of public safety.

“Dry chemical” means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.

“Dry pipe sprinkler system” means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, which allows the water to flow into the piping system and out the opened sprinklers.

“Fire extinguishing system contractor,” “fire protection system contractor,” or “contractor” means a person(s) engaging in or representing oneself to the public as engaging in the activity or business of

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layout, installation, repair, service, alteration, addition, testing, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state, as defined in Iowa Code section 100C.1, and who is ~~certified~~ licensed pursuant to Iowa Code chapter 100C.

"Fire protection system" means a sprinkler, standpipe, hose system, special hazard system, dry system, foam system, or any water-based fire protection system, whether engineered or preengineered and whether manually or automatically activated, used for fire protection purposes which may include an integrated system of underground and overhead piping and which may be connected to a water source.

"Fire protection system installation" means to set up or establish a fire protection system for use in an indicated space.

"Fire protection system installer and maintenance worker" or "fire protection system technician" means a person who, having the necessary qualifications, training, experience, and technical knowledge, conducts fire protection system installation and maintenance and who is licensed by the department to install or maintain the types of fire protection systems endorsed on the person's fire protection system technician license. A fire protection system technician shall be an employee of a fire protection system contractor or, if employed by anyone other than a fire protection system contractor, shall perform work requiring licensing as a fire protection system technician only on property owned or occupied by such employer and may obtain a license if the employer is not a licensed contractor.

"Fire protection system maintenance" means to provide repairs, including all inspections and tests, required to keep a fire protection system and its component parts in an operative condition at all times and the replacement of the system or its component parts when they become undependable or inoperable.

"Fire protection system technician trainee" means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee or a licensed fire protection system technician who is not a trainee. "Fire protection system technician trainee" does not mean a person who is an apprentice fire protection system installer and maintenance worker.

"Foam extinguishing system" means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

"Halogenated extinguishing system" means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

"Hybrid-inert water mist system" means a system that combines the benefits of inert gas systems and water mist systems to extinguish fires. These systems provide both extinguishment and cooling to prevent reignition utilizing nontoxic, non-ozone-depleting hybrid media.

"Layout" means drawings, calculations and component specifications to achieve the specified system design installation. "Layout" does not include design.

"Listed" means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of the production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

"Offense directly relates" refers to either of the following:

1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.

2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.

"Preengineered dry chemical or wet agent fire suppression system" means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards against which these systems protect are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected against by these systems are contained in the manufacturer's installation manual, which is referenced as part of the listing.

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“Preengineered fire protection system” means a fire protection system that has a predetermined flow rate, nozzle pressure, and quantity of extinguishing agent.

“Preengineered water-based fire protection system” means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

“Responsible managing employee” means a person who is an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor and who meets the requirements for a responsible managing employee established in Iowa Code chapter 100C and 661—Chapter 275.

“Routine maintenance” means the repair or replacement of existing fire protection system components of the same size and type, for which no changes in configuration are made. “Routine maintenance” does not mean any new installation or any expansion or extension of any existing fire protection system, nor does it mean inspection and testing.

“Special hazards system” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

“Temporary license” means a license issued to a fire protection system installer and maintenance worker who is licensed or certified in another state and who will perform work in Iowa only within areas covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

“Trainee” means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee or a licensed fire protection system installer and maintenance worker who is not a trainee. “Trainee” does not mean a person who is an apprentice fire protection system installer and maintenance worker.

“Wet agent” or *“wet chemical”* means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

661—276.3(100D) Licensing requirements. A fire protection system installer and maintenance worker shall meet all of the following requirements in order to receive a license from the state fire marshal and shall continue to meet all requirements throughout the period of licensure. A licensee shall notify the state fire marshal as established in subrule 276.1(4), in writing on a form designated by the fire marshal, within 30 calendar days if the licensee fails to meet any requirement for licensure.

276.3(1) Liability insurance. Each licensee, other than a trainee, shall maintain general and complete operations liability insurance covering any work that the licensee is authorized to perform pursuant to any endorsements on the license in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a.—The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b.—The licensee shall cease work immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A licensee shall not initiate any work which requires licensure pursuant to this chapter or to 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

EXCEPTION: A licensee is not required to maintain insurance coverage provided that the licensee’s employer maintains insurance coverage equivalent to the requirements of this subrule.

276.3(2) 276.3(1) Compliance. Each licensee shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and in any political subdivision in which the licensee is performing work.

276.3(3) 276.3(2) Training and experience requirements. An applicant for a license shall meet the following training and experience requirements one of the requirements for the following endorsements:

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~~a. For endorsement for automatic Automatic sprinkler system installation and maintenance, the applicant shall show evidence of the following:~~

~~(1) Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance approved by the United States Department of Labor, including four years of employment as an apprentice fire protection system installer and maintenance worker, and~~

~~(2) (1) A passing score on either the United Association Star Current certification by the National Inspection Testing and Certification Corporation (NITC) in the STAR Fire Sprinkler Sprinklerfitting Mastery Exam Examination, or on another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.~~

~~EXCEPTION: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for automatic sprinkler system installation and maintenance upon submission of evidence of completion of 8500 hours of employment as a fire protection system installer and maintenance worker and any of the following:~~

~~1. Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance of four or more years in duration, approved by the United States Department of Labor.~~

~~2. Passing the United Association Star Fire Sprinkler Mastery Exam or another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.~~

~~3. (2) Certification Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in Automatic Sprinkler System Layout at Level I water-based system layout, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this paragraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

~~(3) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in inspection and testing of water-based systems, or~~

~~(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~b. For endorsement for special Special hazards fire protection system installation and maintenance, the applicant shall show evidence of the following:~~

~~(1) Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems approved by the United States Department of Labor, and~~

~~(2) (1) Certification Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in Special Hazards Protection Systems at Level I special hazards systems, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this subparagraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

~~EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installation and maintenance of special hazards systems in lieu of meeting the apprenticeship requirement. Credit for such work experience obtained on or after October 1, 2010, shall be awarded only for work performed as an apprentice fire protection system installer and maintenance worker or as a licensed fire protection system installer and maintenance worker trainee. An applicant for a license, a certified contractor, or another employer of an applicant for a license may request determination by the state fire marshal that no appropriate apprenticeship is readily available to the~~

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applicant. In order to make such a request, the person making the request shall contact the program as specified in subrule 276.1(4) for instructions regarding information to be submitted.

~~EXCEPTION 2: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for special hazards fire protection system installation and maintenance upon submission of evidence of completion of 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:~~

~~1. Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems of four or more years in duration, approved by the United States Department of Labor.~~

~~2. Certification by the National Institute for Certification in Engineering Technologies in Special Hazards Systems Installation and Maintenance at Level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this paragraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

~~(2) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~c. For endorsement for installation or maintenance of preengineered Preengineered dry chemical or wet agent fire protection systems, the applicant shall show evidence of the following system installation:~~

~~(1) To be endorsed as a preengineered kitchen fire extinguishing system installer, the applicant shall have successfully completed training and an examination verified by a preengineered system manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

~~(2) To be endorsed as a preengineered kitchen fire extinguishing system maintenance worker, the applicant shall have successfully completed training by the applicant's employer or the system's manufacturer and passed a written or online examination for preengineered kitchen fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any testing which occurs on or after January 1, 2011, such approval shall be obtained in advance.~~

~~(3) To be endorsed as a preengineered industrial fire extinguishing system installer, the applicant shall possess a training and examination certification from a preengineered system manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

~~(4) To be endorsed as a preengineered industrial fire extinguishing system maintenance worker, the applicant shall have been trained by the applicant's employer and shall have passed a written or~~

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~~online examination for preengineered industrial fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.~~

(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or

(2) Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire extinguishing systems, preengineered industrial fire extinguishing systems, or both, or

(3) Satisfactory completion of any training required by the manufacturer for the installation of any system the technician installs, or

(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

~~d. For endorsement for installation of preengineered Preengineered water-based fire protection systems in one- and two-family dwellings, the applicant shall show evidence of satisfactory completion of any training required by the manufacturer for installation of any system that the applicant will install. Completion of training and examination which would qualify the person for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this paragraph.~~ installation:

(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or

(2) Satisfactory completion of any training required by the manufacturer for the installation of any system the technician installs, or

(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

e. Automatic sprinkler system maintenance inspection:

(1) Current certification by the National Inspection and Testing Certification Corporation (NITC) in the STAR Fire Sprinklerfitting Mastery Examination, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in water-based systems layout, or

(3) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in inspection and testing of water-based systems, or

(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

f. Special hazards system maintenance inspection:

(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or

(2) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

g. Preengineered dry chemical or wet agent fire protection system maintenance inspection:

(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or

(2) Current certification by the National Association of Fire Equipment Distributors (NAFED) in preengineered kitchen fire extinguishing systems, preengineered industrial fire extinguishing systems, or both, or

(3) Satisfactory completion of any training required by the manufacturer for maintenance and inspection of any system the technician inspects, or

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(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

h. Preengineered water-based fire protection systems in one- and two-family dwellings installation:

(1) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in special hazard systems, or

(2) Satisfactory completion of any training required by the manufacturer for maintenance and inspection of any system the technician inspects, or

(3) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

i. Fire protection system technician trainee, submission of a completed application no later than the first day of employment. A fire protection system technician trainee may perform work which requires licensure under this chapter only under the direct supervision of a licensed fire protection system technician or responsible managing employee whose license contains one or more endorsements as provided in subrule 275.1(2) or 276.1(2), and that work must be within the scope of work authorized by the endorsements held by the supervising fire protection system technician or responsible managing employee. At least one licensed fire protection system technician or responsible managing employee must be present for every three apprentice fire protection system installers and maintenance workers or fire protection system technician trainees performing work related to fire protection systems.

~~**276.3(4) 276.3(3) Continuing education.** A license may be renewed only if the licensee has completed 16 or more hours of continuing education in subjects related to the license and its endorsements during the two years preceding the date on which the new license will become effective if it is issued. recertification of the applicable requirements relative to the endorsement for which the license is being renewed. The continuing education must consist of courses approved by the fire marshal and must have been completed by the licensee during the two years prior to the effective date of the renewal. Any person or organization which wishes to obtain approval for continuing education courses to satisfy the provisions of this subrule shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. After January 1, 2011, prior approval must be obtained before a licensee may take a course for which credit toward the requirements of this subrule will be sought.~~

~~**276.3(5) Temporary license requirements.** A person may be issued a temporary license upon submission of an application to the state fire marshal with proof of equivalent licensure or certification in another state, accompanied by the applicable fee. The state fire marshal may require the submission of any documentation of licensure or certification in another state that the state fire marshal deems necessary. A temporary license may be used only in an area which is or has been within the past 180 days subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6. A temporary license shall be in effect for 90 days from the date of issuance and may be renewed once for an additional 90 days.~~

~~**276.3(4) Training or testing approval.** In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the state fire marshal, such approval is required prior to acceptance of the training or testing to meet licensure requirements. Approval by the state fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the state fire marshal. Any individual, firm, or organization seeking to obtain such approval shall apply to the state fire marshal no later than July 1, 2021, and no later than July 1 every two years thereafter. Program information and any other documentation requested by the state fire marshal for consideration shall be submitted as specified in subrule 276.1(4). Training and testing approved by the state fire marshal will be listed on the state fire marshal's licensing website.~~

~~**276.3(5) License applicability.** Work performed by a technician subject to these rules shall be limited to areas of competence indicated by the specific certification(s) or other training requirements met by the applicant. Work performed in the state shall not begin prior to:~~

~~a. Receipt of a new or renewed license issued by the state fire marshal to the applicant, or~~

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b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the state fire marshal to the applicant.

276.3(6) Portable fire extinguisher requirements. Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing a fire extinguishing system or portable fire extinguisher set forth in any rule of the state fire marshal or local fire ordinance or standard adopted by reference therein.

ITEM 9. Renumber rules **661—276.4(100D)** to **661—276.6(100D)** as **661—276.5(100D)** to **661—276.7(100D)**.

ITEM 10. Adopt the following new rule 661—276.4(272C):

661—276.4(272C) Licensure of persons licensed in other jurisdictions.

276.4(1) For the purposes of this rule, “issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

276.4(2) Notwithstanding any other provision of law, a fire protection system technician license shall be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

a. The person is currently licensed by at least one other issuing jurisdiction as a fire protection system technician with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.

b. The person has been licensed by another issuing jurisdiction for at least one year.

c. The person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience requirements, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.

d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.

e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the state fire marshal shall determine if the cause for the action was corrected and the matter resolved. If the state fire marshal determines that the matter has not been resolved by the jurisdiction imposing discipline, the state fire marshal shall not issue or deny a license to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the state fire marshal shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees.

i. The person does not have a criminal history that would prevent the person from holding the fire protection system technician license applied for in this state.

276.4(3) A person licensed pursuant to this rule is subject to the laws regulating the person’s practice in this state and is subject to the jurisdiction of the state fire marshal.

276.4(4) This rule does not apply to any of the following:

a. The ability of the state fire marshal to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the state fire marshal to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the state fire marshal requires an application to take and pass an examination specific to the laws of this state, the state fire marshal shall issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

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276.4(5) Except as provided in subrule 276.4(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as a fire protection system technician may be considered to have met any education, training, or work experience requirements imposed by the state fire marshal in this state if the person has three or more years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the state fire marshal.

276.4(6) A person applying for a license in this state under the requirements of this subrule shall submit the person's request in writing to the state fire marshal as established in subrule 276.1(4) providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

ITEM 11. Amend renumbered rules 661—276.5(100D) to 661—276.7(100D) as follows:

661—276.5(100D) Application and fees.

276.5(1) Application. Any person seeking licensure as a fire protection system ~~installer and maintenance worker~~ technician shall submit a completed application form to the state fire marshal. The application shall be filed no later than 30 days prior to the date ~~on which licensure is required of beginning work in this state~~ or the date on which an existing license expires. An application form may be obtained from the state fire marshal or from the ~~Web site of the fire protection system installer and maintenance worker licensing program~~ state fire marshal's website. The application form shall be submitted with all required attachments in subrule 276.5(5) and the required license fee established in subrule ~~276.4(2)~~ 276.5(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The ~~Web site~~ website for the fire protection system ~~installer and maintenance worker~~ technician licensing program is <http://www.dps.state.ia.us/fm/building/fescep/index.shtml> dps.iowa.gov/divisions/state-fire-marshal/licensing/fire-protection.

276.5(2) License fee.

a. The fee for a permanent or provisional license, except for a trainee license, shall be \$200. ~~If an application is denied, all except \$25 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the license fee shall be made if the license is revoked or if the denial of the license is based on the applicant's knowingly including false or misleading information on the application.~~ If an application for a license provides for more than one endorsement as provided in subrule 276.1(2), there shall be an additional fee of \$25 for each endorsement beyond the first.

b. The fee for a fire protection system technician trainee license shall be \$100.

~~*c.* The fee for a temporary license shall be \$50. A temporary license may be renewed once; the renewal fee shall be \$50.~~

The state fire marshal shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

276.5(3) Payment. The license fee shall be submitted electronically or by draft, check, or money order in the applicable amount payable to the Iowa Department of Public Safety State Fire Marshal Division. Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 276.1(4). Payment cannot be made in cash. The memo portion of the check should have the following notation: "Fire Protection System Installer and Maintenance Worker Licensing Program."

276.5(4) Amended license.

a. The fee for issuance of an amended license is \$25 the difference between the original license fee paid and changes in endorsement(s), if applicable. The fee shall be submitted with a request for an amended license. A licensee shall request and the state fire marshal shall issue an amended license for any of the following reasons, and a fee does not apply:

(1) A change in employer; A licensee may only transfer the licensee's technician license to another employer if the licensee paid the license fee at the time of original application. If the licensee's previous employer paid the license fee, the licensee must reapply for a new license under the licensee's new employer and pay the license fee.

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~~(2) A change in insurance coverage; or~~

~~(3) (2)~~ (2) A change in any other material information included in or with the initial or renewal application. A change of address is a material change. However, if the request for an amended license is solely for a change of business address, the former address of the business is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended license shall be issued.

b. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the state fire marshal but shall not require issuance of an amended license or payment of the amended license fee.

276.5(5) Attachments. Required attachments to the application for a license include, but are not limited to, the following:

a. Documentation verifying that the applicant has ~~in force the insurance coverage required by subrule 276.3(1)~~ met the applicable licensure requirements. ~~The documentation shall include an acknowledgment that the applicant's or employer's insurance coverage extends to any work performed by the licensee within the scope of licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier, a copy of the insurance certificate with an endorsement showing the required information, or a signed statement from the applicant's employer attesting that the employer has insurance coverage in effect equivalent to the coverage required by subrule 276.3(1).~~

b. ~~If the application requests licensure based on work experience, the applicant shall attach a notarized affidavit attesting that the applicant has the required experience. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:~~

~~(1) Proof of residency in this state.~~

~~(2) Proof all conditions are met as established in rule 661—276.4(100D).~~

~~1. Copy of a license from other issuing jurisdiction.~~

~~2. Evidence the applicant met issuing jurisdiction's educational requirements and, if applicable, work experience requirements.~~

~~3. Evidence the applicant passed the issuing jurisdiction's required examination, if applicable.~~

~~4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.~~

~~5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.~~

~~NOTE: An applicant may contact the fire protection system installer and maintenance worker licensing program for assistance with the wording of the affidavit.~~

661—276.6(100D) Complaints.

~~276.6(1) Complaints regarding the performance of any licensed fire protection system installer and maintenance worker; technician, failure of a licensee to meet any of the requirements established in 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or this chapter or any other provision of law; or persons operating as fire protection system installers and maintenance workers without licensure may be filed with the state fire marshal. Complaints should be addressed as follows:~~

~~Fire Protection System Installer and Maintenance Worker Licensing Program~~

~~State Fire Marshal Division~~

~~Iowa Department of Public Safety~~

~~Attn: SFM Licensing Administration~~

~~215 East 7th Street~~

~~Des Moines, Iowa 50319~~

~~276.6(2) Complaints may be submitted addressed by electronic mail to fesecp@dps.state.ia.us or by facsimile to (515)725-6172 sfmlicense@dps.state.ia.us or in writing by the United States Postal Service.~~

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276.6(3) Complaints should be as specific as possible and shall clearly identify the licensee or other person against whom the complaint is filed. Complaints shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

661—276.7(100D) Denial, suspension, or revocation of licensure; civil penalties; appeals. If a licensee or person who performs work requiring a license violates any provision of these rules or any other provision of law related to work requiring licensure pursuant to this chapter, the state fire marshal may deny, suspend or revoke a license or assess a civil penalty to a licensee or to a person who performs work requiring licensure pursuant to this chapter and who is not licensed.

276.7(1) Denial. The state fire marshal may deny an application for licensure:

a. If the applicant makes a false statement on the application form or in any other submission of information required for licensure. “False statement” means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from licensure equivalent to that provided for in this chapter in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire protection system installer and maintenance worker and if the basis of that action reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have been previously barred for cause from operating as a fire protection system installer and maintenance worker in another jurisdiction and is no longer barred from doing so, the state fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

e. ~~If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a licensee.~~ Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. “Conviction” as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee’s profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

276.7(2) Suspension. A suspension of a license may be imposed by the state fire marshal for any violation of these rules or 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or for a failure to meet any legal requirement to operate as a fire protection system installer and maintenance worker in this state. Failure to provide any notice to the state fire marshal as required by these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

276.7(3) Revocation.

a. A revocation is a termination of a license. A license may be revoked by the state fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire protection system incorrectly installed by a licensee or when information

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comes to the attention of the state fire marshal which, if known to the state fire marshal when the application was being considered, would have resulted in denial of the license.

b. A new application for a license from an applicant whose license has previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The state fire marshal may specify in the revocation order a period longer than one year before a new application for a license may be considered. When a new application for a license from a person whose license was previously revoked is being considered, the applicant may be denied a license based upon the same information which was the basis for revocation even after any such period established by the state fire marshal has expired.

276.7(4) Disqualifications for criminal convictions limited.

a. Notwithstanding any other provision of law to the contrary, a person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the state fire marshal does not grant an exception pursuant to paragraph 276.7(4) "d."

b. The state fire marshal shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

c. The state fire marshal shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on another similar basis.

d. The state fire marshal shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

(1) The nature and seriousness of the crime for which the applicant was convicted.

(2) The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, a forcible felony as defined in Iowa Code section 702.11, or domestic abuse assault in violation of Iowa Code section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.

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

(4) The age of the applicant at the time the offense was committed.

(5) Any treatment undertaken by the applicant.

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

(7) Any letters of reference submitted on behalf of the applicant.

(8) All other relevant evidence of rehabilitation and present fitness of the applicant.

e. An applicant may petition the state fire marshal in writing as specified in subrule 276.1(4) for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license. The state fire marshal shall issue such a determination within 30 days of receiving the petition. The state fire marshal shall determine whether an applicant's criminal record will prevent the applicant from receiving a license while determining whether to deny an applicant's application on the basis of an applicant's criminal conviction. The state fire marshal may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed \$25.

f. When the state fire marshal denies an applicant a license solely or partly because of the applicant's prior conviction of a crime, the state fire marshal shall notify the applicant in writing of all of the following:

(1) The grounds for the denial of disqualification.

(2) That the applicant has the right to a hearing to challenge the state fire marshal's decision.

(3) The earliest date the applicant may submit a new application.

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(4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

g. A determination by the state fire marshal that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in this subrule sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this rule or Iowa Code chapter 17A, the state fire marshal shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.

i. The state fire marshal may require an applicant with a criminal record to submit the applicant's complete criminal record detailing an applicant's offenses with an application. The state fire marshal may also require an applicant with a criminal record to submit a personal statement regarding whether each offense directly relates to the duties and performance of the applicant's occupation. For the purposes of this subrule, "complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

~~276.7(4)~~ 276.7(5) *Civil penalties.* The state fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

~~276.7(5)~~ 276.7(6) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee.

c. Licensees shall keep the state fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the state fire marshal with copies, within ~~7~~ seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

e. In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in subrule ~~276.6(5)~~ 276.7(6) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

~~276.7(6)~~ 276.7(7) *Suspension or revocation for nonpayment of debts owed state or local government.* The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D:

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- a.* The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.
- b.* The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.
- c.* Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.
- d.* All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.
- e.* In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.
- f.* Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in subrule ~~276.6(6)~~ 276.7(7) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

~~276.7(7)~~ **276.7(8)** *Appeals.* Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensee or other person under this rule, other than one imposed pursuant to subrule ~~276.6(5)~~ 276.7(6) or ~~276.6(6)~~ 276.7(7), may be appealed by the licensee or other person within 14 days of receipt of the notice. Appeals of actions taken by the state fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

ITEM 12. Adopt the following new rule 661—276.8(272D):

661—276.8(272D) Veterans, military service members, and certain survivor beneficiaries. Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a fire protection system technician shall apply for licensure following 661—Chapter 278.

ITEM 13. Amend **661—Chapter 277**, title, as follows:

~~CERTIFICATION LICENSING OF ALARM SYSTEM CONTRACTORS AND INSTALLERS~~
TECHNICIANS

ITEM 14. Amend rules 661—277.1(100C) to 661—277.7(100C) as follows:

661—277.1(100C) Establishment of program. There ~~is~~ are established within the state fire marshal division ~~an~~ alarm system contractor and installer ~~certification program~~ licensing programs, called the alarm system contractor license and alarm system technician license. ~~The program is~~ programs are established pursuant to Iowa Code ~~Supplement~~ chapter 100C.

277.1(1) Certification Licensure required.

a. ~~Except as provided in paragraph 277.1(1)“b,” no~~ No person shall act as an alarm system contractor without being currently ~~certified~~ licensed as an alarm system contractor by the state fire marshal. ~~Except as provided in paragraph 277.1(1)“b,” no~~ No person shall act as an alarm system ~~installer technician~~ without being currently ~~certified~~ licensed by the state fire marshal as an alarm system contractor or alarm

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system ~~installer~~ technician unless the person is engaged in the installation of alarm system components, is currently licensed pursuant to Iowa Code Supplement chapter 103, and is exempt from requirements for ~~certification~~ licensure by the state fire marshal as an alarm system ~~installer~~ technician pursuant to Iowa Code Supplement chapter 103.

EXCEPTION: A person may pull cable for an alarm system under the direct supervision of a ~~certified~~ licensed contractor, ~~certified installer~~ licensed technician, or person licensed pursuant to Iowa Code Supplement chapter 103 who is working as an ~~installer~~ a technician without ~~certification~~ licensing pursuant to Iowa Code Supplement chapter 103.

~~b. — On or after October 1, 2008, and before January 1, 2009, a person may operate as a contractor or installer subject to this chapter without being currently certified under this chapter only if the contractor or installer has applied for certification under this chapter. A contractor or installer operating under this paragraph may perform work only within the scope of certification for which the contractor or installer has applied.~~

277.1(2) Endorsement.

a. The ~~certification~~ licensure of each contractor, ~~or installer~~ technician, or technician trainee shall carry an endorsement for one or more of the following:

- (1) Alarm system contractor.
 1. Fire alarm system ~~contractor (1a)~~ installation.
 2. Nurse call system ~~contractor (1b)~~ installation.
 3. Security alarm system ~~contractor (1c)~~ installation.
 4. Alarm system maintenance inspection ~~contractor (1d)~~.
 5. Dwelling unit alarm system ~~contractor (1e)~~ installation.
- (2) Alarm system ~~installer~~ technician.
 1. Fire alarm system ~~installer (2a)~~ installation.
 2. Nurse call system ~~installer (2b)~~ installation.
 3. Security alarm system ~~installer (2c)~~ installation.
 4. Alarm system component ~~installer (2d)~~ installation.
 5. Alarm system maintenance inspection ~~installer (2e)~~.
 6. Dwelling unit alarm system ~~installer (2f)~~ installation.
- ~~7. (3) Alarm system installer assistant (2g) technician trainee.~~

b. Any person acting as an alarm system contractor or ~~installer~~ technician, other than a person who is not required to be ~~certified~~ licensed for such work by the state fire marshal, shall do so only in relation to systems covered by the endorsements on the contractor's or ~~installer's~~ certification ~~technician's~~ license.

277.1(3) Length of ~~certification~~ licensure. ~~Certification~~ Licensure shall normally be for three years and shall expire on September 30 of the third year after the ~~certification~~ license has been issued. A ~~certification~~ license which is effective on a date other than October 1 shall be effective on the date on which the ~~certification~~ license is issued and shall expire on the next September 30, after two years have passed from the date on which the ~~certification~~ license was issued.

277.1(4) Inquiries. Inquiries regarding the alarm system contractor ~~and installer certification program~~ or alarm system technician license programs may be addressed to:

~~Alarm System Contractor and Installer Certification Program~~
 State Fire Marshal Division
 Iowa Department of Public Safety
 Attn: SFM Licensing Administration
 215 East 7th Street
 Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to alarminfo@dps.state.ia.us, sfmlicense@dps.state.ia.us or by telephone to (515)725-6145 the United States Postal Service.

661—277.2(100C) Definitions. The following definitions apply to rules 661—277.1(100C) through 661—277.7(100C) 661—277.11(100C):

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“Alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a fire alarm, security alarm, or medical alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, but does not mean any such security system or portion of a combination system installed in a prison, jail, or detention facility owned by the state, a political subdivision of the state, the department of human services, or the Iowa veterans home.

“Alarm system ~~component installer~~ components” means ~~an employee of an alarm system contractor who is engaged in a~~ the portion of an alarm system installation limited to mounting alarm system raceways, boxes or system devices, and pulling of system cable, not including final termination at an alarm panel or final connection of the alarm system or alarm system testing.

“Alarm system contractor” or *“contractor”* means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of alarm systems in this state.

“Alarm system ~~installer~~ technician” or *“technician”* means a person who is engaged in the layout, installation, repair, alteration, addition, testing, or maintenance of alarm systems and who is ~~certified~~ licensed under the provisions of this chapter to perform work authorized by that certification license and any endorsement pertaining thereto. An alarm system installer technician shall be an employee of an alarm system contractor or, if employed by anyone other than an alarm system contractor, shall perform work requiring certification licensing as an alarm system installer technician only on property owned or occupied by such employer and may obtain a license if the employer is not a licensed contractor.

“Alarm system ~~installer~~ assistant technician trainee” means a person who is engaged in the layout, installation, repair, alteration, addition, or maintenance of alarm systems under the direct supervision of ~~an~~ a responsible managing employee or licensed alarm system installer technician.

“Alarm system maintenance inspection ~~installer~~ technician” means an employee of an alarm system contractor who is engaged in maintenance inspection of fire alarm, nurse call, or security alarm systems.

“ Dwelling alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a fire alarm, nurse call or security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a single-family dwelling or a single dwelling unit of a multifamily residential building and not interconnected with another dwelling alarm system. A dwelling alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

“Fire alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals that serves the general fire alarm needs of a building or buildings and that provides fire department or occupant notification or both. A fire alarm system does not mean single-station or multiple-station alarms installed in dwelling units.

“Installation” means hanging electrical conduits, raceways or boxes; mounting system devices; pulling system cable; activating system-initiating devices and system control units or verifying system operations to meet specifications; and performing system acceptance testing.

“Layout” means drawings, calculations and component specifications to achieve the specified system design installation. “Layout” does not include design.

“Listed” means equipment, materials, or services included in a list published by a nationally recognized independent testing organization that is concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

“Maintenance inspection” means periodic inspection and certification completed by an alarm system contractor or ~~installer~~ technician. For purposes of this chapter, “maintenance inspection” does not include an inspection completed by a building official or fire inspector when acting in an official capacity, or an insurance inspector employed by an insurance company licensed to do business in Iowa.

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~~“NBFAA” means the National Burglar and Fire Alarm Association, 2300 Valley View Lane, Suite 230, Irving, Texas 75062.~~

~~NOTE: As of July 1, 2008, the Web site of the NBFAA is <http://www.alarm.org/>.~~

~~“NICET” means the National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, Virginia 22314-2794.~~

~~NOTE: As of July 1, 2008, the Web site of NICET is <http://www.nicet.org/>.~~

~~“Nurse call system” means a nurse call system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a nurse call system or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a facility required to be licensed or certified by the state pursuant to Iowa Code chapter 125, 135B, 135C, 135G, 135H, 135J, 231C, or 231D, or installed in a facility operating pursuant to Iowa Code chapter 218, 219, 223, 225, 233A, or 233B, to initiate response of on-site medical care providers.~~

~~“Offense directly relates” refers to either of the following:~~

~~1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.~~

~~2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.~~

~~“Responsible managing employee” means an owner, partner, officer, or manager employed full-time by an alarm system contractor who is designated as a responsible managing employee for an alarm system contractor and who meets the requirements for a responsible managing employee established in rule 661—277.3(100C).~~

~~“Security alarm system” means a system or portion of a combination system that consists of components and circuits hardwired or wireless arranged to monitor and annunciate the status of a security alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals, installed in a building or facility to detect unauthorized entry into a building or portion of a building and to notify security personnel or building occupants or both.~~

661—277.3(100C) Responsible managing employee. Each alarm system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees. A contractor may designate more than one responsible managing employee in order to satisfy the requirements for more than one endorsement as provided in subrule 277.1(2). If more than one responsible managing employee is designated, the contractor shall indicate for which responsible managing employee each designated alternate managing employee serves as an alternate.

277.3(1) The responsible managing employee or employees shall be designated in the application for ~~certification~~ licensure; and, if a responsible managing employee is no longer acting in that role, the contractor shall so notify the state fire marshal, in writing, within 30 calendar days, ~~on a form designated by the fire marshal as provided in subrule 277.1(4).~~

277.3(2) If a responsible managing employee is no longer acting in the role of responsible managing employee and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the state fire marshal, in writing as provided in subrule 277.1(4), within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the state fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

277.3(3) If a responsible managing employee designated by an alarm system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the state fire marshal, in writing as provided in subrule 277.1(4), of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity, ~~on a form designated by the fire marshal in writing as provided in subrule 277.1(4).~~ If the state

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fire marshal has not been notified of the appointment of a new responsible managing employee within six months of the date on which a responsible managing employee ceased serving in that capacity, the state fire marshal shall suspend the certification license of the alarm system contractor.

277.3(4) A responsible managing employee or an alternate responsible managing employee shall meet one of the following requirements for the following endorsements:

a. ~~Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design.~~

b. ~~For fire alarm system endorsement, current certification by NICET at level III or higher as a fire alarm systems technician.~~

c. ~~For nurse call system endorsement, current certification by a nurse call system manufacturer or current NICET level II certification or higher in fire alarm systems or audio systems.~~

d. ~~For security alarm system endorsement, current certification by NBFAA as an advanced alarm system technician (level II) or higher, or NICET level II certification or higher in fire alarm systems.~~

e. ~~For alarm system maintenance inspection endorsement, current certification by NBFAA as an advanced alarm technician (level II), or NICET level II certification or higher in fire alarm systems.~~

f. ~~For dwelling unit alarm system endorsement, current certification by NBFAA as an alarm technician (level I) or higher, or NICET level I certification or higher in fire alarm systems.~~

g. ~~For any endorsement, completion of any third party training or certification approved by the fire marshal, as provided in subrule 277.3(5), for that endorsement.~~

h. ~~Prior to October 1, 2010, an alarm system contractor may receive provisional certification if the person designated as the contractor's responsible managing employee provides documentation that procedures have been initiated for obtaining required qualifications for the endorsement requested. Provisional certification shall not be recognized on or after October 1, 2011. Documentation may include an affidavit completed by the applicant if documentation is not available from the testing organization.~~

~~EXCEPTION: Provisional certification for fire alarm endorsement shall be recognized until October 1, 2013, provided that by no later than October 1, 2011, the responsible managing employee for a contractor with this provisional endorsement shall have achieved NICET level II certification in fire alarm systems.~~

a. Fire alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level III or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level III in certified fire alarm designer (CFAD), or

(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

b. Nurse call system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by a nurse call system manufacturer, or

(3) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in fire alarm systems, or

(4) Current certification by the Electronic Security Association (ESA) at level II in certified alarm technician (CAT), or

(5) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

c. Security alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in fire alarm systems, or

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(3) Current certification by the Electronic Security Association (ESA) at level II in certified alarm technician (CAT), or

(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

d. Alarm system maintenance inspection:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level II in certified alarm technician (CAT), or

(4) Current certification by the National Institute for Certification in Engineering Technologies (NICET) level II or above in inspection and testing of fire alarm systems, or

(5) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

e. Dwelling unit alarm system installation:

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or

(4) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

277.3(5) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the state fire marshal, such approval is required prior to acceptance of the training or testing to meet ~~certification~~ licensing requirements. Approval by the state fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the state fire marshal. Any individual, firm, or organization seeking to obtain such approval may apply to the state fire marshal no later than July 1, 2021, and no later than July 1 every two years thereafter. ~~An application form for approval of a testing or training program may be obtained by contacting the alarm system contractor and installer certification program as specified in subrule 277.1(4).~~ Program information and any other documentation requested by the state fire marshal for consideration shall be submitted to the state fire marshal as specified in subrule 277.1(4). Training and testing approved by the state fire marshal will be listed on the state fire marshal's licensing website.

277.3(6) Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee. Work performed in the state shall not begin prior to:

a. Receipt of a new or renewed license issued by the state fire marshal to the applicant, or

b. Receipt of written approval to perform work prior to issuance of a new or renewed license from the state fire marshal to the applicant.

277.3(7) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the state fire marshal or local fire ordinance or standard adopted by reference therein.

661—277.4(100C) Contractor ~~certification~~ licensing requirements. An alarm system contractor shall meet all of the following requirements in order to receive ~~certification~~ licensure from the state fire marshal and shall continue to meet all requirements throughout the period of ~~certification~~ licensure. The contractor shall notify the state fire marshal, in writing, ~~on a form designated by the fire marshal as~~ provided in subrule 277.1(4), within 30 calendar days if the contractor fails to meet any requirement for ~~certification~~ licensure.

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277.4(1) No change.

277.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic alarm systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the state fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of an alarm system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

277.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code. The contractor shall provide a copy of the contractor's current registration from the Iowa workforce development department with the application for licensure.

EXCEPTION: A contractor shall not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of "contractor" for purposes of Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code. Written documentation of such exemption must be provided to the state fire marshal upon application for licensure as an alarm system contractor.

277.4(4) No change.

277.4(5) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsement for which the licensee is renewing.

661—277.5(100C) Contractor application and fees.

277.5(1) *Application.* Any contractor seeking ~~certification~~ licensure as an alarm system contractor shall submit a completed application form to the state fire marshal. The application shall be filed no later than 30 days prior to the date ~~on which certification is required~~ of beginning work in this state or the date on which an existing ~~certification~~ license expires. An application form may be obtained from the state fire marshal or from the ~~Web site of the alarm system contractor and installer certification program~~ state fire marshal's website. The application form shall be submitted with all required attachments and the required application fee established in ~~subrule~~ subrules 277.5(2) and 277.5(5). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The ~~Web site~~ website for the alarm system contractor and ~~installer certification program technician licensure programs~~ is: <http://www.dps.state.ia.us/fm/alarm/index.shtml>
[dps.iowa.gov/divisions/state-fire-marshal/licensing/alarm.](http://www.dps.state.ia.us/fm/alarm/index.shtml)

277.5(2) *Certification Licensure fee.* The ~~certification~~ license fee for alarm system contractors shall be \$300 for three years. If an application for ~~certification~~ licensure provides for more than one responsible managing employee pursuant to rule 661—277.3(100C), there shall be an additional fee of \$50 for each responsible managing employee beyond the first. If an application for ~~certification~~ licensure provides for more than one endorsement as provided in subrule 277.1(2), there shall be an additional fee of \$50 for each endorsement beyond the first. ~~If an application is denied, all except \$100 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.~~

The state fire marshal shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

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277.5(3) Payment. The ~~certification~~ license fee shall be submitted electronically or by draft, check, or money order in the applicable amount payable to the Department of Public Safety Iowa State Fire Marshal Division. ~~The memo portion of the check, if the payment is by check, shall be completed as follows: Alarm System Contractor and Installer Certification Program.~~ Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 277.1(4). Payment shall not be made in cash.

277.5(4) Amended ~~certification~~ licensure fee. The fee for issuance of an amended ~~certification~~ license is ~~\$100~~ the difference between the original license fee paid and changes in endorsement(s) or responsible managing employee(s), if applicable. The fee shall be submitted with the request for an amended ~~certification~~ licensure. A contractor shall request and the state fire marshal shall issue an amended license for any of the items listed below and a fee does not apply:

a. A contractor shall request and the fire marshal shall issue an amended certificate for any of the following:

- (1) A change in the designation of a responsible managing employee;
- (2) b. A change in insurance coverage; or
- (3) c. A change in any other material information included in or with the initial or renewal application. A change in the location of a business is a material change; however, no fee shall be charged for the issuance of an amended ~~certificate~~ license if the sole reason for amending the ~~certificate~~ license is to reflect a change in location which was necessitated by disaster emergency conditions and the business was located in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.; or

b. d. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the state fire marshal but shall not require issuance of an amended ~~certification~~ license or payment of the amended ~~certification~~ license fee.

277.5(5) Attachments. Required attachments to the application for ~~certification~~ licensure include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 277.4(2). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the contractor within the scope of ~~certification~~ licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable ~~certification~~ licensure requirements.

c. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:

- (1) Proof of residency in this state.
- (2) Proof all conditions are met as established in rule 661—277.8(272C).
 - 1. Copy of a license from other issuing jurisdiction.
 - 2. Evidence the applicant met the issuing jurisdiction's educational requirements and, if applicable, work experience requirements.
 - 3. Evidence the applicant passed issuing jurisdiction's required examination, if applicable.
 - 4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.
 - 5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.

277.5(6) National criminal history check. Each applicant for ~~certification~~ licensure as a contractor shall submit fingerprints and the applicable fee ~~as directed by the division of criminal investigation at the time of application for a new or renewal license~~ for a national criminal history check conducted by the Federal Bureau of Investigation.

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661—277.6(100C) ~~Installer certification~~ Technician licensure requirements. An applicant for alarm system ~~installer certification~~ technician licensure shall meet all of the following requirements which are applicable to the endorsements for which the applicant is applying in order to receive ~~certification licensure~~ from the state fire marshal and shall continue to meet all such requirements throughout the period of ~~certification licensure~~. The ~~installer technician~~ shall notify the state fire marshal, in writing, ~~on a form designated by the fire marshal, as provided in subrule 277.1(4)~~ within 30 calendar days if the ~~installer technician~~ fails to meet any applicable requirement for ~~certification licensure~~.

277.6(1) The alarm system ~~installer technician~~ shall meet one of the following requirements for the following endorsements:

~~a. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design. Fire alarm system installation:~~

~~(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or~~

~~(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level II or above in fire alarm systems, or~~

~~(3) Current certification by the Electronic Security Association (ESA) at level II in certified alarm technician (CAT), or~~

~~(4) Current certification by the Elite Continuing Education University (CEU) in fire alarm installation techniques (FAIT), or~~

~~(5) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~b. For fire alarm system endorsement, current certification by NICET at level II or higher in fire alarm systems or current certification by NBFAA as an advanced alarm system technician (level II) and two years of related work experience. Nurse call system installation:~~

~~(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or~~

~~(2) Current certification by a nurse call system manufacturer, or~~

~~(3) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or~~

~~(4) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or~~

~~(5) Current licensure as a master electrician or journeyman electrician by the electrical examining board pursuant to Iowa Code chapter 103.~~

~~(6) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.~~

~~c. For nurse call system endorsement, current certification by a nurse call system manufacturer, documented training by the certified nurse call contractor employer, current NICET level I certification or higher in fire alarm systems or audio systems, completed certification by NBFAA as an alarm system technician (level I) or higher, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103. Security alarm system installation:~~

~~(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or~~

~~(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or~~

~~(3) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or~~

~~(4) Current certification by the Elite Continuing Education University (CEU) in advanced electronic intrusion technician (AEIT), or~~

~~(5) Current certification by the Complete Electrical Academy at level I in Electronic Security Technician, or~~

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(6) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

~~d. For security alarm system endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems. Alarm system component installation:~~

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or

(4) Current licensure as a master electrician or journeyman electrician by the electrical examining board pursuant to Iowa Code chapter 103.

(5) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

~~e. For alarm system component installer endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, current NICET level I certification or higher in fire alarm systems or audio systems, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103. Alarm system maintenance inspection:~~

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or

(4) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in inspection and testing of fire alarm systems, or

(5) Current certification by the Complete Electrical Academy at level I in electronic security technician, or

(6) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

~~f. For alarm system maintenance inspection endorsement, completed certification by NBFAA as an alarm system technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems. Dwelling unit alarm system installation:~~

(1) Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in alarm system design, or

(2) Current certification by the National Institute for Certification in Engineering Technologies (NICET) at level I or above in fire alarm systems, or

(3) Current certification by the Electronic Security Association (ESA) at level I in certified alarm technician (CAT), or

(4) Current certification by the Elite Continuing Education University (CEU) in alarm level I, or

(5) Current certification by the Complete Electrical Academy at level I in electronic security technician, or

(6) Satisfactory completion of an applicable training or testing program that has been approved by the state fire marshal.

~~g. For dwelling unit alarm system endorsement, completed certification by NBFAA as an alarm technician (level I) or higher, or current NICET level I certification or higher in fire alarm systems or audio systems, or current licensure as a master electrician or journeyman electrician by the electrical examining board, pursuant to Iowa Code Supplement chapter 103. Alarm system technician trainee, submission of a completed application no later than the first day of employment. An alarm system technician trainee may perform work which requires licensure under this chapter only under the direct~~

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supervision of a licensed alarm system technician or responsible managing employee whose license contains one or more endorsements as provided in rules 661—277.3(100C) and 661—277.6(100C), respectively, and that work must be within the scope of work authorized by the endorsements held by the supervising alarm system technician or responsible managing employee.

~~*h.*—For alarm system installer assistant endorsement, submission of a completed application no later than the first day of employment. An alarm system installer assistant may perform work which requires certification under this chapter only under the direct supervision of an alarm system installer whose certification contains one or more endorsements as provided in subrule 277.6(1), paragraphs “a” through “f,” and that work must be within the scope of work authorized by the endorsements held by the supervising installer.~~

~~*i.*—For any endorsement, completion of any third-party training or certification approved by the state fire marshal as provided in subrule 277.3(5).~~

~~*j.*—Prior to October 1, 2010, an alarm system installer may receive provisional certification if the installer provides documentation that procedures have been initiated for obtaining required qualifications for the endorsement requested. Provisional certification shall not be recognized on or after October 1, 2011. No provisional certification shall be issued for alarm system installer endorsement. Documentation may include an affidavit completed by the applicant if documentation is not available from the testing organization.~~

277.6(2) The installer technician shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the installer technician is performing work.

277.6(3) In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the state fire marshal, such approval is required prior to acceptance of the training or testing to meet certification licensure requirements. Approval by the state fire marshal of any training or testing to meet these requirements may be sought by the individual, firm, or organization providing the testing or training or initiated by the state fire marshal. Any individual, firm, or organization seeking to obtain such approval may apply to the state fire marshal no later than July 1, 2021, and no later than July 1 every two years thereafter. An application form for approval of a testing or training program may be obtained by contacting the alarm system contractor and installer certification program Program information and any other documentation requested by the state fire marshal for consideration shall be submitted to the state fire marshal as specified in subrule 277.1(4). Training and testing approved by the state fire marshal will be listed on the state fire marshal’s licensing website.

277.6(4) Work performed by an installer a technician subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the installer technician and shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee of the installer’s technician’s employer, unless the employer is not a certified licensed contractor as allowed by 2008 Iowa Acts, House File 2547, section 2 Iowa Code chapter 100C. Work performed in the state shall not begin prior to one of the following:

- a.* Receipt of a new or renewed license issued by the state fire marshal to the applicant, or
- b.* Receipt of written approval to perform work prior to issuance of a new or renewed license from the state fire marshal to the applicant.

277.6(5) Nothing in this rule shall be interpreted to conflict with or diminish any requirement for training or certification for anyone installing or servicing an alarm system set forth in any rule of the state fire marshal or local fire ordinance or standard adopted by reference therein.

277.6(6) A license may be renewed only if the licensee has completed recertification of the applicable requirements relative to the endorsements for which the licensee is renewing.

661—277.7(100C) Installer Technician application and fees.

277.7(1) Application. Any installer technician seeking certification licensure as an alarm system installer technician shall submit a completed application form to the state fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which work

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~~begins in the state or on which an existing certification license expires, except that an application for endorsement as an alarm system installer assistant technician trainee shall be submitted no later than the first day of employment as an alarm system installer assistant technician trainee. An application form may be obtained from the state fire marshal or from the Web site of the alarm system contractor and installer certification program state fire marshal's website. The application form shall be submitted with all required attachments and the required application fee established in subrule 277.7(2) this rule. An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.~~

~~NOTE: The Web site for the alarm system contractor and installer certification program is: <http://www.dps.state.ia.us/fm/alarm/index.shtml>.~~

~~277.7(2) Certification Licensure fee. The certification license fee for an alarm system installer technician shall be \$150 for three years, except that the certification license fee for endorsement as an alarm system installer assistant technician trainee shall be \$50 for one year. There shall be an additional fee of \$25 for each endorsement beyond the first. If an application is denied, all except \$50 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant's knowingly including false or misleading information on the application.~~

~~The state fire marshal shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.~~

~~277.7(3) Payment. The certification fee shall be submitted electronically by draft, check, or money order in the applicable amount payable to the Department of Public Safety, with the memo portion of the check completed as follows: Alarm System Contractor and Installer Certification Program Iowa State Fire Marshal Division. Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 277.1(4). Payment shall not be made in cash.~~

~~277.7(4) Amended certification licensure fee.~~

~~a. The fee for issuance of an amended certification license is \$50 the difference between the original license fee paid and changes in endorsement(s), if applicable. The fee shall be submitted with the request for an amended certification license. An installer A technician shall request and the state fire marshal shall issue an amended certificate license for a change in any material information included in or with the initial or renewal application. A licensee shall request and the state fire marshal shall issue an amended license for any of the following reasons and a fee does not apply:~~

~~(1) A change in employer. A licensee may only transfer the licensee's technician license to another employer if the licensee paid the license fee at the time of original application. If the licensee's previous employer paid the license fee, the licensee must reapply for a new license under the new employer and pay the license fee.~~

~~(2) A change in any other material information included in or with the initial or renewal application. A change of address is a material change. However, if the request for an amended license is solely for a change of business address, the former address of the business is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended license shall be issued.~~

~~b. Other changes in the information required in the application form shall be reported to the state fire marshal but shall not require issuance of an amended certification license or payment of the amended certification license fee.~~

~~277.7(5) Attachments. Required attachments to the application for certification license include, but are not limited to, documentation of required certifications, licenses or training. the following:~~

~~a. Documentation applicant has met the applicable licensure requirements.~~

~~b. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:~~

~~(1) Proof of residency in this state.~~

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(2) Proof all conditions are met as established in rule 661—277.8(272C).

1. Copy of a license from other issuing jurisdiction.
2. Evidence the applicant met the issuing jurisdiction's educational requirements and, if applicable, work experience requirements.
3. Evidence the applicant passed issuing jurisdiction's required examination, if applicable.
4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.
5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.

277.7(6) National criminal history check. Each applicant for ~~certification licensure as an installer a technician~~ shall submit fingerprints and the applicable fee ~~as directed by the division of criminal investigation at the time of application for a new or renewal license~~ for a national criminal history check conducted by the Federal Bureau of Investigation.

ITEM 15. Renumber rules **661—277.8(100C)** and **661—277.9(100C)** as **661—277.9(100C)** and **661—277.10(100C)**.

ITEM 16. Adopt the following new rule 661—277.8(272C):

661—277.8(272C) Licensure of persons licensed in other jurisdictions.

277.8(1) For the purposes of this rule, “issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

277.8(2) Notwithstanding any other provision of law, an alarm system contractor license or alarm system technician license shall be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

- a. The person is currently licensed by at least one other issuing jurisdiction as an alarm system contractor or alarm system technician with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.
- b. The person has been licensed by another issuing jurisdiction for at least one year.
- c. When the person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience requirements, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.
- d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.
- e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.
- f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the state fire marshal shall determine if the cause for the action was corrected and the matter resolved. If the state fire marshal determines that the matter has not been resolved by the jurisdiction imposing discipline, the state fire marshal shall not issue or deny a license to the person until the matter is resolved.
- g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the state fire marshal shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.
- h. The person pays all applicable fees.
- i. The person does not have a criminal history that would prevent the person from holding the alarm system contractor or alarm system technician license applied for in this state.

277.8(3) A person licensed pursuant to this rule is subject to the laws regulating the person's practice in this state and is subject to the jurisdiction of the state fire marshal.

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277.8(4) This rule does not apply to any of the following:

a. The ability of the state fire marshal to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the state fire marshal to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the state fire marshal requires an application to take and pass an examination specific to the laws of this state, the state fire marshal shall issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

277.8(5) Except as provided in subrule 277.8(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as an alarm system contractor or alarm system technician may be considered to have met any education, training, or work experience requirements imposed by the state fire marshal in this state if the person has three or more years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the state fire marshal.

ITEM 17. Amend renumbered rules 661—277.9(100C) and 661—277.10(100C) as follows:

661—277.9(100C) Complaints. Complaints regarding the performance of any ~~certified licensed~~ contractor or ~~installer technician~~, failure of a ~~certified licensed~~ contractor or ~~installer technician~~ to meet any of the requirements established in Iowa Code Supplement chapter 100C or this chapter or any other provision of law, or operation as an alarm system contractor or ~~installer technician~~ without ~~certification licensure~~ may be filed with the state fire marshal.

277.9(1) Complaints should be addressed as follows:

~~Alarm System Contractor and Installer Certification Program~~

~~State Fire Marshal Division~~

~~Iowa Department of Public Safety~~

~~Attn: SFM Licensing Administration~~

~~215 East 7th Street~~

~~Des Moines, Iowa 50319~~

277.9(2) Complaints may be submitted by electronic mail to ~~alarminfo@dps.state.ia.us~~ alarminfo@dps.state.ia.us or by ~~faesimile to (515)725-6172~~ the United States Postal Service.

277.9(3) Complaints should be as specific as possible and must clearly identify the contractor or ~~installer technician~~ against whom the complaint is filed. ~~A form which may be used to file complaints is available on the Web site of the alarm system contractor and installer certification program. Complaints may be filed without using the complaint form provided, but shall be submitted in writing. Complaints shall be submitted in writing to the state fire marshal. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.~~

~~NOTE: The Web site for the alarm system contractor and installer certification program is: <http://www.dps.state.ia.us/fm/alarm/index.shtml>.~~

661—277.10(100C) Denial, suspension, or revocation of ~~certification licensure~~; civil penalties; and appeals. The state fire marshal may deny, suspend or revoke the ~~certification license~~ of a contractor or ~~installer technician~~ or may assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as an alarm system contractor or ~~installer technician~~ is violated.

277.10(1) Denial. The state fire marshal may deny an application for ~~certification licensure~~:

a. If the applicant makes a false statement on the application form or in any other submission of information required for ~~certification licensure~~. “False statement” means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for ~~certification licensure~~ established in this chapter.

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c. If the applicant is currently barred for cause from acting as an alarm system contractor or installer technician in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as an alarm system contractor or installer technician and if the basis of that action reflects upon the integrity of the applicant in operating as an alarm system contractor or installer technician. If an applicant is found to have been previously barred for cause from operating as an alarm system contractor or installer technician in another jurisdiction and is no longer barred from doing so, the state fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a certified licensed contractor or installer technician. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. ~~If either the applicant or the designated responsible managing employee, if the application is for certification as a contractor, has been convicted of a crime which reflects upon the integrity of the applicant in operating as an alarm system contractor or installer, the fire marshal shall evaluate the conviction or convictions with regard to the likelihood that the applicant would operate with integrity as a certified contractor or installer. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, in the courts of this state or another state, territory or country. "Conviction" as used in this subrule includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.~~ If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Willful or repeated violations of the provisions of this chapter.

277.10(2) Suspension. A suspension of a certification license may be imposed by the state fire marshal for any violation of these rules or Iowa Code ~~Supplement~~ chapter 100C or for a failure to meet any legal requirement to operate as an alarm system contractor or installer technician in this state. Failure to provide any notice to the state fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the certification license even after the period of the suspension.

277.10(3) Revocation. A revocation is a termination of a certification license. A certification license may be revoked by the state fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by an alarm system incorrectly installed by a certified contractor or installer technician or when information comes to the attention of the state fire marshal which, if known to the state fire marshal when the application was being considered, would have resulted in denial of the certification license. A new application for certification licensure from a contractor or installer technician whose certification license had previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The state fire marshal may specify in the revocation order a longer period than one year before a new application for certification licensure may be considered. When a new application for certification licensure from a contractor or installer technician whose certification license was previously revoked is being considered, the applicant may be denied certification licensure based upon the same information which was the basis for revocation even after any such period established by the state fire marshal has expired.

277.10(4) Disqualifications for criminal convictions limited.

a. Notwithstanding any other provision of law to the contrary, a person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the state fire marshal does not grant an exception pursuant to paragraph 277.10(4) "d."

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b. The state fire marshal shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

c. The state fire marshal shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on another similar basis.

d. The state fire marshal shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

(1) The nature and seriousness of the crime for which the applicant was convicted.

(2) The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, a forcible felony as defined in Iowa Code section 702.11, or domestic abuse assault in violation of Iowa Code section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.

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

(4) The age of the applicant at the time the offense was committed.

(5) Any treatment undertaken by the applicant.

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

(7) Any letters of reference submitted on behalf of the applicant.

(8) All other relevant evidence of rehabilitation and present fitness of the applicant.

e. An applicant may petition the state fire marshal in writing as specified in subrule 277.1(4) for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license. The state fire marshal shall issue such a determination within 30 days of receiving the petition. The state fire marshal shall determine whether an applicant's criminal record will prevent the applicant from receiving a license while determining whether to deny an applicant's application on the basis of an applicant's criminal conviction. The state fire marshal may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed \$25.

f. When the state fire marshal denies an applicant a license solely or partly because of the applicant's prior conviction of a crime, the state fire marshal shall notify the applicant in writing of all of the following:

(1) The grounds for the denial of disqualification.

(2) That the applicant has the right to a hearing to challenge the state fire marshal's decision.

(3) The earliest date the applicant may submit a new application.

(4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

g. A determination by the state fire marshal that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in paragraph 277.10(4) "d" sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this subrule or Iowa Code chapter 17A, the state fire marshal shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.

i. The state fire marshal may require an applicant with a criminal record to submit the applicant's complete criminal record detailing an applicant's offenses with an application. The state fire marshal may also require an applicant with a criminal record to submit a personal statement regarding whether each offense directly relates to the duties and performance of the applicant's occupation. For the purposes

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of this subrule, “complete criminal record” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

~~277.10(4)~~ **277.10(5)** *Civil penalties.* The state fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

~~277.10(5)~~ **277.10(6)** *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the ~~certified~~ licensed contractor or installer technician by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor or ~~installer technician~~ installer technician may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of ~~certification~~ licensure of a contractor or ~~installer technician~~ installer technician, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor or ~~installer technician~~ installer technician.

c. Contractors or ~~installers~~ technicians shall keep the state fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor or ~~installer technician~~ installer technician before a ~~certificate~~ license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a ~~certification~~ license or has suspended or revoked a ~~certification~~ license pursuant to Iowa Code chapter 252J.

e. In the event a contractor or ~~installer technician~~ installer technician files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the ~~certification~~ license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule ~~277.9(5)~~ **277.10(6)** implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a ~~certification~~ licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

277.10(7) *Suspension or revocation for nonpayment of debts owed state or local government.* The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D:

a. The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

c. Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the state fire marshal with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

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d. All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

e. In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 277.10(7) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

~~277.10(6)~~ **277.10(8)** *Appeals.* Any denial, suspension, or revocation of a ~~certification~~ license, or any civil penalty imposed upon a ~~certified~~ licensed contractor or installer technician under this rule, other than one imposed pursuant to subrule ~~277.9(5)~~ 277.10(6) or 277.10(7), may be appealed by the contractor or ~~installer~~ technician within 14 days of receipt of the notice. Appeals of actions taken by the state fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

~~These rules are intended to implement Iowa Code Supplement chapter 100C as amended by 2008 Iowa Acts, House File 2547.~~

ITEM 18. Adopt the following new rule 661—277.11(272C):

661—277.11(272C) Veterans, military service members, and certain survivor beneficiaries. Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as an alarm system contractor or alarm system technician shall apply for licensure following 661—Chapter 278.

ITEM 19. Adopt the following new implementation sentence in **661—Chapter 277**:
These rules are intended to implement Iowa Code chapter 100C.

[Filed 12/23/20, effective 2/17/21]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 113 of the Governor's proclamation of disaster emergency issued January 7, 2021: governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202021.01.07.pdf.