



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1125 to 1242

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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2018

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Friday, November 30, 2018	December 19, 2018
14	Wednesday, December 12, 2018	January 2, 2019
15	Wednesday, December 26, 2018	January 16, 2019

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, December 7, 2018, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

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

Update of human resources policies and procedures, 68.1, 68.2(2), 68.6  
Notice ARC 4122C, also Filed Emergency ARC 4121C ..... 11/21/18  
 Update of processes, procedures, and references, amendments to chs 4, 6, 43, 45, 46, 60, 64,  
 71, 103, 110, 117 to 119 Filed ARC 4134C ..... 11/21/18  
 Hiring of Iowa national service corps or AmeriCorps participants, 54.5(3) Filed ARC 4135C ..... 11/21/18  
 Peace officers and fire fighters—continuation of benefits, 64.15(3) Filed ARC 4136C ..... 11/21/18  
 Procurement of state vehicles—elimination of life cycle costing, 117.12 Filed ARC 4137C ..... 11/21/18

#### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Agricultural lime—sampling, 43.20, 43.32, 43.34, 43.35(1) Filed ARC 4138C ..... 11/21/18

#### **AUDITOR OF STATE[81]**

Organization and procedures, 25.4 to 25.8 Notice ARC 4125C ..... 11/21/18

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

Future ready Iowa registered apprenticeship development fund, ch 13 Filed ARC 4110C ..... 11/7/18

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

Developmental disabilities basic state grant, amendments to ch 38 Filed ARC 4111C ..... 11/7/18  
 Retroactive Medicaid coverage benefit—residents of nursing facilities, 75.25, 76.13(3)  
Notice ARC 4106C ..... 11/7/18  
 Support enforcement services, amendments to ch 98 Filed ARC 4112C ..... 11/7/18  
 Children’s residential facilities—abuse reporting, 106.19 Filed ARC 4113C ..... 11/7/18  
 Child care providers—mandatory prohibitions, additional background checks, amendments  
 to chs 109, 110, 120 Filed ARC 4114C ..... 11/7/18  
 Required report for juvenile detention reimbursement, 167.3(2) Notice ARC 4126C ..... 11/21/18  
 Child care assistance rate ceilings, 170.4 Filed ARC 4115C ..... 11/7/18

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

Food and consumer safety—food code updates, inspection frequency, license fees,  
 time/temperature control for safety foods, amendments to ch 30 Filed ARC 4139C ..... 11/21/18  
 Food establishment and food processing plant inspections, amendments to ch 31 Filed ARC 4140C ..... 11/21/18

#### **MANAGEMENT DEPARTMENT[541]**

Suspension and reinstatement of state funds, ch 13 Filed ARC 4141C ..... 11/21/18

#### **NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Advanced registered nurse practitioners, ch 7 Notice ARC 4132C ..... 11/21/18

#### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Chiropractic physicians—continuing education hours, 41.14(3) Notice ARC 4129C ..... 11/21/18  
 Chiropractic physicians—license reactivation, 41.14(3)“b”(3) Filed ARC 4116C ..... 11/7/18  
 Physician assistants—opioid prescribing practices, 326.1, 327.6(3), 328.3(2)“d,” 329.2(32)  
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 Supervision of physician assistants at remote medical sites, 327.4(2) Notice ARC 4130C ..... 11/21/18

#### **PUBLIC HEALTH DEPARTMENT[641]**

Vital records—forms, fees, amendments, reporting of non-institution births, delayed  
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#### **RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Confidential records; licensing; licensees’ responsibilities; racing; definition of “minus  
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Personal transportation service, 26.80	Notice	ARC 4108C	11/7/18
Indication of dependent child health care coverage on tax return, 38.19	Filed	ARC 4118C	11/7/18
Section 179 expensing, 40.65, 53.23, 59.24	Filed	ARC 4142C	11/21/18
Research activities credit, 42.11, 52.7	Filed	ARC 4143C	11/21/18
Excise tax rate on motor fuels, 68.2(1)	Notice	ARC 4133C	11/21/18
Exemptions primarily benefiting manufacturers and other persons engaged in processing, 211.1, 230.2(1), 230.15(4)	Notice	ARC 4109C	11/7/18
Baseball and softball complex sales tax rebate, 235.2	Filed	ARC 4144C	11/21/18
Raceway facility sales tax rebate, 235.3	Filed	ARC 4145C	11/21/18

**SECRETARY OF STATE[721]**

Local option sales and services tax elections in qualified counties, 21.804	Filed	ARC 4146C	11/21/18
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**TRANSPORTATION DEPARTMENT[761]**

Sanctions, amendments to ch 615	Filed	ARC 4119C	11/7/18
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**TREASURER OF STATE[781]**

Iowa educational savings plan trust, ch 16	Notice	ARC 4124C	11/21/18
Iowa ABLE savings plan trust, ch 20	Notice	ARC 4123C	11/21/18

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**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Jim Carlin  
43 Arlington Road  
Sioux City, Iowa 51106

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Mark Costello  
37265 Rains Avenue  
Imogene, Iowa 51645

Senator Robert E. Dvorsky  
450 Third Avenue, #3  
Coralville, Iowa 52241

Senator Pam Jochum  
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Representative Megan Jones  
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Sioux Rapids, Iowa 50585

Representative Amy Nielsen  
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North Liberty, Iowa 52317

Representative Rick Olson  
3012 East 31st Court  
Des Moines, Iowa 50317

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P.O. Box A  
Mount Auburn, Iowa 52313

Sam Langholz  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone: (515)281-5211

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Update of human resources policies and procedures, 68.1, 68.2(2), 68.6 IAB 11/21/18 <b>ARC 4122C</b>	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	December 11, 2018 9 to 10 a.m.
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**AUDITOR OF STATE[81]**

Organization and procedures, 25.4 to 25.8 IAB 11/21/18 <b>ARC 4125C</b>	State Capitol Building, Room 116 1007 E. Grand Ave. Des Moines, Iowa	December 11, 2018 10 to 11 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Chiropractic physicians—continuing education hours, 41.14(3) IAB 11/21/18 <b>ARC 4129C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 11, 2018 9 to 9:30 a.m.
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Physician assistants—opioid prescribing practices, 326.1, 327.6(3), 328.3(2)“d,” 329.2(32) IAB 11/21/18 <b>ARC 4128C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 11, 2018 8:30 to 9 a.m.
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Supervision of physician assistants at remote medical sites, 327.4(2) IAB 11/21/18 <b>ARC 4130C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 11, 2018 7:30 to 8 a.m.
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**RACING AND GAMING COMMISSION[491]**

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

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**TREASURER OF STATE[781]**

Iowa educational savings plan  
trust, ch 16  
IAB 11/21/18 **ARC 4124C**

First Floor  
Lucas State Office Bldg.  
Des Moines, Iowa

December 13, 2018  
1 to 2 p.m.

Iowa ABLE savings plan trust,  
ch 20  
IAB 11/21/18 **ARC 4123C**

First Floor  
Lucas State Office Bldg.  
Des Moines, Iowa

December 12, 2018  
1 to 2 p.m.

**UTILITIES DIVISION[199]**

Rate cases, tariffs, and rate  
regulation election practice and  
procedure, amendments to ch  
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IAB 10/10/18 **ARC 4046C**

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

December 18, 2018  
10:30 a.m. to 12:30 p.m.



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 4122C

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

## Notice of Intended Action

**Proposing rule making related to update of human resources policies and procedures  
and providing an opportunity for public comment**

The Administrative Services Department hereby proposes to amend Chapter 68, "Equal Employment Opportunity and Affirmative Action," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 8A.104, 8A.413, 19B.3 and 19B.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.402 and 8A.413 and chapter 19B.

*Purpose and Summary*

These rules are being amended to update policies and procedures relating to reporting and investigation of sexual harassment, discrimination, equal opportunity and affirmative action complaints in the State of Iowa Executive Branch. The amendments provide that these complaints may be made directly to the Administrative Services Department or the Office of the Governor, rather than just within an agency. They also provide that the Administrative Services Department shall conduct investigations of such conduct unless otherwise directed by the Office of the Governor. In addition, the amendments clarify the confidentiality of the complaint and investigation process. These amendments are consistent with the revised policies that are being issued simultaneously with these amendments.

*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 December 11, 2018. Comments should be directed to:

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

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](mailto: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:

December 11, 2018  
9 to 10 a.m.

Procurement Conference Room, A Level  
Hoover State Office Building  
1305 East Walnut Street  
Des Moines, Iowa

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

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

*Emergency Rule Making Adopted by Reference*

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4121C**, IAB 11/21/18). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

**ARC 4125C**

**AUDITOR OF STATE[81]**

**Notice of Intended Action**

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

The Auditor of State hereby proposes to amend Chapter 25, "Organization and Procedures," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 11 and section 17A.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 11.6, 11.31, 536A.2, and 536A.6.

AUDITOR OF STATE[81](cont'd)

*Purpose and Summary*

These proposed amendments reflect the Office of Auditor of State's compliance with Iowa Code section 17A.7(2), which states that, as of July 1, 2012, "over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules" with the objective of "the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies." The proposed amendments to Chapter 25 are intended to reflect the Office's current organizational structure of three divisions and to rescind or amend rules to reflect various changes to the Iowa Code.

*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 Office 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 Office no later than 4:30 p.m. on December 11, 2018. Comments should be directed to:

Bernardo Granwehr  
Office of Auditor of State  
State Capitol Building  
1007 East Grand Avenue, Room 111  
Des Moines, Iowa 50319-0001  
Email: [bernardo.granwehr@auditor.state.ia.us](mailto:bernardo.granwehr@auditor.state.ia.us)

*Public Hearing*

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

December 11, 2018  
10 to 11 a.m.

State Capitol Building, Room 116  
1007 East Grand Avenue  
Des Moines, Iowa

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

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

AUDITOR OF STATE[81](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend rule 81—25.4(17A,11) as follows:

**81—25.4(17A,11) Distribution of duties.** The office of auditor of state has ~~four~~ three principal divisions, namely:

**25.4(1)** The ~~executive and~~ administrative division, under the direct control of the auditor of state, assisted by a deputy and administrative assistants, which exercises control and supervision of all activities of the auditor's office.

**25.4(2)** The ~~state~~ financial audit division, supervised and directed by a ~~supervisor~~ deputy appointed by the auditor of state, which is charged with the responsibilities of annual audit of all agencies of the state receiving or expending state funds, as well as audits of local governments such as counties, cities and schools as provided by statute. This division also performs reaudits and provides technical assistance to private citizens, CPA firms, government officials and other governmental agencies.

**25.4(3)** The ~~county audit~~ performance investigation division, directed by a supervisor appointed by the auditor of state, which is charged with the responsibilities of ~~the annual audit of each county of the state~~ conducting performance audits of state agencies, investigating suspected embezzlements, and conducting special studies as provided by statute.

**25.4(4)** The ~~municipal and school audit~~ division, directed by a supervisor appointed by the auditor of state, which is responsible for the audit of cities and schools as provided by statute.

ITEM 2. Rescind and reserve rule **81—25.5(17A,11)**.

ITEM 3. Rescind and reserve rule **81—25.6(17A,11)**.

ITEM 4. Amend rule 81—25.7(17A,11) as follows:

**81—25.7(17A,11) Staffing.** Each of the divisions and agencies of the auditor's office is staffed by auditors and assistants appointed by the auditor of state, as provided for by Iowa Code ~~sections 11.7 and 11.8~~ section 11.31, and other personnel necessary to fulfill the requirements of the auditor's office.

ITEM 5. Amend rule 81—25.8(17A,11) as follows:

**81—25.8(17A,11) Annual audit.** The statutes of Iowa provide for annual audit of all state offices and departments of the state and the counties and cities and city offices, merged areas and educational agencies and all school districts and school offices except that cities having a population of ~~700 or more, but less than 2,000, shall be audited at least once every four years and cities having a population of less than 700 may be examined as otherwise provided.~~

**ARC 4126C**

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

### **Notice of Intended Action**

#### **Proposing rule making related to juvenile detention reimbursement and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 167, "Juvenile Detention Reimbursement," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*Purpose and Summary*

This proposed amendment adds clarity to Chapter 167 by defining who must complete the financial and statistical report required for juvenile detention reimbursement.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*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 December 11, 2018. Comments should be directed to:

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend subrule 167.3(2) as follows:

**167.3(2)** The home submits the reports completed forms in paragraphs 167.3(2)“a” and 167.3(2)“b” by March 15 and the certified audit in paragraph 167.3(2)“c” by March 15 or within ten days of completion if after March 15 of the year following the conclusion of the state fiscal year for which reimbursement will be made. The home shall have an independent certified public accountant or an independent accounting firm complete the financial and statistical report in paragraph 167.3(2)“b” and certify the fair presentation of the report. The preparer shall have the experience necessary to

HUMAN SERVICES DEPARTMENT[441](cont'd)

complete the report in accordance with generally accepted accounting principles (GAAP) and the instructions for completing the financial and statistical report.

- a. No change.
- b. ~~A printed or~~ An electronic copy of the department-authorized financial and statistical report for juvenile detention homes.
  - ~~(1) Certification page.~~
  - ~~(2) Schedule A, Revenue Report.~~
  - ~~(3) Schedule C, Property and Equipment Depreciation and Related Party Property Costs.~~
  - ~~(4) Schedule D, Expense Report.~~
- c. ~~A printed or~~ An electronic copy of the home's certified audit containing financial information for the period for which reimbursement is being claimed.

**ARC 4132C**

## **NURSING BOARD[655]**

### **Notice of Intended Action**

#### **Proposing rule making related to advanced registered nurse practitioners and providing an opportunity for public comment**

The Board of Nursing hereby proposes to rescind Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code, and to adopt a new Chapter 7 with the same title.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 147.76.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 152.

#### *Purpose and Summary*

The proposed changes included in new Chapter 7:

- Clarify definitions in the chapter.
- Add definitions to the chapter.
- Streamline the requirements and process for licensure as an advanced registered nurse practitioner (ARNP).
  - Clarify the role and expectation of the ARNP per the Consensus Model and current standards of practice.
  - Add language on the standards of practice for treating patients.
  - Add language on the standards of practice for the prescribing and administration of controlled substances.
  - Add language on the ability of the ARNP to enter into collaborative practice agreements with pharmacists.

#### *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.



NURSING BOARD[655](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

*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 December 11, 2018. Comments should be directed to:

Kathy Weinberg  
Iowa Board of Nursing  
400 S.W. 8th Street, Suite B  
Des Moines, Iowa 50309  
Email: [kathy.weinberg@iowa.gov](mailto:kathy.weinberg@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:

Rescind 655—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7  
ADVANCED REGISTERED NURSE PRACTITIONERS

**655—7.1(152) Definitions.**

“*Advanced registered nurse practitioner*” or “*ARNP*” means a person who is licensed by the board pursuant to this chapter.

“*Board*” as used in this chapter means the Iowa board of nursing.

“*Collaboration*” is the process whereby an ARNP and another health care provider or member of the health care team jointly manage the care of a client or patient.

“*Controlled substance*” means a drug in Schedules II through V of subchapter II of Iowa Code chapter 124.

“*National professional certification organization*” means the American Academy of Nurse Practitioners, the American Association of Critical Care Nurses, the American Midwifery Certification Board, the American Nurses Credentialing Center, the National Board of Certification and Recertification for Nurse Anesthetists, the National Certification Corporation, and the Pediatric Nursing Certification Board.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

## NURSING BOARD[655](cont'd)

“*Prescription monitoring program database*” or “*PMP database*” means a centralized database of reportable controlled substance prescriptions dispensed to patients and includes data access logs, security tracking information, and records of each individual who requests prescription monitoring program (PMP) information as operated by the board of pharmacy.

**655—7.2(152) Requirements for licensure as an ARNP.**

**7.2(1) Qualifications.** An applicant for an ARNP license shall meet the following qualifications:

a. Hold an active unrestricted license as a registered nurse in accordance with 655—Chapter 3.  
b. Graduation from an accredited graduate or postgraduate advanced practice educational program in one of the following roles, except as provided by subrule 7.2(2):

- (1) Certified nurse-midwife.
- (2) Certified registered nurse anesthetist.
- (3) Certified nurse practitioner.
- (4) Clinical nurse specialist.

c. Current certification issued by a national professional certification organization as a certified nurse-midwife or certified registered nurse anesthetist, or as a certified nurse practitioner or clinical nurse specialist in at least one of the following population foci:

- (1) Women’s health/gender-related.
- (2) Family (individual across the lifespan).
- (3) Psychiatric mental health.
- (4) Adult/gerontology.
- (5) Pediatrics.
- (6) Neonatal.

**7.2(2) Exception.** An applicant who has completed a formal advanced practice educational program but has not graduated from an accredited graduate or postgraduate advanced practice educational program may be licensed as an ARNP provided that the applicant possesses a current certification from a national professional certification organization as described in paragraph 7.2(1)“c.” This exception is intended to allow for the grandfathering of ARNPs who completed educational programs before the board required graduation from an accredited graduate or postgraduate advanced practice educational program.

**655—7.3(152) Application process.**

**7.3(1)** An applicant who wishes to be licensed as an ARNP shall submit the following to the board:

a. An ARNP application for each population focus.  
b. A dated copy of the applicant’s current advanced level certification issued by the appropriate national professional certification organization.  
c. If the applicant is not licensed as a registered nurse in Iowa, verification of an active registered nurse license in another state recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.  
d. A nonrefundable license fee of \$81.

**7.3(2)** The applicant shall request that official transcripts be sent directly to the board from the educational program verifying the coursework, date of completion of the program, and the degree conferred.

**7.3(3)** The executive director of the board or the executive director’s designee shall have the authority to determine if all requirements have been met for licensure of the applicant as an ARNP. If all requirements have been met:

a. The applicant shall be issued a license card and a certificate to practice as an ARNP which clearly denotes the applicant’s name, title, and population focus, and the expiration date of the license.  
b. The expiration date of the ARNP license shall be the same as the expiration date of the applicant’s license to practice as a registered nurse.

## NURSING BOARD[655](cont'd)

**7.3(4)** Licensure completion. An applicant shall complete the ARNP licensure process within 12 months from the start of the application. The board reserves the right to destroy incomplete application materials after 12 months.

**7.3(5)** Renewal of licensure. An ARNP license may be renewed beginning 60 days prior to the license expiration date and ending 30 days after the expiration date. To renew, a licensee shall submit the information required by subrule 7.3(1). The expiration date assigned to a renewed ARNP license shall be the same as the expiration date of the licensee's license to practice as a registered nurse.

**7.3(6)** Inactive status. Failure to renew an ARNP license within 30 days after its expiration shall result in an inactive ARNP license.

*a.* Continuing to work as an ARNP with an inactive ARNP license may result in disciplinary action.

*b.* To reactivate the license, the licensee must reactivate the underlying license to practice as a registered nurse, if required, and shall complete the license renewal process for the ARNP license.

**655—7.4(152) Advanced nursing practice.**

**7.4(1)** An ARNP shall practice within the ARNP's respective population foci. An ARNP shall practice in accordance with the applicable standard of care as described in guidelines published by national professional associations or other reputable sources.

**7.4(2)** An ARNP must maintain current certification with a national professional certification organization at all times while the ARNP license is active.

**7.4(3)** An ARNP licensed by the board may prescribe, administer, or dispense prescription drugs or devices, including controlled substances, within the ARNP's role and population foci and consistent with applicable state and federal laws.

**7.4(4)** An ARNP shall have the authority to practice to the full extent of the ARNP's license, education, and experience in the ARNP's respective population foci. An ARNP may:

- a.* Assess health status;
- b.* Obtain a relevant health and medical history;
- c.* Perform physical examinations;
- d.* Order preventive and diagnostic procedures;
- e.* Formulate a differential diagnosis;
- f.* Develop a treatment plan;
- g.* Develop a patient education plan;
- h.* Receive third-party reimbursement;
- i.* Maintain hospital privileges; and
- j.* Promote health maintenance.

**7.4(5)** Supervision of fluoroscopy. An ARNP shall be permitted to provide direct supervision in the use of fluoroscopic X-ray equipment, as defined in rule 641—38.2(136C).

*a.* The ARNP shall provide direct supervision of fluoroscopy pursuant to the following provisions:

(1) Completion of an educational course including content in radiation physics, radiobiology, radiological safety and radiation management applicable to the use of fluoroscopy, and maintenance of documentation verifying successful completion.

(2) Collaboration, as needed, as defined in rule 655—7.1(152).

(3) Compliance with facility policies and procedures.

*b.* The ARNP shall complete an annual radiological safety course whose content includes, but is not limited to, the time, dose, distance, shielding and effects of radiation.

*c.* The ARNP shall maintain documentation of the initial educational course and all annual radiological safety updates.

*d.* The initial and annual education requirements are subject to audit by the board pursuant to 655—subrule 5.2(10).

**655—7.5(152) Standards of practice for treating patients.** An ARNP shall follow the standards of practice for the ARNP's respective population foci. Prior to treating a patient, an ARNP shall:

## NURSING BOARD[655](cont'd)

**7.5(1)** Establish a patient-provider relationship.

**7.5(2)** Perform and document the following, or have access to the patient's health records where all of the following have been documented by other providers in the care team:

- a. Chief complaint;
- b. Health history;
- c. A focused assessment;
- d. Diagnosis; and
- e. Plan of treatment.

**655—7.6(152) Standards of practice for controlled substances.** In addition to following the standards of practice for treating a patient described in rule 655—7.5(152), an ARNP who prescribes or administers a controlled substance shall practice in accordance with the following:

**7.6(1)** The health history shall include a personal and family substance abuse risk assessment.

**7.6(2)** The health record must include documentation of the presence of one or more recognized indications for the use of a controlled substance.

**7.6(3)** An ARNP is encouraged to utilize a treatment agreement if continuously prescribing one or more controlled substances.

**7.6(4)** Prior to issuing a controlled substance prescription or dispensing a controlled substance, the ARNP or authorized delegate shall query the PMP. The query shall be performed within 48 hours of a prescription being issued or dispensed and shall be done for each patient, each time a controlled substance prescription is authorized or dispensed.

**7.6(5)** An ARNP who dispenses a controlled substance is required to report the dispensing to the PMP in accordance with 657—Chapter 37.

**7.6(6)** Throughout the course of the patient's treatment, the ARNP shall provide ongoing education that includes, but is not limited to, the risks of using a controlled substance, and information regarding addiction, physical dependence, substance abuse, and tolerance.

**7.6(7)** An ARNP shall maintain an active Drug Enforcement Administration (DEA) registration and an active controlled substance application (CSA) registration to dispense, prescribe, or administer controlled substances.

**7.6(8)** An ARNP shall not prescribe a controlled substance to the ARNP's self or to a family member unless the prescribing occurs in a clinical setting when an emergency situation arises and when there is no other qualified practitioner available to the patient.

**7.6(9)** The board may discipline an ARNP for prescribing opioids in dosage amounts that exceed what would be prescribed by a reasonably prudent ARNP in a similar population focus.

**7.6(10)** An ARNP who prescribes opioids is required to complete a minimum of 2 contact hours of continuing education regarding the U.S. Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, as a condition of license renewal. These hours may count toward the 36 contact hours required for license renewal. The ARNP shall maintain documentation of these hours, which may be subject to audit.

**655—7.7(152) Prescribing epinephrine auto-injectors in the name of a facility.**

**7.7(1)** An ARNP may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code section 135.185(1), a school district, or an accredited nonpublic school.

**7.7(2)** An ARNP who prescribes epinephrine auto-injectors in the name of an authorized facility as defined in Iowa Code section 135.185(1), a school district, or an accredited nonpublic school, to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A, provided the ARNP has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

## NURSING BOARD[655](cont'd)

**655—7.8(152) Supervision of pharmacists engaged in collaborative drug therapy management.** A supervising ARNP may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The ARNP is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

**7.8(1) Definitions.** As used in this subrule:

“*ARNP*” means a person who is currently licensed in Iowa to practice advanced nursing. An ARNP who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The ARNP may delegate only drug therapies that are in areas common to the ARNP’s practice.

“*Authorized pharmacist*” means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy (IBP) as specified in the drug therapy management criteria in rule 657—39.13(155A).

“*Board*” means the board of nursing of the state of Iowa.

“*Collaborative drug therapy management*” means participation by an ARNP and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

“*Collaborative practice*” means that an ARNP may delegate aspects of drug therapy management for the ARNP’s patients to an authorized pharmacist through a written community practice protocol. “*Collaborative practice*” also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital’s clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital’s P&T committee.

“*Community practice protocol*” means a written, executed agreement entered into voluntarily between an ARNP and an authorized pharmacist establishing drug therapy management for one or more of the ARNP’s patients residing in a community setting. A community practice protocol shall comply with the requirements of 657—subrule 39.13(2).

“*Community setting*” means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

“*Hospital clinic*” means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital’s P&T committee.

“*Hospital pharmacist*” means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital’s P&T committee.

“*Hospital practice protocol*” means a written plan, policy, procedure, or agreement that authorizes drug therapy management between ARNPs and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all ARNPs and hospital pharmacists at a hospital or the hospital’s clinics under the direct authority of the hospital’s P&T committee or only to those ARNPs and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of 657—subrule 39.13(3).

“*IBP*” means the Iowa board of pharmacy.

“*P&T committee*” means a committee of the hospital composed of ARNPs, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

“*Therapeutic interchange*” means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

**7.8(2) Community practice protocol.**

a. An ARNP shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBP or a committee authorized by the IBP. Written protocols shall be made available upon request of the board or the IBP.

b. The community practice protocol shall include:

## NURSING BOARD[655](cont'd)

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each ARNP who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The ARNP who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal ARNP.

(3) The name and contact information of the principal ARNP and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the patient's ARNP. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient's ARNP for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the ARNP to secure the patient's written consent. If the ARNP does not secure the patient's written consent, the pharmacist shall secure such and notify the patient's ARNP within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the ARNP, including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the ARNP.

(10) A description of the types of reports the ARNP requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the ARNP.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the ARNP authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits an ARNP from delegating collaborative drug therapy management to any unlicensed or licensed person other than another ARNP or authorized pharmacist.

## NURSING BOARD[655](cont'd)

(17) A description of the mechanism for the pharmacist and ARNP to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's ARNP and one authorized pharmacist.

d. Written protocols shall be made available upon request of the board or the IBP.

e. An ARNP may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the ARNP notifies, in writing, the pharmacist. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change.

f. Patient consent for community practice protocols. The ARNP or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient needs to be communicated to the other party at the time of securing the patient's consent. The patient's ARNP shall maintain the patient consent in the patient's medical record.

**7.8(3) Hospital practice protocol.**

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of ARNPs and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the ARNP. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the ARNP for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's ARNP, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's ARNP to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

These rules are intended to implement Iowa Code sections 17A.3 and 147.73 and chapter 152.

**ARC 4129C****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action****Proposing rule making related to license reactivation for chiropractic physicians and providing an opportunity for public comment**

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

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

The proposed amendments reduce the required number of continuing education hours from 60 to 40 for reactivation applicants in order to be consistent with recent rule making.

*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 Division of Professional Licensure 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 December 11, 2018. Comments should be directed to:

Susan Reynolds  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
Des Moines, Iowa 50319-0075  
Email: [susan.reynolds@idph.state.ia.us](mailto:susan.reynolds@idph.state.ia.us)

*Public Hearing*

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

December 11, 2018  
9 to 9:30 a.m.

Fifth Floor Conference Room 526  
Lucas State Office Building  
Des Moines, Iowa



## PROFESSIONAL LICENSURE DIVISION[645](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. 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 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 subparagraph **41.14(3)“a”(2)** as follows:

(2) Verification of completion of ~~60~~ 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of the application for reactivation.

ITEM 2. Amend subparagraph **41.14(3)“b”(2)** as follows:

(2) Verification of completion of ~~60~~ 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of application for reactivation; and

**ARC 4128C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rule making related to opioid prescribing practices of a physician assistant and providing an opportunity for public comment**

The Board of Physician Assistants hereby proposes to amend Chapter 326, “Licensure of Physician Assistants,” Chapter 327, “Practice of Physician Assistants,” Chapter 328, “Continuing Education for Physician Assistants,” and Chapter 329, “Discipline for Physician Assistants,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 148C.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 124, 147, 148, 148C and 272C and 2018 Iowa Acts, House File 2377.

*Purpose and Summary*

2018 Iowa Acts, House File 2377, created new Iowa Code section 124.551A, which requires the Board to adopt rules requiring prescribing practitioners to review patient information in the prescription monitoring program (PMP). New Iowa Code section 147.162 requires the Board to adopt rules to establish penalties for practitioners who overprescribe opioids. New Iowa Code section 272C.2C requires the Board to adopt rules requiring continuing education for opioid prescribers as a condition of license renewal. These proposed amendments mandate physician assistants who prescribe opioids to check the PMP prior to prescribing opioids, require continuing education regarding opioid prescriptions, and permit Board discipline for physician assistants who overprescribe opioids.

## PROFESSIONAL LICENSURE DIVISION[645](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*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure 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 December 11, 2018. Comments should be directed to:

Susan Reynolds  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
Des Moines, Iowa 50319-0075  
Email: [susan.reynolds@idph.iowa.gov](mailto:susan.reynolds@idph.iowa.gov)

*Public Hearing*

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

December 11, 2018  
8:30 to 9 a.m.

Fifth Floor 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 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** definitions of "Opioid" and "Prescription monitoring program database" in rule **645—326.1(148C)**:

"*Opioid*" means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Prescription monitoring program database*” or “*PMP database*” means the Iowa prescription monitoring program database administered by the Iowa board of pharmacy pursuant to Iowa Code chapter 124, subchapter VI, and 657—Chapter 37.

ITEM 2. Adopt the following **new** subrule 327.6(3):

**327.6(3)** Prior to prescribing an opioid, a physician assistant shall review the patient’s information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility patient care.

ITEM 3. Adopt the following **new** paragraph **328.3(2)“d”**:

*d.* A licensee who has prescribed opioids to a patient during the renewal cycle shall complete a minimum of two hours of continuing education regarding the guidelines for prescribing opioids for chronic pain, as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, as a condition of license renewal. These hours may count toward the 100 hours of continuing education required for license renewal. The licensee shall maintain documentation of these hours, which may be subject to audit.

ITEM 4. Adopt the following **new** subrule 329.2(32):

**329.2(32)** Prescribing opioids in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

**ARC 4130C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rule making related to remote medical sites  
and providing an opportunity for public comment**

The Board of Physician Assistants hereby proposes to amend Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 148C.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 147, 148, 148C and 272C.

*Purpose and Summary*

The proposed amendment changes the care coordination between the supervising physician and the physician assistant working at a remote medical site to include electronic communication that will provide real-time patient assessment and treatment. In accordance with Iowa Code section 148C.5, the Board of Physician Assistants is amending its administrative rules in conjunction with the Board of Medicine (**ARC 3992C**, IAB 9/12/2018). The amendment is intended to reduce the number of waiver requests to improve administrative efficiency. This rule making is required to comply with Iowa Code sections 147.80 and 148C.5.

*Fiscal Impact*

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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*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 Division of Professional Licensure 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 December 11, 2018. Comments should be directed to:

Susan Reynolds  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
Des Moines, Iowa 50319-0075  
Email: [susan.reynolds@idph.state.ia.us](mailto:susan.reynolds@idph.state.ia.us)

*Public Hearing*

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

December 11, 2018  
7:30 to 8 a.m.

Fifth Floor 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 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 327.4(2) as follows:

**327.4(2)** A The supervising physician must visit a remote site or communicate with the physician assistant at the remote site via electronic communications to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in special circumstances. When visits are less frequent than every two weeks in unusual or emergency circumstances, the board shall be notified in writing of these circumstances. For purposes of this rule, communication may consist of, but shall not be limited to, in-person meetings, two-way, interactive communication directly between the supervising physician and the physician assistant via the telephone,

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

secure messaging, electronic mail, or chart review. At least one supervising physician must meet in person with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site.

**ARC 4127C****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action****Proposing rule making related to vital records  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 95, "Vital Records: General Administration," Chapter 96, "Birth Registration," Chapter 98, "Marriage Registration," and Chapter 99, "Vital Records Modifications," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 144.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 144.

*Purpose and Summary*

These proposed amendments will affect persons who are seeking to establish a vital record event or amend a vital record on file. Outlining in rule the process to amend or establish vital records will also assist a judge when issuing an order in a court of competent jurisdiction. Also, doulas or midwives who provide guidance and support to a pregnant woman during labor and delivery will be required to report the home birth event. The amendments will better allow the Department to support the public and protect the integrity of vital records. The following paragraphs describe the proposed amendments in more detail:

The proposed amendments to Chapter 95 will ensure that vital record fees are being assessed per record issued and not per search performed. In addition:

- A definition of "doula" is added.
- Language is added to protect the registrant of vital records to ensure that entitlement to a certified copy of any vital record is for the benefit of the person listed on the vital record.
- Entitlement to a certified copy of a vital record by legal representatives must be on behalf of an entitled family member and also for the benefit of the person on the record.

The proposed amendment to Chapter 96 adds the requirement that a doula or a midwife must report a home birth.

The proposed amendment to Chapter 98 outlines the process to establish a delayed marriage record through the court system.

The proposed amendments to Chapter 99 outline the process to amend a certificate of vital record through the court system and to allow for a person to amend a vital record using an established vital record on file.

*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.

## PUBLIC HEALTH DEPARTMENT[641](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 the Department's variance and waiver provisions contained in 641—Chapter 178.

*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 December 11, 2018. Comments should be directed to:

Melissa Bird  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [melissa.bird@idph.iowa.gov](mailto:melissa.bird@idph.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. Adopt the following **new** definition of “Doula” in rule **641—95.1(144)**:  
“Doula” means a person, typically without formal obstetric training, who provides guidance and support to a pregnant woman during labor and delivery.

ITEM 2. Amend rule 641—95.3(144), introductory paragraph, as follows:

**641—95.3(144) Forms—property of department.** All forms, certificates and reports pertaining to the registration of vital events are the property of the department and shall be surrendered to the state registrar upon demand. Forms used for the purpose of creating a vital record event shall not be accessible to the general public.

ITEM 3. Amend subrules 95.6(1) and 95.6(2) as follows:

**95.6(1) Fees for services provided by state registrar or county registrar.** The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

a. The state registrar or county registrar, as applicable, shall charge a fee of \$20 to conduct a search for a record. ~~On and after July 1, 2019, this fee will revert to \$15 for a certified copy of a vital record.~~

~~(1) The search fee shall include one certified copy of the record.~~

~~(2) For each additional certified copy of the same record, a \$20 fee shall be charged. On and after July 1, 2019, this fee will revert to \$15.~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

(3) If, following a search, no record is found and no certified copy is printed, the \$20 fee may be retained. On and after July 1, 2019, this fee will revert to \$15.

b. The state registrar shall charge a fee of \$20 to prepare an adoption certificate, to amend a certificate, to amend a certificate of live birth to reflect a legal change of name, to prepare a delayed certificate, to process other administrative or legal actions, or for the search and preparation of copies of supporting documents on file in the state registrar's office. On and after July 1, 2019, this fee will revert to \$15. No fee shall be charged for establishment of paternity.

c. The state registrar shall charge a fee of \$25 to file a completed application for the mutual consent voluntary adoption registry.

d. The state registrar shall charge a fee of \$5 to update applicant information maintained in the mutual consent voluntary adoption registry and the declaration of paternity registry.

e. The state registrar shall charge a fee of \$20 to amend an abstract or other legal documentation in support of the preparation of a new certificate. On and after July 1, 2019, this fee will revert to \$15.

f. The state registrar shall charge a fee of \$35 to ~~conduct a search for a record for the purpose of issuing~~ issue a commemorative copy of a certificate of birth or a certificate of marriage pursuant to Iowa Code section 144.45A. Fees collected shall be deposited in the emergency medical services fund established in Iowa Code section 135.25.

g. The state registrar shall charge a fee of \$20 ~~to conduct a search for a certificate of fetal death~~ for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to Iowa Code section 144.31A. On and after July 1, 2019, this fee will revert to \$15.

**95.6(2) *Overpayments.*** Any overpayment of \$5 or less received by the state registrar for the copying of ~~or search for~~ vital records or for the preparation or amending of a certificate shall not be refunded and shall be retained by the department.

ITEM 4. Amend paragraph **95.8(1)“d”** as follows:

d. Other persons who demonstrate a direct tangible interest and entitlement when it is shown that the certified copy is needed to determine or protect a personal or property interest and the interest is for the benefit of the registrant.

ITEM 5. Amend paragraph **95.8(2)“d”** as follows:

d. Commercial firms or agencies requesting lists of vital record events, or lists of names, or lists of addresses, or that are not legal representatives requesting records on behalf of entitled individuals.

ITEM 6. Amend rule 641—96.7(144) as follows:

**641—96.7(144) Non-institution birth.**

**96.7(1)** In case of a non-institution Iowa live birth, the official non-institution birth worksheet shall be completed and filed with the state registrar by one of the following in the indicated order of priority:

- a. The physician in attendance at or immediately after the live birth.
- b. Any other person, including a certified nurse midwife or doula, in attendance at or immediately after the live birth.
- c. The mother or her legal spouse.
- d. The person in charge of the premises where the live birth occurred.

**96.7(2)** No change.

**96.7(3)** An Iowa-licensed certified nurse midwife may preregister with the state registrar by submitting a ~~dated statement on business letterhead identifying the midwife's business name, if applicable, printed full name and original signature of the midwife, professional title, license number, address and telephone number~~ completed Iowa-Licensed CNM Pre-Registration Application For Home Births and a clear photocopy of that person's current government-issued photo identification.

a. ~~Certified To register a live birth, certified nurse midwives who are preregistered shall submit to the state registrar for registration of the live birth at a minimum~~ To register a live birth, certified nurse midwives who are preregistered shall submit to the state registrar for registration of the live birth at a minimum the following:

(1) A cover letter that is on the business letterhead, that identifies the live birth submitted for registration, that supports the facts of the live birth, and that contains the original signature of the person responsible for registering the live birth;

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) The original official non-institution birth worksheet completed and signed pursuant to subrule 96.7(5) or as directed by the state registrar; ~~and~~

(3) Payment of fees, which shall be included with the birth worksheet; and

(4) Other evidence acceptable to the state registrar as requested.

*b.* It is the responsibility of the individual preregistering to update any information provided in the individual's original registration.

**96.7(4) Certified nurse midwives** A certified nurse midwife, doula, or any person providing assistance with the birth not preregistered prior to submitting a certificate of live birth for registration shall follow subrules 96.7(1), 96.7(2) and 96.7(5) for all live births the midwives-attend person attends outside a birthing institution.

**96.7(5)** No change.

ITEM 7. Amend subrule 98.7(6) as follows:

**98.7(6) Denial of registration.** In the absence of adequate substantiating evidence or if the state registrar finds reason to question the validity or adequacy of the evidence required to establish a delayed certificate of marriage, the state registrar shall not register the delayed record.

*a.* The written notice of rejection from the state registrar shall include:

(1) The Delayed Certificate of Marriage form stamped "rejected"; and

(2) The Delayed Evidence Refusal form.

*b.* Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the state registrar. Upon dismissal, the state registrar shall advise the applicant, and all documents submitted in support of such registration shall be returned to the applicant. The state registrar shall provide information related to the applicant's right of appeal to the district court.

*c.* If a request to establish a delayed certificate of marriage is rejected under the provisions of Iowa Code section 144.16, a petition may be filed with the district court for an order to establish a delayed certificate of marriage. The petition shall:

(1) Be made on a form prescribed and furnished by the state registrar.

(2) Allege that diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Iowa Code section 144.16.

(3) Allege that the state registrar has refused to establish the delayed certificate of marriage.

(4) Include such other allegations as may be required.

(5) Be accompanied by a statement of the registration official made in accordance with Iowa Code section 144.16 and all documentary evidence which was submitted to the registration official in support of such registration.

(6) Be verified by the petitioner.

ITEM 8. Amend subrules 99.6(1) and 99.6(2) as follows:

**99.6(1)** Amendments of vital records may be made by the state registrar one year or more after the date of the event upon request from an entitled person or by an order to amend the record by a court of competent jurisdiction. Amendments include the correction of obvious errors, omissions, or transposition of letters in words of common knowledge.

**99.6(2)** For a certificate of live birth, entitled persons include in the following descending order of priority:

*a.* The registrant, if the registrant is of legal age, has reached the age of majority or is an emancipated minor;

~~*b.*~~ Either parent as shown on the child's certificate of live birth; or

~~*b.*~~ The mother, in the case of the death or incapacity of the second parent;

~~*c.*~~ The second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

~~*c.*~~ The legal guardian or agency having legal custody of the child.



## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 9. Amend subrule 99.6(7) as follows:

**99.6(7)** The documentary evidence shall have been established at least five years prior to the date of the application or within seven years of the date of the event.

*a.* The state registrar shall determine a priority of best evidence and may, at the state registrar's discretion, require additional documentary evidence to support the requested amendment.

*b.* The state registrar shall evaluate the evidence submitted in support of any amendment, and when there is reason to question the validity or adequacy of the evidence, the state registrar may reject the amendment and shall advise the applicant of the reasons for this action and provide information related to the applicant's right of appeal to the district court pursuant to Iowa Code section 144.38.

*c.* If a request to amend a certificate of birth is rejected under the provisions of Iowa Code section 144.38, a petition may be filed with the district court for an order amending a vital record. The petition shall:

(1) Be made on a form prescribed and furnished by the state registrar.

(2) Allege that diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Iowa Code section 144.38.

(3) Allege that the state registrar has refused to amend the certificate of vital record.

(4) Include such other allegations as may be required.

(5) Be accompanied by a statement of the registration official made in accordance with Iowa Code section 144.38 and all documentary evidence which was submitted to the registration official in support of such registration.

(6) Be verified by the petitioner.

ITEM 10. Amend rule 641—99.9(144) as follows:

**641—99.9(144) Other amendments to certificate of live birth.**

**99.9(1)** The parent's name or both parents' names as reported by the parent or parents on the birth worksheet used to establish the certificate of live birth shall ~~not be corrected~~ only be amended if the amendment is supported by a certified copy of a vital record or amended except by an order from a court of competent jurisdiction.

**99.9(2)** Certificates of live birth of deceased persons shall ~~not be amended~~ only be amended if the amendment is supported by a certified copy of a vital record or amended by an order from a court of competent jurisdiction.

ITEM 11. Amend rule 641—99.11(144) as follows:

**641—99.11(144) Correction or amendment to a certificate of marriage.**

**99.11(1)** and **99.11(2)** No change.

**99.11(3)** ~~The correction or amendment process shall not be used to change a legal name after marriage~~ An order from a court of competent jurisdiction is required to correct or amend a legal name after marriage.

**ARC 4133C**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to excise tax rate on motor fuels and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 421.14 and 452A.59.

REVENUE DEPARTMENT[701](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 452A.3.

*Purpose and Summary*

This proposed rule making amends subrule 68.2(1) to adjust the excise tax rate on gasoline from 30.5¢ per gallon (ending June 30, 2018) to 30.7¢ per gallon (beginning July 1, 2018) pursuant to the formula prescribed by Iowa Code section 452A.3. The ethanol distribution percentage for calendar year 2017 is between 65 percent and 70 percent, an increase from 2016. As a result, pursuant to Iowa Code section 452A.3(1)“b”(5), in fiscal year 2019 the excise tax rate for ethanol blended gasoline will remain 29¢ per gallon, but the excise tax rate for gasoline will increase from 30.5¢ per gallon to 30.7¢ per gallon.

*Fiscal Impact*

Under the excise tax rates applicable for fiscal year 2019 as proposed in this rule making and as required by statute, it is estimated that, accounting for refunds, collections would be \$453.6 million, resulting in an increase of \$1.1 million in revenues.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 11, 2018. Comments should be directed to:

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

## REVENUE DEPARTMENT[701](cont'd)

The following rule-making action is proposed:

Amend subrule 68.2(1) as follows:

**68.2(1)** The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	21¢ per gallon (for July 1, 2008, through February 28, 2015)
	31¢ per gallon (for March 1, 2015, through June 30, 2015)
	30.8¢ per gallon (for July 1, 2015, through June 30, 2016)
	30.7¢ per gallon (for July 1, 2016, through June 30, 2017)
	30.5¢ per gallon ( <u>beginning for July 1, 2017, through June 30, 2018</u> )
30.7¢ per gallon ( <u>beginning July 1, 2018</u> )	
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through February 28, 2015)
	29¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.3¢ per gallon (for July 1, 2015, through June 30, 2016)
	29¢ per gallon (beginning July 1, 2016)
E-85 gasoline	17¢ per gallon (for January 1, 2006, through June 30, 2007)
	19¢ per gallon (for July 1, 2007, through February 28, 2015)
	29¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.3¢ per gallon (for July 1, 2015, through June 30, 2016)
	29¢ per gallon (beginning July 1, 2016)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.5¢ per gallon (beginning July 1, 2015)
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015)
	5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015)
	30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014)
	21¢ per gallon (for July 1, 2014, through February 28, 2015)
	31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (beginning March 1, 2015)

## TREASURER OF STATE

### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for November is 5.00%.

TREASURER OF STATE[781](cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 9, 2018, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days .....	Minimum .35%
32-89 days .....	Minimum .35%
90-179 days .....	Minimum .55%
180-364 days .....	Minimum .60%
One year to 397 days .....	Minimum .85%
More than 397 days .....	Minimum 1.05%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**ARC 4124C**

**TREASURER OF STATE[781]**

**Notice of Intended Action**

**Proposing rule making related to Iowa educational savings plan trust and providing an opportunity for public comment**

The Treasurer of State hereby proposes to rescind Chapter 16, "Iowa Educational Savings Plan Trust," Iowa Administrative Code, and to adopt a new Chapter 16 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 12D.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 12D.

TREASURER OF STATE[781](cont'd)

*Purpose and Summary*

This proposed rule making updates rules on the administration of the Iowa educational savings plan trust.

*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 Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office of the Treasurer of State no later than 4:30 p.m. on December 11, 2018. Comments should be directed to:

Daniel Wasta  
Office of the Treasurer of State  
State Capitol, Room 114  
1007 East Grand Avenue  
Des Moines, Iowa 50319  
Email: [daniel.wasta@tos.iowa.gov](mailto:daniel.wasta@tos.iowa.gov)

*Public Hearing*

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

December 13, 2018  
1 to 2 p.m.

Lucas State Office Building, First Floor  
321 East 12th Street  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

TREASURER OF STATE[781](cont'd)

Rescind 781—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16  
IOWA EDUCATIONAL SAVINGS PLAN TRUST

**781—16.1(12D) Purpose.** The purpose of these rules is to provide for the administration and operation of the Iowa educational savings plan trust.

**781—16.2(12D) Definitions.** In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

“*Account*” means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

“*Account balance*” means the fair market value of an account.

“*Account balance limit*” means the amount determined periodically by the program administrator as necessary to provide for the qualified higher education expenses of a beneficiary in accordance with Section 529. The account balance limit shall apply to the total of all accounts in the plans for the benefit of a beneficiary.

“*Account owner*” means the participant or other owner of an account.

“*Adjusted maximum annual amount*” means the amount that a participant may annually contribute to an account for a beneficiary and deduct from Iowa income taxes pursuant to Iowa Code chapter 422.

“*Beneficiary*” means the individual designated as the beneficiary of an account.

“*College savings Iowa*” means the name and logo registered under Iowa law to represent the direct-sold plan under the Iowa educational savings plan trust.

“*Contractor*” means any party retained by the program administrator to assist in the day-to-day operations of a plan, including record-keeping, investment advisory and administrative services. The program administrator may delegate any responsibilities with respect to day-to-day operations of a plan to one or more contractors.

“*Contribution*” means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the applicable program description.

“*Eligible educational institution*” means an eligible educational institution as defined in Section 529.

“*Iowa advisor 529 plan*” means the name and logo registered to represent the advisor-sold plan under the Iowa educational savings plan trust.

“*K-12 institution*” means any elementary or secondary public, private, or religious school.

“*Member of the family*” means a member of the family as defined in Section 529, except that for a qualified rollover to a Section 529A ABLE account, “member of the family” shall mean as defined in Section 529A of the Internal Revenue Code.

“*Nonqualified withdrawal*” means a withdrawal from an account that is not a qualified withdrawal or a qualified rollover.

“*Participant*” means the owner of an account.

“*Participation agreement*” means the form that the participant submits to the plan to identify the participant, beneficiary, plan, and other information that may be requested by the plan.

“*Plan*” means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

“*Program administrator*” means the treasurer of state.

“*Program description*” means the description of each plan provided to participants setting forth information with respect to the plan.

“*Qualified higher education expenses*” means qualified higher education expenses as defined in Section 529. Any reference to qualified higher education expenses includes a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private or religious school.

“*Qualified rollover*” means a distribution of amounts from a plan which, within 60 days of such distribution, is transferred: (1) to another qualified tuition program for the benefit of the same beneficiary,

## TREASURER OF STATE[781](cont'd)

provided that it has been at least 12 months from the date of a previous transfer to a qualified tuition program for that beneficiary; (2) to another qualified tuition program (or an account in another plan) for the benefit of a member of the family of the beneficiary; or (3) to a Section 529A ABLE account for the beneficiary or member of the family of the beneficiary, subject to ABLE account contribution limits.

*“Qualified withdrawal”* means a withdrawal from an account used to pay qualified higher education expenses.

*“Section 529”* means Section 529 of the Internal Revenue Code.

*“Successor participant”* means a successor to the ownership of an account designated as such in accordance with rule 781—16.10(12D) and the applicable program description.

**781—16.3(12D) Participation agreement and program description.** The following material shall be used to administer the Iowa educational savings plan trust.

**16.3(1)** Each participant shall submit a participation agreement in order to open an account. The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

**16.3(2)** Each plan will have a program description setting forth the terms of the plan and describing the investments, procedures and fees applicable to that plan. Each program description shall also set forth the privacy policy adopted by the program administrator for that plan. Persons interested in a plan should consult the program description. A program description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

**781—16.4(12D) Forms.**

**16.4(1)** Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed below. Current forms are available online at [www.collegesavingsiowa.com](http://www.collegesavingsiowa.com) for college savings Iowa and at [www.iowaadvisor529.com](http://www.iowaadvisor529.com) for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- a. Participation.
  - (1) Open or close an account.
  - (2) Reserved.
- b. Account changes.
  - (1) Update the participant or beneficiary contact information.
  - (2) Change the beneficiary.
  - (3) Add, change or remove a successor or interested party.
  - (4) Transfer ownership rights of an account to another person.
- c. Investment changes.
  - (1) Exchange existing investments.
  - (2) Change the direction of future contributions.
- d. Contribution changes.
  - (1) Establish, delete or change automatic investments or payroll deduction.
  - (2) Establish, delete or change banking information.
  - (3) Establish or make an electronic bank transfer or an additional purchase by check.
  - (4) Transfer funds from a qualified U.S. savings bond, education savings account or another 529 plan (directly or indirectly).
- e. Withdrawals.
  - (1) Request a full or partial withdrawal.
  - (2) Request a qualified rollover.
- f. Authorization.
  - (1) Establish, delete or change an authorized agent, limited power of attorney or power of attorney on an account.

## TREASURER OF STATE[781](cont'd)

(2) Authorize or change a financial advisor or agent who can obtain information regarding the account.

(3) Identify the current trustee of a trust.

(4) Identify officers of an organization who can act upon an account.

**16.4(2)** The contractor may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving a plan and will make those forms available online and in paper format and may authorize substitute forms for a plan or a process in lieu of existing forms.

**781—16.5(12D) Participant eligibility.** Participants must meet the following requirements:

**16.5(1)** The participant must be an individual, individual's legal representative, trust, estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code.

**16.5(2)** An individual participant must be at least 18 years old and a United States citizen or resident alien with a valid social security number or tax identification number.

**16.5(3)** A participant shall execute a participation agreement that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.

**16.5(4)** A participant shall, on signing a participation agreement, provide the plan with the participant's social security number or tax identification number and the other information required on the participant agreement.

**16.5(5)** Participants which are trusts must submit evidence that the individual trustee is so authorized and agrees to the terms and conditions of the participation agreement and must provide the information requested by the program administrator. Participants which are described in Section 501(c)(3) of the Internal Revenue Code must provide their tax identification number and any other information requested by the program administrator.

**781—16.6(12D) Beneficiary eligibility.** A beneficiary of a participation agreement may be designated at any time after birth and assignment of a social security number. This rule establishes the eligibility criteria for a beneficiary.

**16.6(1)** A beneficiary may be a resident of any state.

**16.6(2)** A participant shall, on signing a participation agreement, provide the contractor a valid social security number for the beneficiary.

**781—16.7(12D) Program administrator rights and responsibilities.**

**16.7(1)** The program administrator reserves the right to:

*a.* Freeze an account or suspend account services or do both when a plan has received reasonable notice of a dispute regarding the assets in an account, including notice of a dispute in account ownership or when the plan reasonably believes a fraudulent transaction may occur or has occurred;

*b.* Freeze an account or suspend account services or do both upon the notification to the plan of the death of a participant until the plan receives required documentation in good order and reasonably believes that it is lawful to transfer the account ownership to the successor participant;

*c.* Redeem an account, without the participant's permission, in cases of threatening conduct or suspicious, fraudulent, or illegal activity; and

*d.* Reject a contribution for any reason, including contributions that the plan believes are not in the best interests of the plan, a portfolio, or the participants.

**16.7(2)** The risk of market loss, tax implications, penalties, and any other expenses, as a result of such an account freeze, account redemption, or contribution rejection, will be solely the participant's responsibility.

**16.7(3)** The contractor will provide each participant a fourth-quarter statement. In addition, the program administrator will provide each participant that had an account with either contributions or withdrawals in the first, second, or third quarter with a quarterly statement for that account.



## TREASURER OF STATE[781](cont'd)

**781—16.8(12D) Contributions.** Contributions are deductible in accordance with Iowa income tax laws and administrative rules of the department of revenue. Participation agreements shall be for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

**16.8(1)** Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

**16.8(2)** The program administrator shall actuarially determine the account balance limit. No additional contributions may be made on behalf of a beneficiary if the total of the account balances of all accounts held for the beneficiary exceeds the applicable account balance limit.

**16.8(3)** The program administrator shall determine the adjusted maximum annual amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum amount shall be communicated to participants in the plans and to the public in any reasonable manner determined by the program administrator.

**781—16.9(12D) Substitution or change of beneficiary.** Beneficiaries may be changed subject to the rules and regulations of the program administrator. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the applicable program description.

**16.9(1)** At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and must be a member of the family of the beneficiary being replaced.

**16.9(2)** A participant may request that a beneficiary be substituted by submitting the appropriate form to the contractor.

**781—16.10(12D) Change of participant or account owner.** The participant is the owner of the account and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

**16.10(1)** A participant may transfer the participant's current ownership rights in an account to another eligible individual, an individual's legal representative, a trust, an estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code or to a beneficiary. To do so, the participant shall complete the appropriate form.

**16.10(2)** A participant may also designate a successor on the participation agreement. A participant may change the designated successor by completing the appropriate form. The designated successor shall succeed to the ownership of the account in the event of the death of the participant. Upon the death of the participant, the successor participant must notify the plan by submitting a completed participant agreement form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed.

**16.10(3)** In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

*a.* The designated beneficiary, if 18 years of age or older, shall become the owner of the account as well as remain the beneficiary upon filing the appropriate forms.

*b.* If the designated beneficiary is under the age of 18, account ownership will be transferred to a surviving parent or other legal guardian of the beneficiary upon the filing of the appropriate forms.

**16.10(4)** The participant may name a successor to the account even though the successor may already have established or may have plans to establish a plan account.

**781—16.11(12D) Qualified withdrawals.** This rule establishes the procedures for the payment of qualified withdrawals.

**16.11(1)** The participant must initiate a withdrawal for qualified or nonqualified withdrawals. The participant must file the appropriate form with the contractor.

## TREASURER OF STATE[781](cont'd)

**16.11(2)** Qualified withdrawals will be paid in one of three ways once the form has been received by the contractor:

- a. Directly to the eligible educational institution or K-12 institution only.
- b. Directly to the participant.
- c. Directly to the beneficiary at eligible educational institutions only.

**16.11(3)** Withdrawals for the payment of tuition in connection with enrollment or attendance at a K-12 institution may not exceed a maximum of \$10,000 per taxable year per beneficiary from all 529 plans.

**16.11(4)** Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant's account at the time of the withdrawal.

**16.11(5)** Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The participant will receive the 1099-Q for any withdrawal paid to the participant. The beneficiary will receive the 1099-Q for any withdrawal paid to the beneficiary or institution of higher education. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified.

**16.11(6)** A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the contractor.

**16.11(7)** The Iowa state income tax treatment of contributions to and withdrawals from an account shall be as set forth in Iowa Code chapter 422.

**781—16.12(12D) Nonqualified withdrawals and cancellation.** Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

**16.12(1)** A nonqualified withdrawal is one in which the funds are used for a purpose other than the payment of or reimbursement for qualified educational expenses. A participant may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the contractor the appropriate form. A nonqualified withdrawal will be paid only to the participant.

**16.12(2)** If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the contractor of the appropriate form.

**16.12(3)** Funds that are distributed to a participant in a nonqualified withdrawal pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which such withdrawal is made. The participant will receive the 1099-Q for any nonqualified withdrawals. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified. Nonqualified withdrawals may be subject to state and federal taxes and penalties.

**781—16.13(12D) Rollover.** The Iowa state income tax treatment of a qualified rollover from an account shall be as set forth in Iowa Code chapter 422. A rollover which is not a qualified rollover shall be treated as a nonqualified withdrawal.

**781—16.14(12D) Garnishment.** Pursuant to Iowa Code section 642.2, funds held by the program administrator under the trust are not subject to garnishment.

**781—16.15(12D) Appeal of decisions.** An account owner may appeal any decision of the program administrator under these rules and with respect to the plan.

**16.15(1)** An account owner may utilize the appeals process after receipt of the decision from the program administrator.

**16.15(2)** Failure to submit the appeal request within 30 calendar days of receipt of the decision from the program administrator shall constitute an acceptance of the decision.

TREASURER OF STATE[781](cont'd)

**16.15(3)** The account owner shall submit to the program administrator a written request for an appeal along with all supporting documentation.

**16.15(4)** The program administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

**16.15(5)** An appeal review shall be conducted at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

**16.15(6)** Based on the evidence and additional information presented during the appeal, the program administrator will render a decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12D.

**ARC 4123C**

## **TREASURER OF STATE[781]**

### **Notice of Intended Action**

#### **Proposing rule making related to Iowa ABLE savings plan trust and providing an opportunity for public comment**

The Treasurer of State hereby proposes to adopt new Chapter 20, "Iowa ABLE Savings Plan Trust," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 12I.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 12I.

#### *Purpose and Summary*

This proposed rule making provides rules on the administration of the Iowa ABLE savings plan trust.

#### *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 Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office of the Treasurer of State no later than 4:30 p.m. on December 11, 2018. Comments should be directed to:

TREASURER OF STATE[781](cont'd)

Daniel Wasta  
Office of the Treasurer of State  
State Capitol, Room 114  
1007 East Grand Avenue  
Des Moines, Iowa 50319  
Email: [daniel.wasta@tos.iowa.gov](mailto:daniel.wasta@tos.iowa.gov)

*Public Hearing*

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

December 12, 2018  
1 to 2 p.m.

Lucas State Office Building, First Floor  
321 East 12th Street  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 781—Chapter 20:

CHAPTER 20  
IOWA ABLE SAVINGS PLAN TRUST

**781—20.1(12I) Purpose.** The purpose of these rules is to provide for the administration and operation of the Iowa ABLE savings plan trust.

**781—20.2(12I) Definitions.** In addition to the terms defined in Iowa Code section 12I.1, the following terms apply to this chapter:

*“Account”* means an account in the plan opened by the account owner or authorized individual on behalf of the account owner to receive contributions and to provide funds for qualified disability expenses.

*“Account balance”* means the fair market value of an account.

*“Account balance limit”* means the amount set as such by the plan as set forth in the plan addendum. When the fair market value of an account reaches the account balance limit, no additional contributions will be accepted by the plan. Assets in an account can continue to accrue earnings beyond the account balance limit.

*“Account owner”* means the account owner and designated beneficiary of the account. An account owner must be an eligible individual. References herein to an account owner include an authorized individual or an authorized agent acting on behalf of an account owner.

*“Annual contribution limit”* means the annual limit on contributions from all sources to an account in a qualified ABLE program under Section 529A.

## TREASURER OF STATE[781](cont'd)

*“Authorized agent”* means a person granted permission, which is revocable, by the account owner or authorized individual to access information about the account or to take specified actions on the account or to do both of those things.

*“Authorized individual”* means an individual authorized to act on the account owner’s behalf with respect to the account. The authorized individual may neither have nor acquire any beneficial interest in the account during the account owner’s lifetime and must administer the account for the benefit of the account owner.

*“Beneficiary”* or *“designated beneficiary”* means the eligible individual who is the owner of the account.

*“Contractor”* means any party retained by the plan administrator to assist in the day-to-day operations of the plan, including record-keeping, investment advisory and administrative services. The plan administrator may delegate any responsibilities with respect to day-to-day operations of the plan to one or more contractors.

*“Contribution”* means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the plan disclosure documents.

*“Eligible individual”* means an eligible individual as defined in Section 529A.

*“Federal penalty tax”* means a 10 percent additional federal tax imposed on the earnings portion of certain nonqualified withdrawals.

*“Fund”* means the underlying investments that are mutual funds or exchange-traded funds.

*“Iable”* means the name and logo registered under Iowa law to represent the Iowa ABLE savings plan trust.

*“Internal Revenue Code”* means the Internal Revenue Code of 1986, as amended, and regulations promulgated or proposed thereunder.

*“Investment managers”* means the managers of the underlying investments.

*“Investment options”* means the investment choices offered by the plan. Account owners can choose to invest in any number of investment options.

*“IRS”* means the Internal Revenue Service.

*“Member of the family”* means a sibling of the eligible individual, whether by blood or by adoption, including a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

*“Nonqualified withdrawal”* means any withdrawal that does not meet the requirements of being a qualified withdrawal or a rollover. Expenses will not be qualified disability expenses if they are incurred at a time when an account owner is not an eligible individual.

*“NYSE”* means the New York Stock Exchange, Inc.

*“Participation agreement”* means the agreement between the account owner and the plan that governs the account owner’s use of the plan.

*“Plan”* means the Iowa ABLE savings plan trust.

*“Plan addendum”* means the plan-specific disclosure document which contains substantive disclosure of the terms and conditions of an investment in the plan. The plan addendum is intended to be read with the plan disclosure statement.

*“Plan administrator”* means the treasurer of state as trustee and administrator of the plan.

*“Plan disclosure documents”* means the plan disclosure statement and the plan addendum applicable to the plan, including any supplements or amendments thereto.

*“Plan disclosure statement”* means the document adopted by the plan administrator which is intended to provide a description of the program and disclosure of the terms and conditions of an investment in the plan, including any supplements thereto distributed from time to time.

*“Qualified disability expenses”* means qualified disability expenses as defined in Section 529A.

*“Qualified withdrawal”* means any withdrawal from an account used to pay for qualified disability expenses of the account owner.

*“Rollover”* means a contribution to an account of an account owner (or of an eligible individual who is a member of the family of the account owner) of all or a portion of an amount withdrawn from the account owner’s account, provided the contribution is made within 60 days of the date of the withdrawal

## TREASURER OF STATE[781](cont'd)

and, in the case of a rollover to the account owner's ABLE account, no rollover has been made to an ABLE account of the account owner within the prior 12 months.

"*Secretary*" means the Secretary of the Treasury of the United States.

"*Section 529A*" means Section 529A of the Internal Revenue Code.

"*Social Security Act*" means the Social Security Act of 1935, as amended.

"*State*" means the state of Iowa.

"*Treasurer*" means the treasurer of the state of Iowa.

"*Underlying investments*" means the mutual funds, exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

**781—20.3(12I) Creation of Iowa ABLE savings plan trust.** The plan is created as a trust pursuant to Iowa Code chapter 12I. The treasurer is the trustee of the plan and, pursuant to Iowa Code chapter 12I, has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of Iowa Code chapter 12I pertaining to the plan.

The plan provides for the establishment of accounts under the plan by eligible individuals in order to provide a means to save for qualified disability expenses. The eligible individual is the account owner. The treasurer shall segregate moneys received by the plan into two funds: the program fund and the administrative fund. Contributions to the plan made on behalf of an eligible individual may only be made in the form of cash. An account owner is not permitted to provide investment direction regarding contributions or earnings held by the plan.

**781—20.4(12I) Participation agreement and plan disclosure documents.** The following material shall be used to administer the plan.

**20.4(1)** The plan shall have a form of participation agreement which must be used to establish accounts. The participation agreement shall be signed and dated in accordance with the requirements of the plan disclosure documents by the account owner to verify that the account owner agrees to the terms and conditions of the plan.

**20.4(2)** The plan will have plan disclosure documents setting forth the terms of the plan and describing the investment options, procedures, fees and costs applicable to the plan. The plan disclosure documents shall also set forth the privacy policy adopted by the plan administrator for the plan. Persons interested in the plan should consult the plan disclosure documents. The plan disclosure documents may be changed at any time by the plan administrator, and any such change may impact the rights of the account owner under the plan.

**781—20.5(12I) Eligible individual.** An account owner must be an eligible individual. An individual is an eligible individual for a taxable year if, during that year, either (1) the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act ("benefits eligibility"), or (2) a disability certification meeting specified requirements is filed with the Secretary in accordance with Section 529A ("certification eligibility"). In all cases, the blindness or disability must have occurred before the individual's twenty-sixth birthday. This rule establishes the following other requirements for opening an account:

**20.5(1)** An account owner may be a resident of any state.

**20.5(2)** An account owner must be a U.S. citizen or resident alien.

**20.5(3)** An account owner must, on signing a participation agreement, provide the plan administrator with a valid social security number or tax identification number.

**20.5(4)** An account owner must have a valid permanent U.S. street address.

**20.5(5)** No account owner may have more than one account in an ABLE plan in existence at the same time. A prior ABLE account that has been closed does not prohibit the subsequent creation of another ABLE account for the same account owner. As part of the enrollment process, the account owner will be required to certify under penalties of perjury that the account owner has no other ABLE account (except in the case of a rollover).

## TREASURER OF STATE[781](cont'd)

**20.5(6)** If an individual desires to open an account based on benefits eligibility, the individual must make the following certifications under penalties of perjury that:

*a.* The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and has received a benefit verification letter from the Social Security Administration and agrees to retain and provide the letter (or a genuine copy of the letter or other evidence) to the plan, the plan administrator, the IRS, or the U.S. Department of the Treasury upon request;

*b.* The individual's disability was present before the individual's twenty-sixth birthday.

**20.5(7)** If an individual desires to open an account based on certification eligibility, the individual must certify under penalties of perjury that the individual:

*a.* Has a medically determinable physical or mental impairment which results in marked or severe functional limitations and which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

*b.* Is blind (within the meaning of the Social Security Act); or

*c.* Has a condition listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration.

The individual must also certify that the disability, blindness, or compassionate allowances condition occurred before the date of the individual's twenty-sixth birthday and that the individual has a copy of the individual's diagnosis relating to the relevant impairment(s), signed by a physician meeting the criteria of Social Security Act Section 1861(r)(1). The individual must also agree to retain and provide a copy of the diagnosis and related information to the plan upon request.

**20.5(8)** By maintaining an account, the account owner is making a continuing certification that the account owner is an eligible individual. It is the account owner's responsibility to notify the plan in writing if the account owner ceases to be an eligible individual. It is also the account owner's responsibility to notify the plan in writing if the account owner subsequently requalifies as an eligible individual.

**781—20.6(12I) Authorized individual.** An authorized individual may establish an account on behalf of the account owner and make investment decisions for the account owner. An authorized individual may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner. Whenever an action is required to be taken by an account owner in connection with an account, the authorized individual may take such action on behalf of the account owner.

**20.6(1)** A parent or legal guardian of an account owner who is a minor may be the authorized individual for that account owner. An adult account owner with legal capacity may appoint an individual as an authorized individual. In addition, a conservator legally appointed for an adult account owner who lacks legal capacity may be an authorized individual.

**20.6(2)** An authorized individual may be required to provide supporting documentation to the plan. The plan may freeze an account until the plan receives the required documentation and is able to verify the authorized individual's authority to open, transact and maintain an account on behalf of the account owner.

**781—20.7(12I) Authorized agent.** An account owner with legal capacity or an authorized individual may designate an authorized agent to act on the account. An authorized agent may be appointed with varying levels of authority in accordance with the plan disclosure documents. Certain levels of authority will require the completion of a power of attorney form.

**781—20.8(12I) Forms.**

**20.8(1)** Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions set forth in and in accordance with the plan disclosure documents. Current forms are available online at [IAble.gov](http://IAble.gov). Among the actions which require the completion of an appropriate form are opening and closing an account, transferring

## TREASURER OF STATE[781](cont'd)

ownership rights of an account to another person, changing investments, requesting a full or partial withdrawal, requesting a rollover, and assigning an authorized agent.

**20.8(2)** The plan administrator may from time to time provide additional forms for use by account owners in connection with actions involving the plan and will make those forms available online and in paper format and may authorize substitute forms for the plan or a process in lieu of forms except when not permitted by Iowa Code chapter 12I.

**781—20.9(12I) Plan administrator rights and responsibilities.**

**20.9(1)** The plan administrator reserves the right to:

*a.* Freeze an account, suspend account services or do both: (1) if the plan administrator receives notice of a dispute regarding account assets or account ownership, including notice of the death of an account owner (until appropriate documentation is received and the plan administrator reasonably believes that it is lawful to transfer account ownership); (2) if the plan administrator reasonably believes a fraudulent transaction may occur or has occurred; or (3) when a minor account owner reaches the age of majority (until appropriate documentation is received);

*b.* Close an account, without the account owner's permission, in cases of threatening conduct or suspicious, fraudulent or illegal activity;

*c.* Terminate or refuse to establish an account if the plan administrator determines that it is in the best interest of the plan or required by law;

*d.* Close an account if the plan administrator determines that the account owner provided false or misleading information to the plan in establishing or maintaining an account or that the account owner is restricted by law from participating in the plan; and

*e.* Reject a contribution for any reason, including contributions to the plan that the plan administrator believes are not in the best interests of the plan, an investment option or the account owners.

**20.9(2)** The risk of market loss, tax implications, penalties, and any other expenses as a result of the above will be solely the account owner's responsibility.

**781—20.10(12I) Contributions.** The participation agreement and plan disclosure documents will provide for limits on the annual and total contributions to an account. This rule provides for implementation of such provisions.

**20.10(1)** Section 529A mandates an annual contribution limit for qualified ABLE programs. The account limit is subject to adjustment as provided in Section 529A. The limit may change from time to time, and any change will be set forth in the plan disclosure documents.

**20.10(2)** Anyone is allowed to make a contribution at any time during the calendar year to an account provided that the total of all annual contributions may not exceed the annual contribution limit and that all contributions are in compliance with the other requirements set forth in the plan disclosure documents.

**20.10(3)** The plan administrator shall actuarially determine an account balance limit applicable to the account of an account owner. No additional contributions may be made to an account when the fair market value of the account exceeds the account balance limit listed in the plan addendum. Accounts that have reached the account balance limit may continue to accrue earnings, although future contributions may not be made to such accounts. If, however, the market value of an account falls below the account balance limit due to market fluctuations and not as a result of withdrawals from the account, additional contributions will be accepted.

**20.10(4)** The plan administrator shall determine the maximum amount that an individual may contribute to an account and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of an account owner for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to account owners in the plans and to the public in any reasonable manner determined by the plan administrator.

**781—20.11(12I) Substitution or change of beneficiary.** Iowa Code section 12I.3(3)“a” provides that beneficiaries may be changed subject to the rules and regulations of the treasurer. This rule establishes



## TREASURER OF STATE[781](cont'd)

the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the plan disclosure documents.

**20.11(1)** The beneficiary must be the account owner. At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—20.5(12I) and must be a member of the family of the beneficiary being replaced.

**20.11(2)** An account owner has the right to change the beneficiary of an account. An account owner may request that a beneficiary be substituted by submitting the appropriate form to the plan administrator.

**781—20.12(12I) Change of account owner; transfer.** The account owner has the exclusive right to cancel the participation agreement or change the account owner in accordance with these rules and the plan disclosure documents.

**20.12(1)** An account owner may transfer the account owner's ownership rights in an account only to another eligible individual who is a member of the family of the account owner. To do so, the account owner shall complete the appropriate form and provide any requested documentation.

**20.12(2)** All or a portion of an account owner's account balance may be transferred to another account within the plan, but only during the life of the account owner. At the time of the transfer, the transferee must be an eligible individual and a member of the family of the transferor-account owner.

**781—20.13(12I) Qualified withdrawals.** This rule establishes the procedures for the payment of qualified withdrawals. A qualified withdrawal is a withdrawal from an account that is used to pay for any qualified disability expenses of the account owner.

**20.13(1)** The account owner must initiate withdrawal for qualified disability expenses. The account owner must file the appropriate form with the plan administrator.

**20.13(2)** Qualified withdrawals will be paid as provided in the plan disclosure documents.

**20.13(3)** Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the account owner's account at the time of the withdrawal.

**20.13(4)** Funds that are distributed to an account owner shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawals made to or as instructed by the account owner. The account owner receiving the 1099-Q must determine whether the withdrawal was made for a qualified disability expense or was a nonqualified withdrawal.

**781—20.14(12I) Nonqualified withdrawals and participation agreement cancellation.** An account owner may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

**20.14(1)** The earnings portion of a nonqualified withdrawal is subject to federal income taxation and the federal penalty tax except in certain limited circumstances.

**20.14(2)** An account owner may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting the appropriate form to the plan administrator. A nonqualified withdrawal will be paid only to the account owner.

**20.14(3)** Upon cancellation of a participation agreement, an account owner shall be entitled to the return of the account owner's account balance. If the participation agreement is canceled, the account owner is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the account owner after receipt of the appropriate form by the plan administrator.

**20.14(4)** Funds that are distributed to an account owner in a nonqualified withdrawal shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawal. Nonqualified withdrawals may be subject to state and federal taxes and penalties. Withdrawals may be requested online or by calling the plan. In certain instances, additional documentation may be required before a withdrawal may be processed. Only the

## TREASURER OF STATE[781](cont'd)

account owner may direct withdrawals from the account. Withdrawals will be sent as provided in the plan disclosure documents.

**781—20.15(12I) Account statements.** Account owners will receive quarterly account statements, which will include the total value of the account and a list of transactions within the account for that quarterly period. Account owners will receive account statements, transaction confirmations, and other personal correspondence in paper format unless the account owner signs up for electronic delivery.

**781—20.16(12I) State tax treatment.** The maximum amount that may be deducted per year for Iowa income tax purposes by an individual who is a resident of this state for contributions to an account shall not exceed the maximum deductible amount determined for the year pursuant to Iowa Code section 12D.3(1). State inheritance tax treatment of interests in the plan shall be as provided in Iowa Code section 450.4(9).

**781—20.17(12I) Security.** An account owner shall not be entitled to utilize any interest in the plan as security for a loan.

**781—20.18(12I) Garnishment.** Pursuant to Iowa Code section 642.2, funds held by the plan administrator under the plan are not subject to garnishment.

**781—20.19(12I) Reports—annual audited financial report—reports under federal law.**

**20.19(1)** The plan administrator shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the plan by November 1 to the governor and the general assembly. The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

**20.19(2)** The annual audit shall be supplemented by any of the following information prepared by the treasurer.

- a. Any related studies or evaluations prepared in the preceding year;
- b. A summary of the benefits provided by the plan, including the number of account owners in the plan; and
- c. Any other information deemed relevant by the plan administrator in order to make a full, fair, and effective disclosure of the operations of the plan.

**20.19(3)** The plan administrator or contractor shall prepare and submit to the Secretary or other required party any reports, notices, or statements required under Section 529A.

**781—20.20(12I) Federal tax treatment.** For federal income tax purposes, the plan shall be considered a qualified ABLE program exempt from taxation pursuant to Section 529A and shall be operated so that it meets the requirements of Section 529A.

**781—20.21(12I) Appeal of decisions.** An account owner may appeal any decision of the plan administrator under these rules and with respect to the plan.

**20.21(1)** An account owner may utilize the appeals process after receipt of the decision from the plan administrator.

**20.21(2)** Failure to submit the appeal request within 30 calendar days of receipt of the decision from the plan administrator shall constitute an acceptance of the decision.

**20.21(3)** The account owner shall submit to the plan administrator a written request for an appeal along with all supporting documentation.

**20.21(4)** The plan administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

**20.21(5)** An appeal review shall be conducted, at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

TREASURER OF STATE(cont'd)

**20.21(6)** Based on the evidence and additional information presented during the appeal, the plan administrator will render a decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12I.

## USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

December 1, 2017 — December 31, 2017	4.25%
January 1, 2018 — January 31, 2018	4.25%
February 1, 2018 — February 28, 2018	4.50%
March 1, 2018 — March 31, 2018	4.50%
April 1, 2018 — April 30, 2018	4.50%
May 1, 2018 — May 31, 2018	4.50%
June 1, 2018 — June 30, 2018	4.50%
July 1, 2018 — July 31, 2018	5.00%
August 1, 2018 — August 31, 2018	5.00%
September 1, 2018 — September 30, 2018	5.00%
October 1, 2018 — October 31, 2018	5.00%
November 1, 2018 — November 30, 2018	5.00%
December 1, 2018 — December 31, 2018	5.25%

**ARC 4121C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed Emergency**

**Rule making related to update of human resources policies and procedures**

The Administrative Services Department hereby amends Chapter 68, “Equal Employment Opportunity and Affirmative Action,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.413, 19B.3 and 19B.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.402 and 8A.413 and chapter 19B.

*Purpose and Summary*

These rules are being amended to update policies and procedures relating to reporting and investigation of sexual harassment, discrimination, equal opportunity and affirmative action complaints in the State of Iowa Executive Branch. The amendments provide that these complaints may be made directly to the Administrative Services Department or the Office of the Governor, rather than just within an agency. They also provide that the Administrative Services Department shall conduct investigations of such conduct unless otherwise directed by the Office of the Governor. In addition, the amendments clarify the confidentiality of the complaint and investigation process. These amendments are consistent with the revised policies that are being issued simultaneously with the adoption of these emergency amendments.

*Reason for Adoption of Rule Making Without  
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Administrative Services Department finds that notice and public participation are unnecessary or impractical because the emergency adoption was approved by Administrative Rules Review Committee.

In compliance with Iowa Code section 17A.3(3)“a,” the Administrative Rules Review Committee at its October 25, 2018, meeting reviewed the Administrative Services Department’s determination and this rule making and approved the emergency adoption.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Administrative Services Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 25, 2018, because pursuant to 17A.5(2)“b”(1)(b), this rule making confers a benefit on the public or some segment thereof. This rule making also implements revised policies that provide processes that should be immediately available for state executive branch employees to report sexual harassment and discrimination.

*Adoption of Rule Making*

This rule making was adopted by the Administrative Services Department on October 25, 2018.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4122C** to allow for public comment.

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

*Effective Date*

This rule making became effective on October 25, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **11—68.1(19B)**, definition of "Sexual harassment," as follows:

*"Sexual harassment"* means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs. ~~It may be directed at a specific individual or group of individuals. Conduct of a sexual nature will be considered harassing if it (1), which conduct threatens to impair the ability of a person to perform the duties of employment; (2) promises, threatens or in some manner affects a tangible employment benefit; or (3) threatens to impair the ability of a person to , or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.~~

ITEM 2. Amend subrule 68.2(2) as follows:

**68.2(2)** Each agency shall adhere to the provisions of the "State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees," ~~made effective by the governor on November 1, 2001.~~ and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees."

ITEM 3. Rescind rule 11—68.6(19B) and adopt the following **new** rule in lieu thereof:

**11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints.** The director shall have the authority to investigate practices prohibited under the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees," adopted in accordance with Iowa Code section 19B.12. The director shall investigate any complaint pertaining to the policies specified in this rule unless directed by the governor to be investigated by another agency or entity.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

**68.6(1) Confidentiality.** Complaints and records related to complaints, regardless of where the records are located, are confidential. These confidential records include, but are not limited to, all information gathered in the course of an investigation and investigative reports. Confidential records shall not be released unless ordered by a court of competent jurisdiction. This rule does not supersede the remedies provided under Iowa Code chapter 216.

**68.6(2) General procedures.**

*a.* Any person who feels that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to make a complaint pursuant to the complaint procedure outlined in the respective policies.

*b.* An agency shall immediately report all complaints pertaining to the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” to the department.

**68.6(3) Sexual harassment complaint procedures.** All employees shall have access to internal grievance procedures as authorized by Iowa Code section 19B.12 for reporting complaints of sexual harassment as set forth in the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

*a.* Any employee who believes that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to bring a complaint to:

- (1) The employee’s immediate supervisor;
- (2) The next higher supervisor; or
- (3) The agency director or the employee identified by the agency to receive complaints of sexual harassment.

*b.* A complaint, including those concerning senior agency officials or agency directors, may be made directly to the department or the office of the governor without reporting the matter internally to the agency.

**68.6(4) Complaint investigation procedures.** The department shall investigate all complaints arising under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” unless directed by the governor to be investigated by another agency or entity. All executive branch employees must cooperate fully with any investigation and may be subject to discipline up to and including termination of employment for failure to cooperate with an investigation. The department shall submit findings for an investigation conducted under this rule to the applicable agency or the office of the governor.

**68.6(5) Retaliation prohibited.** Any form of retaliation against an employee for resisting discriminatory or harassing behavior, reporting a complaint of discriminatory or harassing behavior, assisting a complainant who reports discriminatory or harassing behavior, or who cooperates in an investigation regarding discriminatory or harassing behavior is prohibited. Executive branch employees who engage in retaliatory behavior may be subject to discipline up to and including termination of employment. An employee who experiences retaliation prohibited under this subrule may report the retaliation through any of the avenues identified in this rule.

[Filed Emergency 10/25/18, effective 10/25/18]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4134C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed**

**Rule making related to processes and procedures**

The Department of Administrative Services hereby amends Chapter 4, “Public Records and Fair Information Practices,” Chapter 6, “Agency Procedure for Rule Making,” Chapter 43, “Employee Payroll Deductions for Charitable Organizations,” Chapter 45, “Payroll Deduction for Tuition Program Contributions,” Chapter 46, “Payroll Deduction for Additional Insurance Coverage,” Chapter 60, “Separations, Disciplinary Actions and Reduction in Force,” Chapter 64, “Benefits,” Chapter 71, “Combined Charitable Campaign,” Chapter 103, “State Employee Driving Guidelines,” Chapter 110, “Inventory Guidelines for State of Iowa Personal and Real Property,” Chapter 117, “Procurement of Goods and Services of General Use,” Chapter 118, “Purchasing Standards for Service Contracts,” and Chapter 119, “Uniform Terms and Conditions 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, 8A.311, 17A.3 and 17A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.104 and 17A.7(2).

*Purpose and Summary*

These rules are being amended to correct outdated processes, procedures, and references. The amendments address 13 of the Department’s chapters in the Iowa Administrative Code and are submitted as part of the Department’s five-year review of rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4021C**. A public hearing was held on October 18, 2018, at 10 a.m. in Conference Room 5, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. Since publication of the Notice, the amendments in Items 1 and 17 were harmonized to account for the amendments adopted in **ARC 4053C** (IAB 10/10/18). Also, in Item 3, the word “review” was added to complete the name of the Administrative Rules Review Committee.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **4.13(2)“I”** as follows:

*l.* Confidential assignments of state vehicles by ~~the state vehicle dispatcher~~ fleet services. These records include letters/memos detailing driver assignments and plate numbers for selected vehicles pursuant to Iowa Code sections 8A.362 and 321.19(1).

ITEM 2. Amend paragraph **4.14(6)“f”** as follows:

*f.* ~~Telephone directory of state employees.~~ The ~~information technology enterprise office of the chief information officer~~ maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored ~~on~~ both on paper and electronically.

ITEM 3. Amend rule 11—6.10(17A) as follows:

**11—6.10(17A) Exemptions from public rule-making procedures.**

**6.10(1)** ~~Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the~~ The department may adopt that a rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption pursuant to Iowa Code section 17A.4(3)“a” when the statute so provides or with the approval of the administrative rules review committee. ~~The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.~~

**6.10(2)** ~~Categories exempt.~~ The following narrowly tailored categories of rules are exempt from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

**6.10(3)** ~~6.10(2)~~ *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 6.10(1). ~~Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition.~~ After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.



## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 4. Amend rule 11—6.17(17A) as follows:

**11—6.17(17A) Review by department of rules by department.** Pursuant to Iowa Code section 17A.7(2) beginning July 1, 2012, over each five-year period of time, the department shall conduct an ongoing and comprehensive review of the department's rules.

~~6.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.~~

~~6.17(2) In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.~~

ITEM 5. Amend subrule 43.2(2) as follows:

**43.2(2)** Have 100 or more eligible state officers and employees participating for any payroll system except as follows: as set forth in rule 11—43.5(70A).

~~a. In the case of employees at the University of Northern Iowa, 50 or more.~~

~~b. In the case of employees at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, 25 or more participants.~~

ITEM 6. Amend rule 11—43.5(70A) as follows:

**11—43.5(70A) Payroll system.** A payroll system for the purpose of this chapter is any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.
9. Community-based corrections.
  - Waterloo corrections district.
  - Ames corrections district.
  - Sioux City corrections district.
  - Council Bluffs corrections district.
  - Des Moines corrections district.
  - Cedar Rapids corrections district.
  - Davenport corrections district.
  - Fairfield corrections district.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 7. Amend rule 11—45.1(81GA, HF748), parenthetical implementation statute, as follows:

**11—45.1(81GA, HF748 70A) General provisions.**

ITEM 8. Amend rule 11—45.2(81GA, HF748) as follows:

**11—45.2(81GA, HF748 70A) Definitions.** For the purpose of this chapter, the following definitions apply.

“Employee” means a ~~permanent~~ nontemporary employee of the state of Iowa.

“Payroll system” means any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.

“Qualified tuition program” means a program which meets the requirements of a qualified tuition program under Section 529 of the Internal Revenue Code.

ITEM 9. Amend rule 11—45.3(81GA, HF748), parenthetical implementation statute, as follows:

**11—45.3(81GA, HF748 70A) Tuition program qualifications.**

ITEM 10. Amend rules 11—45.5(81GA, HF748) to 11—45.14(81GA, HF748), parenthetical implementation statutes, as follows:

**(81GA, HF748 70A)**

ITEM 11. Amend **11—Chapter 45**, implementation sentence, as follows:

These rules are intended to implement ~~2005 Iowa Acts, House File 748~~ Iowa Code section 70A.17B.

ITEM 12. Amend rule **11—46.2(70A)**, definition of “Employee,” as follows:

“Employee” means a ~~permanent~~ nontemporary state employee.

ITEM 13. Amend rule 11—60.1(8A) as follows:

**11—60.1(8A) Separations.**

**60.1(1)** *Resignation, retirement, phased retirement, early retirement, or early termination.*

- a. No change.
- b. Rescinded IAB 8/6/14, effective 9/10/14.
- c. ~~Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.~~
- d. Separation from employment for purposes of induction into military service shall be in accordance with 11—subrules 63.6(2) and 63.9(2).
- e. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

**60.1(2)** No change.

~~**60.1(3)** *Early retirement incentive program—1992.* This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.~~

~~**60.1(4)** *Sick leave and vacation incentive program—2002.* This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

~~60.1(5) Sick leave and vacation incentive program—Fiscal Year 2003.~~ This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

~~60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005.~~ This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

~~60.1(7) State employee retirement incentive program—Fiscal Year 2010.~~

~~a.—This state employee retirement incentive program is provided for in 2010 Iowa Acts, Senate File 2062.~~

~~b.—To become a program participant, an employee must complete and file a program application form on or before April 15, 2010, and must terminate employment no later than June 24, 2010.~~

~~c.—For purposes of this program, the following definitions shall apply:~~

~~“Employee” means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services, an employee of the fair board, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, “employee” does not mean an elected official.~~

~~“Eligible employee” means an employee who is employed on February 10, 2010, who is 55 years of age or older on July 31, 2010, and who has submitted an application by the employee’s last day of employment to the Iowa public employees’ retirement system to begin monthly retirement benefits by July 2010. “Eligible employee” shall include an employee who began receiving IPERS monthly benefits prior to February 2010 if the employee is employed on February 10, 2010, and terminates employment on or before June 24, 2010. “Eligible employee” shall not include an employee who is eligible for the sick leave conversion program as described in Iowa Code section 70A.23, subsection 4, or a former employee who withdraws the application for monthly retirement benefits from the Iowa public employees’ retirement system before receiving the first month of benefits.~~

~~“Participant” means an eligible employee who, on or before April 15, 2010, submits an application to participate and does participate in the state employee retirement incentive program established by this subrule. For the purposes of this program, a person remains a participant after all benefits under this program have been made.~~

~~“Program” means the state employee retirement incentive program established in 2010 Iowa Acts, Senate File 2062.~~

~~“State” means the state of Iowa and all of its branches, departments, agencies, boards, or commissions, including a judicial district department of correctional services and the state board of regents.~~

~~d.—A participant who elects to remain in the state’s retiree health insurance group plan may receive a health insurance contribution benefit. The health insurance contribution benefit consists of up to 5 years of contributions toward retiree health insurance. The contributions shall be used to pay the employer’s portion of the health insurance premiums. The department shall determine the contribution rate based on the employer’s contribution to an existing state plan.~~

~~A participant shall begin receiving the health insurance contribution benefit once payments, if any, under Iowa Code section 70A.23 cease, and shall continue to receive such benefits for 5 years after termination of employment. If a participant is not eligible for payments under Iowa Code section 70A.23, the participant will begin receiving health insurance contribution benefits the month following termination of employment and shall continue to receive such benefits for 5 years after termination of employment.~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~e.—All existing rules and policies regarding continuation of health insurance and changing health insurance plans shall apply to participants and surviving spouses covered by the program.~~

~~f.—A participant will receive a years of service incentive payment for 5 years after termination of employment. The payments shall include the entire value of the participant's accrued but unused vacation leave and, for participants with at least 10 years of state employment, \$1000 for each year of state employment, up to 25 years of employment. State employment shall include all past and present employment with the state, regardless of whether the employee took a refund of the contributions made to IPERS for a prior period of service, if the employee provides adequate documentation of prior periods of employment. The payment shall be paid in five equal installments beginning in September 2010 and ending in 2014.~~

~~g.—If a participant dies within 5 years of termination of employment, the participant's beneficiary will receive any remaining years of service incentive benefits. If the participant's surviving spouse is covered on the participant's state retiree health insurance plan, the surviving spouse may elect to continue health insurance coverage and will receive any remaining health insurance contribution benefits under this program. If the surviving spouse was not covered by the participant's health insurance plan, or if there is no surviving spouse, any remaining health insurance contribution benefits are forfeited.~~

~~h.—A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.~~

~~i.—The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.~~

~~j.—A participant is not eligible to accept any further employment with the state, other than as an elected official or a member of a board or commission, from the date of termination from employment. A participant may not enter into a contract to provide services to the state as an independent contractor or a consultant.~~

~~k.—The state's obligations and duties under Iowa Code chapter 669 are not altered or diminished by a participant's signing of the program application and release form. Participants may pursue any remedy allowed in Iowa Code chapter 669 without regard to program eligibility.~~

ITEM 14. Amend subrule 60.3(7) as follows:

**60.3(7)** Reduction in force shall not be used to avoid or circumvent the provisions or intent of 2003 Iowa Code Supplement section 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

ITEM 15. Rescind and reserve subrule **64.10(5)**.

ITEM 16. Amend rule 11—71.1(8A) as follows:

**11—71.1(8A) Policy.** These rules define and structure the state's charitable organization campaign program. The intent of the campaign is to provide an opportunity for state employees to contribute to eligible charitable agencies through the state's payroll deduction process, to ensure accountability of participants with regard to the funds contributed funds are contributed to an entity that complies with the definition of a charitable organization as defined in Iowa Code section 70A.14(1), and to minimize workplace disruption and administrative costs by allowing solicitation at the work site only once per year. Nothing about this program shall be construed as support or endorsement by the state of Iowa for any individual charitable agency or federation of agencies.

ITEM 17. Amend rule 11—103.2(8A) as follows:

**11—103.2(8A) Definitions.**

"*At-fault accident*" means an accident in which the state driver is determined to be 50 percent or more responsible for the accident.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

“*Cargo payload*” means the net cargo weight transported. The weight of the driver, passengers, and fuel shall not be considered in determining cargo payload.

“*Cargo volume*” means the space calculated in cubic feet behind the vehicle driver and passenger seating area. In station wagons, the cargo volume is measured to the front seating area with the second seat laid flat behind the driver.

“*Defensive driving course*” means ~~an eight-hour course with~~ instruction provided by the Iowa state patrol.

“*Department*” means the department of administrative services (DAS).

“*Driver improvement course*” means ~~an eight-hour course with~~ instruction provided by a ~~local area college~~ an Iowa community college.

“*Gross vehicle weight rating (GVWR)*” means the weight specified by the manufacturer as the loaded weight of a single vehicle.

“*Habitual violation*” means that the person has been convicted of three or more moving violations committed within a 12-month period.

“*Passengers*” means the total number of vehicle occupants transported on a trip, including the driver.

“*Pool car*” means a vehicle assigned to the ~~state of Iowa~~, department of administrative services, fleet services.

“*Preventable accident,*” for purposes of this chapter, means an accident that could have been prevented or in which damage could have been minimized by proper evasive action.

“*Primary use*” means the utilized application exceeds 50 percent of the miles driven annually for United States Environmental Protection Agency (EPA)-designated light-duty trucks and vans and exceeds 75 percent of the miles driven annually for EPA-designated passenger sedans and wagons.

“*Private vehicle*” means any vehicle not registered to the state of Iowa.

“*Special work vehicle*” means but is not limited to fire trucks, ambulances, motor homes, buses, medium- and heavy-duty trucks (25,999 lbs. GVWR and larger), heavy construction equipment, and other highway maintenance vehicles, and any other classes of vehicles of limited application approved by the state vehicle dispatcher.

“*State driver*” means any person who drives a vehicle to conduct official state business other than a law enforcement officer employed by the department of public safety.

“*State vehicle*” means any vehicle registered to the state of Iowa, department of administrative services.

ITEM 18. Amend subrule 103.3(1) as follows:

**103.3(1)** *Agencies subject to vehicle assignment standards.* Pursuant to Iowa Code Supplement section 8A.362, the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in rule ~~103.4(8A)~~ 11—103.4(8A). The following agencies are subject to the vehicle assignment standards in rule ~~103.4(8A)~~ 11—103.4(8A):

- a. ~~State vehicle dispatcher~~ The department;
- b. State department of transportation;
- c. Institutions under the control of the state board of regents;
- d. The department for the blind; and
- e. Any other state agency exempted from obtaining vehicles for use through ~~the state vehicle dispatcher~~ fleet services.

ITEM 19. Amend subrule 103.4(1) as follows:

**103.4(1)** In order to maximize the average passenger miles per gallon of motor vehicle fuel consumed, vehicles shall be assigned on the following basis:

- a. EPA-rated compact sedans shall carry one or two passengers and their personal effects.
- ~~b. EPA-rated compact wagons shall carry one or two passengers, their personal effects, and cargo for which a compact sedan cannot be used.~~
- ~~c.~~ b. EPA-rated midsize sedans shall carry three or more passengers and their personal effects.
- ~~d. EPA-rated midsize wagons shall carry one or more passengers, their personal effects, and cargo that will not conform to the use of a midsize sedan.~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

- ~~e. c.~~ EPA-rated full-size sedans shall carry four or more passengers and their personal effects.
- ~~f. d.~~ Cargo vans shall be appropriate in size and GVWR for their primary use with regard to payload and cargo volume.
- ~~g. e.~~ Mini passenger vans shall carry three or more passengers, their personal effects, and cargo that does not conform to the use of a ~~midsize wagon or~~ full-size sedan.
- ~~h. f.~~ Eight-passenger vans shall carry five or more passengers and their personal effects.
- ~~i. g.~~ Twelve-passenger vans shall carry seven or more passengers and their personal effects.
- ~~j. h.~~ Fifteen-passenger vans shall carry nine or more passengers and their personal effects.
- ~~k. i.~~ Pickups and sport utility vehicles shall be appropriate in size, GVWR, and drivetrain (two-wheel drive or four-wheel drive) for their primary use with regard to trailering, payload, cargo volume, and on/off road requirements.

ITEM 20. Amend rule 11—103.5(8A) as follows:

**11—103.5(8A) Type of accident.** The determination as to whether an accident is without fault, at fault, or preventable shall be made by the risk manager of the department of ~~administrative services~~. In making this determination, the risk manager will consider all relevant information including information provided by the state driver and others involved in the accident, information provided by witnesses to the accident and information contained in any investigating officer's reports.

ITEM 21. Amend rule 11—103.7(8A) as follows:

**11—103.7(8A) Required reporting.** A state driver must report any potential liability, collision or comprehensive loss which occurs while conducting state business to the risk manager of the department of ~~administrative services~~. The failure to report may result in payment of any loss from the funds of the state driver's employing agency rather than from the state self-insurance fund. All documentation, such as proof of required class completion and insurance coverage, must be provided to the department risk manager.

ITEM 22. Amend rule 11—103.8(8A) as follows:

**11—103.8(8A) Mandatory training.** Each state driver who is assigned a state vehicle or who drives a state or private vehicle on state business at least 5,000 miles per year shall attend a defensive driving or driver improvement course every three years. Each state driver who drives a pool car shall also participate in vehicle safety classes as ~~offered and~~ required by the ~~division of fleet and mail department~~ and provided by the Iowa state patrol or Iowa community colleges.

ITEM 23. Amend rule 11—103.11(8A) as follows:

**11—103.11(8A) Access to driving records.** The ~~fleet and mail division~~ department has the authority to monitor the Iowa department of transportation driving record of employees who drive a state vehicle or a private vehicle to conduct state business.

ITEM 24. Amend paragraph 103.12(3)"d" as follows:

*d.* The state driver fails to notify the ~~fleet and mail division~~ department of an operating while intoxicated conviction received while operating a state vehicle or a private vehicle.

ITEM 25. Amend rule 11—103.13(8A) as follows:

**11—103.13(8A) Reconsideration of suspension.** If a state driver is suspended from driving a state vehicle, the driver may request a reconsideration of the suspension except as noted in 103.12(7). A written request for reconsideration must be submitted to the suspended driver's immediate supervisor. The immediate supervisor must provide a written report, supporting or denying the employee's request, to the director of the department of ~~administrative services~~. The director shall act on this request and, within 60 days from receipt of the supervisor's request for reconsideration, notify the state driver's supervisor of the action taken.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 26. Amend subrule 110.2(1) as follows:

**110.2(1) *Personal property.*** For purposes of this chapter, personal property is any item or equipment that has an acquisition value of \$5000 or more and has an anticipated useful life of one year or more. Computer software is to be excluded from this definition. If the minimum level for capitalization set by the federal Office of Management and Budget ~~Circular A87 2 CFR Part 200~~ is changed, ~~there will be a coordinated effort between the department of administrative services and the department of revenue to will~~ determine if the amount should be adjusted for the state of Iowa.

ITEM 27. Amend subrule 110.2(3) as follows:

**110.2(3) *Acquisition value—cost or estimated cost.*** ~~Cost or estimated cost~~ may include freight, installation expense and administrative expense, if readily known and available. ~~If cost is unknown and cannot be estimated, acquisition value is the fair market value.~~ For donated items, historical treasures and similar assets, acquisition value is the fair market value at date of donation price that would be paid to acquire an asset with similar service potential.

ITEM 28. Amend rule 11—110.6(7A) as follows:

**11—110.6(7A) *Inventory listing.*** Personal property should be accounted for on an inventory listing. As applicable, the following minimum information must be presented on the inventory listing for each record of personal property:

1. Department.
2. Tag number.
3. Description.
4. Acquisition value.
5. Location(s).
6. Acquisition date.
7. Disposition date (not applicable until disposal of property).
8. The only depreciation method allowed shall be the straight-line method.
9. ~~If the department depreciates personal property is depreciated,~~ the information must include the useful life of the asset.

Departments shall develop adequate internal control procedures that (1) identify individual(s) authorized to update and change the inventory records and (2) provide for an adequate segregation of duties between the recording and custody of property.

ITEM 29. Amend rule **11—117.2(8A)**, definition of “Department,” as follows:

“*Department*” means the department of administrative services (DAS).

ITEM 30. Amend subrule 117.8(1) as follows:

**117.8(1) *General notification.***

*a. Bid posting.* The department and each state agency shall provide notice of solicitations. The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, bidopportunities.iowa.gov, operated by the department of ~~administrative services~~ in accordance with Iowa Code sections 73.2, 8A.311, and 362.3. Instead of direct posting, the agency may add a link to bidopportunities.iowa.gov that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of ~~administrative services~~.

*b. Other forms of notice.* Notice of competitive bidding opportunities and proposals may be provided by telephone or fax, in print, or by other means that give reasonable notice to vendors, in addition to the posting or linking of formal solicitations to the official Internet site operated by the department of ~~administrative services~~.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*c.* and *d.* No change.

ITEM 31. Amend paragraph **117.10(2)“c”** as follows:

*c.* If reimbursable expenses are included in the price proposal, rates shall not exceed those in procedure 210.245, “Travel-in-state—board, commission, advisory council, and task force member expenses,” of the ~~department of administrative services~~ department’s state accounting enterprise’s Accounting Policy and Procedures Manual.

ITEM 32. Adopt the following **new** definition of “Department” in rule **11—118.3(8A)**:

“*Department*” means the department of administrative services (DAS).

ITEM 33. Amend subrule 118.15(2) as follows:

**118.15(2)** Nothing in this chapter is intended to supplant or supersede the requirements adopted by the ~~department of administrative services~~ relating to the processing of claims. State agencies entering into personal services contracts should refer to procedure 240.102, Miscellaneous—Services Contracting, of the ~~department of administrative services,~~ department’s state accounting enterprise policy and procedure manual.

ITEM 34. 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 of administrative services~~ 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 35. Amend rule 11—119.5(8,8A) as follows:

**11—119.5(8,8A) Special terms and conditions.** Rule 11—119.4(8,8A) does not apply to service contracts containing special terms and conditions adopted by a department or establishment for use in its service contracts with the approval of the department of management, in cooperation with the office of the attorney general and the department of administrative services as provided for in ~~2003~~ Iowa Code Supplement section 8.47(2).

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4135C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed**

**Rule making related to hiring practices for Iowa national service corps  
or AmeriCorps participants**

The Department of Administrative Services hereby amends Chapter 54, “Recruitment, Application and Examination,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.413(4), 8A.413(7), 17A.3, and 17A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2420.



ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*Purpose and Summary*

2018 Iowa Acts, House File 2420, establishes an Iowa National Service Corps Program administered by the Iowa Commission on Volunteer Service. Pursuant to 2018 Iowa Acts, House File 2420, state agencies or political subdivisions of the state may establish hiring preferences for any Iowa National Service Corps or AmeriCorps participant who has successfully completed a year of full-time service or 1,700 hours of service over a period extending beyond a year. This amendment comports with 2018 Iowa Acts, House File 2420.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4019C**. A public hearing was held on October 17, 2018, at 3 p.m. in Conference Room 5, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Adopt the following **new** subrule 54.5(3):

**54.5(3) Preference for Iowa national service corps or AmeriCorps.** State agencies may establish hiring preferences for an applicant who has participated in Iowa national service corps or AmeriCorps in accordance with 2018 Iowa Acts, House File 2420.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4136C****ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed****Rule making related to continuation of benefits**

The Department of Administrative Services hereby amends Chapter 64, “Benefits,” 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 8A.402(1)“c” and 2018 Iowa Acts, House File 2502.

*Purpose and Summary*

2018 Iowa Acts, House File 2502, division XVII, creates a new section of Iowa Code, 509A.13C, addressing continuing coverage of health care benefits for the surviving spouse and each surviving child of an eligible peace officer or fire fighter killed in the line of duty. Pursuant to Iowa Code section 8A.402(1)“c,” the Department is the central agency responsible for state human resource management, including employee benefits. The new section in Iowa Code chapter 509A says, in part, if a governing body, a county board of supervisors, or a city council has procured accident or health care coverage for its employees under this chapter, such coverage shall permit continuation of existing coverage or reenrollment in previously existing coverage for the surviving spouse and each surviving child of an eligible peace officer or fire fighter killed in the line of duty. This amendment comports with 2018 Iowa Acts, House File 2502.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4020C**. A public hearing was held on October 16, 2018, at 10 a.m. in Conference Room 5, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

The fiscal impact cannot be determined. While there is an eligible population, there is no evidence of participation in the new offering.

*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.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Adopt the following **new** subrule 64.15(3):

**64.15(3)** The surviving spouse and each surviving child of an eligible peace officer or fire fighter, as defined in 2018 Iowa Acts, House File 2502, are eligible for the continuation of existing, or reenrollment in previously existing, health insurance coverage.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4137C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed****Rule making related to procurement of state vehicles**

The Department of Administrative Services hereby amends Chapter 117, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.311, 17A.3 and 17A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 8A.311(20) and 2018 Iowa Acts, Senate File 2416.

*Purpose and Summary*

2018 Iowa Acts, Senate File 2416, amends Iowa Code section 8A.311(20), eliminating life cycle costing as a determination in purchasing vehicles for the State of Iowa fleet. 2018 Iowa Acts, Senate File 2416, instead provides that the purchase of passenger vehicles; light, medium-duty, and heavy-duty trucks; passenger and cargo vans; and sport utility vehicles shall be awarded to the lowest responsive and responsible bidder based solely on bid price. These amendments comport with 2018 Iowa Acts, Senate File 2416.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4018C**. A public hearing was held on October 17, 2018, at 2 p.m. in

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Conference Room 5, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 117.12(3) as follows:

**117.12(3) *Life cycle cost and energy efficiency.*** The department and agencies shall utilize life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products except for passenger vehicles; light, medium-duty, and heavy-duty trucks; passenger and cargo vans; and sport utility vehicles.

ITEM 2. Amend subrule 117.12(6) as follows:

**117.12(6) *Vehicle procurement.***

*a.* Specifications for procurement of all non-law enforcement, light-duty vehicles, excluding those purchased and used for off-road maintenance work or to pull loaded trailers, shall be for flexible fuel vehicles ~~(as defined by Iowa Code section 8A.362(5))~~ when an equivalent flexible fuel model is available.

*b.* Use of specifications for hybrid-electric or other alternative fuel vehicles ~~(as defined by Iowa Code section 8A.362(5))~~ is encouraged. Procurement of hybrid-electric or other alternative fuel vehicles may be dependent upon whether the ~~costs~~ cost of the ~~vehicle's life cycle are~~ vehicle is equivalent to a non-alternative fuel vehicle or non-flexible fuel vehicle (a vehicle with a gasoline E10 engine) ~~prior to the year 2010.~~

*c.* ~~The life cycle costs of American motor vehicles shall be reduced by 5 percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. The life cycle costs of a motor vehicle shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or 75,000 miles, whichever occurs first.~~

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~d. c.~~ The average fuel efficiency for new passenger vehicles and light trucks, ~~as defined in paragraph 117.12(6) "a,"~~ that are purchased in a year shall equal or exceed the average fuel economy standard for the vehicles' model years as published by the United States Secretary of Transportation.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4138C**

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

**Adopted and Filed**

**Rule making related to agricultural lime**

The Agriculture and Land Stewardship Department hereby amends Chapter 43, "Fertilizers and Agricultural Lime," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 201A.5 and 201A.8.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 201A.5.

*Purpose and Summary*

The amendments increase the cost of testing an individual sample of agricultural lime from \$25 to \$60. The testing fee has not been increased since 1988. The amendments also reduce the number of samples that have to be taken and remove references to Iowa State University.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4004C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

Last year, 181 samples were tested. If the same number holds, an additional \$6,335 in fees will be collected.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making actions are adopted:

ITEM 1. Amend subrule 43.20(2) as follows:

**43.20(2) Sample fee.** The manufacturer or producer of agricultural lime, limestone, or aglime shall pay a fee of no more than ~~\$25~~ \$60 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University for each sample taken at the manufacturer's or producer's facilities.

ITEM 2. Amend rule ~~21—43.20(201)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~201.6~~ 201A.6 and ~~201.12~~ 201A.11.

ITEM 3. Amend subrules 43.32(1) and 43.32(4) as follows:

**43.32(1)** Samples of agricultural liming material for analyzing the number of pounds of ECCE shall be obtained by taking samples from the manufacturer's production belt or stockpile. Samples A minimum of one sample and up to five samples shall be taken at locations where there are permanent production facilities once each calendar month during the months year that agricultural liming material is being produced. Samples shall be taken at locations where there are no permanent production facilities once during the first week time that a portable plant is at the location producing agricultural liming material and once each week. Subsequent samples will be taken either during the period that the portable plant is at the location or from the stockpile created, until a total of three to five representative samples from the pile have been accumulated and submitted for analysis, after which a sample shall be obtained and tested once each calendar month during the months in which agricultural liming material is being produced. The manufacturer or producer of agricultural liming material shall notify the secretary of agriculture or person or persons appointed by the secretary of the production of agricultural liming material seven calendar days prior to the manufacture or production of agricultural liming material so that samples may be obtained by a person or persons appointed by the secretary in compliance with this rule.

**43.32(4)** Samples of water treatment plant lime for analyzing the number of pounds of ECCE shall be obtained by taking samples from the water plant designated sampling point. Samples shall be taken ~~once each month during the months~~ when agricultural liming material is being taken off-site for land application. The producer of the agricultural liming material shall notify the secretary of agriculture or person(s) appointed by the secretary about the intent to land apply the liming material seven calendar days prior to the land application ~~of when~~ when agricultural liming material is stockpiled so that samples may be obtained in compliance with this rule.

ITEM 4. Amend rule ~~21—43.34(201A)~~ as follows:

**21—43.34(201A) Sample fee.** The manufacturer or producer of agricultural liming material or specialty limestone shall pay a fee of no more than ~~\$25~~ \$60 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University of Science and Technology for each sample collected.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 5. Amend subrule 43.35(1) as follows:

**43.35(1)** The secretary of agriculture shall, upon receipt of the analysis provided in rule 21—43.33(201A), certify the number of pounds of ECCE, using the method provided in rule 21—43.31(201A). The certification shall be forwarded to the manufacturer or producer from whom the sample was obtained by written notice and sent by United States mail.

Each certification of ECCE ~~shall~~ should be based on the average of a maximum of five analyses from five samples. Each new analysis received ~~shall~~ should be added to the previous five analyses and the oldest analysis shall be omitted. Fewer than five analyses shall be averaged on the basis of the actual number of analyses. Nothing in this rule shall preclude a manufacturer or producer from having a certification on separate stockpiles of agricultural liming material provided that each stockpile shall be separated from any other stockpile and each separate stockpile has been sampled and certified as required.

[Filed 10/31/18, effective 1/1/19]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4139C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed****Rule making related to food and consumer safety**

The Inspections and Appeals Department hereby amends Chapter 30, "Food and Consumer Safety," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104, 137C.6, 137D.2 and 137F.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 2390.

*Purpose and Summary*

This adopted rule making implements changes made to Iowa Code chapter 137F resulting from the enactment of 2018 Iowa Acts, Senate File 2390. The legislation amended definitions to be consistent with the current Food Code issued by the U.S. Food and Drug Administration (FDA) and modified fees and penalties.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4026C**. No public comments were received. The adopted rule making includes two changes from the Notice. The term "time/temperature control for safety" defined in rule 481—30.2(10A,137C,137D,137F) was changed to "time/temperature control for safety food" to be consistent with the term defined in 2018 Iowa Acts, Senate File 2390, section 5. A rule implementation clause was added to new rule 481—30.7(137F).

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

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

*Fiscal Impact*

The Legislative Services Agency, Fiscal Services Division, estimated an increase in revenue to the General Fund of approximately \$1.3 million annually due to the fee increases approved in 2018 Iowa Acts, Senate File 2390 (Fiscal Note, April 26, 2018).

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Event,” “Time/temperature control for safety food” and “Vending machine location” in rule **481—30.2(10A,137C,137D,137F)**:

“*Event*” means a significant occurrence or happening sponsored by a civic, business, governmental, community, or veterans organization and may include an athletic contest. For example, an event does not include a single store’s grand opening or sale.

“*Time/temperature control for safety food*” means a food that requires time and temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

“*Vending machine location*” means the room, enclosure, space, or area where one or more vending machines are installed and operated, including the storage areas on the premises that are used to service and maintain the vending machine.

ITEM 2. Amend rule **481—30.2(10A,137C,137D,137F)**, definitions of “Farmers market potentially hazardous food license,” “Food establishment,” “Home bakery,” “Pushcart,” “Temporary food establishment” and “Vending machine,” as follows:

“*Farmers market ~~potentially hazardous~~ time/temperature control for safety food license*” means a license for a temporary food establishment that sells ~~potentially hazardous~~ time/temperature control for safety foods at farmers markets. A separate annual farmers market ~~potentially hazardous~~ time/temperature control for safety food license is required for each county in which the licensee sells ~~potentially hazardous~~ time/temperature control for safety foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school ~~and the Iowa juvenile home~~. Assisted living programs and adult day services are included in the



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

definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not ~~potentially hazardous~~ time/temperature control for safety foods.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home bakery pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market if time/temperature control for safety foods are not sold or distributed from the premises.
6. Premises of a residence in which food that is not ~~potentially hazardous~~ a time/temperature control for safety food is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. to 17. No change.

“*Home bakery*” means a business on the premises of a residence that is operating as a home-based bakery where baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$35,000. “Home bakery” does not include:

1. A food establishment;
2. A food processing plant;
3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;
4. A residence that prepares or distributes honey;
5. A residence that distributes shell eggs;
6. A residence that prepares ~~nonhazardous~~ foods that are not time/temperature control for safety foods for sale at a farmers market; or
7. A residence that prepares ~~nonhazardous~~ baked goods that are not time/temperature control for safety foods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

“*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving ~~nonpotentially hazardous~~ foods that are not time/temperature control for safety foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

“*Temporary food establishment*” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event ~~or celebration~~. An “~~event or celebration~~” is a ~~significant occurrence or happening sponsored by a civic, business, educational, government, community, or veterans’ organization and may include athletic contests~~. For example, ~~an event does not include a single store’s grand opening or sale~~.

“*Vending machine*” means ~~a food establishment which is~~ a self-service device ~~that which~~, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, ~~nonpotentially hazardous~~ foods that are not time/temperature control for safety foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. “Panned candies” are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

ITEM 3. Amend subrule 30.3(1) as follows:

**30.3(1) Transferability.** A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market ~~potentially hazardous~~ time/temperature control for safety food license may be used in the same county at different individual

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

locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

ITEM 4. Amend subrule 30.3(3) as follows:

**30.3(3) License expiration.** A license is renewable and expires after one year, with the exception of a temporary food establishment license, which is event- and location-specific and is issued in conjunction with a single event at a specific location, which is valid for a period not to exceed 14 consecutive days.

ITEM 5. Amend rule 481—30.4(137C,137D,137F) as follows:

**481—30.4(137C,137D,137F) License fees.** The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

**30.4(1) Retail food establishments.** License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. For annual gross sales of less than ~~\$10,000~~ ~~\$40.50~~ \$250,000—\$150.
- b. For annual gross sales of \$10,000 to \$250,000—~~\$101.25~~ \$250,000 to \$750,000—\$300.
- ~~c. For annual gross sales of \$250,000 to \$500,000—\$155.25.~~
- ~~d. For annual gross sales of \$500,000 to \$750,000—\$202.50.~~
- ~~e. c.~~ For annual gross sales of more than \$750,000 or more—~~\$303.75~~—\$400.

**30.4(2) Food service establishments.** License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

- a. For annual gross sales of less than ~~\$50,000~~ ~~\$67.50~~ \$100,000—\$150.
- b. For annual gross sales of \$50,000 to \$100,000—~~\$114.50~~ \$100,000 to \$500,000—\$300.
- ~~c. For annual gross sales of \$100,000 to \$250,000—\$236.25.~~
- ~~d. For annual gross sales of \$250,000 to \$500,000—\$275.00.~~
- ~~e. c.~~ For annual gross sales of more than \$500,000 or more—~~\$303.75~~—\$400.

**30.4(3) Vending machines.** License fees for food and beverage vending machines are ~~\$20~~ \$50 for the first machine and ~~\$5~~ \$10 for each additional machine (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

**30.4(4) Home bakery.** The license fee for a home bakery is ~~\$33.75~~ \$50 (Iowa Code section 137D.2(1) as amended by 2018 Iowa Acts, Senate File 2390).

**30.4(5) Hotels.** License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to ~~15~~ 30 guest rooms—~~\$27.00~~ \$50.
- b. For ~~16 to 30~~ 31 to 100 guest rooms—~~\$40.50~~ \$100.
- c. For ~~31 to 75~~ 101 or more guest rooms—~~\$54.00~~ \$150.
- ~~d. For 76 to 149 guest rooms—\$57.50.~~
- ~~e. For 150 or more guest rooms—\$101.25.~~

**30.4(6) Mobile food units or pushcarts.** The license fee for a mobile food unit or a pushcart is ~~\$27~~ \$250 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

**30.4(7) Temporary food service establishments.**

a. The fee for a temporary food ~~service~~ establishment license issued for up to 14 consecutive days in conjunction with a single event ~~or celebration~~ is ~~\$33.50~~ \$50 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

b. The annual fee for a temporary food establishment license issued for multiple nonconcurrent events on a countywide basis during a calendar year is \$200 (Iowa Code section 137F.6 as amended by

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

2018 Iowa Acts, Senate File 2390). Temporary food establishments that operate simultaneously at more than one location within a county are required to have a separate license for each location.

**30.4(8)** *Food processing plants including food storage facilities (warehouses).* For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. ~~Annual~~ For annual gross sales of less than \$50,000—~~\$67.50~~ \$200,000—\$150.
- b. ~~Annual~~ For annual gross sales of \$50,000 to \$250,000—~~\$135.00~~ \$200,000 to \$2 million—\$300.
- c. ~~Annual~~ gross sales of \$250,000 to \$500,000—~~\$202.50~~.
- d. c. ~~Annual~~ For annual gross sales of \$500,000 or more—~~\$337.50~~ more than \$2 million—\$500.

**30.4(9)** *Farmers market.* A person selling ~~potentially hazardous time/temperature control for safety~~ food at a farmers market must pay an annual license fee of ~~\$100~~ \$150 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

**30.4(10)** *Discount Certificate of free sale or sanitation.* ~~If an establishment renews its license as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection and the establishment has not been issued a critical violation during the previous 12-month period, the establishment's license fee for the current renewal period shall be reduced by \$50 but no more than the establishment's total license fee(s) The fee for a certificate of free sale or sanitation is \$35 for the first certificate and \$10 for each additional identical certificate requested at the same time.~~

**30.4(11)** *Unattended food establishment.* The annual license fee for an unattended food establishment is based on the annual gross food and beverage sales (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. Annual gross sales of less than \$100,000—\$75.
- b. Annual gross sales of \$100,000 or more—\$150.

**30.4(12)** *Events.* The license fee for an event is \$50, which shall be submitted with a license application to the appropriate regulatory authority at least 60 days in advance of the event. An “event” for purposes of this subrule does not include a function with ten or fewer temporary food establishments, a fair as defined in Iowa Code section 174.1, or a farmers market.

~~30.4(11)~~ **30.4(13)** *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6 and 2018 Iowa Acts, Senate File 2390.

ITEM 6. Rescind rule 481—30.7(137F) and adopt the following new rule in lieu thereof:

**481—30.7(137F) Double licenses.** A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1) “c”) and \$150 for its food service establishment license (rule 481—30.7(137F)).

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

ITEM 7. Amend rule 481—30.8(137C,137D,137F) as follows:

**481—30.8(137C,137D,137F) Inspection frequency.**

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

**30.8(1) *Food establishments.*** Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 36 months ~~and no more than once every 3 months.~~

**30.8(2) *Food processing plants.*** Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 60 months ~~and no more than once every 6 months.~~ If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

**30.8(3) *Food processing plants that store foods.*** Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 36 84 months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

**30.8(4) *Hotels.*** Hotels shall be inspected at least once biennially.

**30.8(5) *Home bakeries and vending machines.*** Home bakeries and vending machines shall ~~be inspected at least once every 24 months~~ have a pre-opening inspection and then shall not have a specific inspection frequency. An inspection may be triggered, for example, by complaints, potential foodborne illness, or information about potential violations of law or rules.

**30.8(6) *Farmers market ~~potentially hazardous~~ time/temperature control for safety food.*** Farmers market ~~potentially hazardous~~ time/temperature control for safety food licensees shall be inspected at least once annually.

**30.8(7) *Temporary food establishments.*** Temporary food establishments issued an annual license pursuant to paragraph 30.4(7) "b" shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.

[Filed 10/31/18, effective 1/1/19]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4140C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to food establishment and food processing plant inspections**

The Inspections and Appeals Department hereby amends Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

The adopted rule making reflects 2018 Code of Federal Regulations updates and removes the expired transition compliance dates for section 2-102.12 of the 2013 FDA Model Food Code with supplement, which requires the employment of a certified food protection manager.

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

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4027C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **31.1(2)“a”(4)** as follows:

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

ITEM 2. Amend paragraph **31.1(2)“b”** as follows:

*b.* For all other establishments, the following time frames apply for employment of an individual who is a certified food protection manager:

(1) For ~~establishments~~ newly licensed ~~after January 1, 2014~~ establishments, the requirement of section 2-102.12 must be met within six months of licensure.

~~(2) Establishments in existence as of January 1, 2014, that do not receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 by January 1, 2018.~~

~~(3) Establishments in existence as of January 1, 2014, that receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 within six months of the violation.~~

(4) ~~(2)~~ If the individual meeting the requirement of section 2-102.12 leaves employment with an establishment required to meet section 2-102.12, the establishment shall meet the requirement of section 2-102.12 within six months.

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

ITEM 3. Amend subrule 31.1(4) as follows:

**31.1(4) Morel mushrooms.** Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market ~~potentially hazardous~~ time/temperature control for safety food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert’s successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market ~~potentially hazardous~~ time/temperature control for safety food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

“1. The name, address, and telephone number of the morel mushroom identification expert;

“2. A copy of the morel mushroom identification expert’s certificate of successful completion of the course, containing the date of completion; and

“3. The quantity of morel mushrooms purchased and the date(s) purchased.

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”

ITEM 4. Amend subrule 31.1(16) as follows:

**31.1(16) Nonprofit exception for temporary events.** Nonprofit organizations that are licensed as temporary food establishments may serve ~~nonpotentially hazardous~~ non-time/temperature control for safety food from an unapproved source for the duration of the event.

ITEM 5. Amend subrule 31.2(1) as follows:

**31.2(1) Definitions.** For the purposes of this rule, the following definitions shall apply. The definitions of “food,” “label,” “labeling,” and “dietary supplement” are as defined in 21 U.S.C. Section 321 (2012).

ITEM 6. Amend subrule 31.2(2) as follows:

**31.2(2) Prohibited acts.** The prohibited acts identified in 21 U.S.C. Section 331(a) to (f), (k), and (v) (2012) shall also be prohibited acts in Iowa.

ITEM 7. Amend subrule 31.2(9), introductory paragraph, as follows:

**31.2(9) Adoption of Code of Federal Regulations.** The following parts of the Code of Federal Regulations (April 1, ~~2017~~ 2018) are adopted:

ITEM 8. Amend paragraph **31.2(9)“v”** as follows:

v. 21 CFR Part 117, current good manufacturing practice and hazard analysis and risk-based preventive controls for human food, ~~as follows~~ shall apply, with the following exceptions:

(1) ~~As of October 1, 2017, subparts A, B and F of 21 CFR 117 shall be in effect for all food processing plants.~~

(2) ~~As of October 1, 2017, all other subparts of 21 CFR 117 shall be effective upon the effective date established by the federal government.~~

(3) (1) ~~As of October 1, 2018, qualified~~ Qualified facilities, as defined in 21 CFR 117, shall not include food processing plants manufacturing foods for interstate commerce or for use as an ingredient to other foods.

(2) Warehousing operations located on the premises of residences that store food for sale directly to a consumer customer or at a farmers market shall comply with subparts A, B, and F of 21 CFR 117.

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

ITEM 9. Amend subrule 31.2(10) as follows:

**31.2(10) Egg products processing plants.** The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9)“b,” unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety and Inspection Service, in 9 CFR Parts 590-592, January 1, 2015 2018. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, 2015 2018, apply.

ITEM 10. Amend rule 481—31.5(137F), introductory paragraph, as follows:

**481—31.5(137F) Temporary food establishments and farmers market ~~potentially hazardous time/temperature control for safety~~ food licensees.** While the retail food code adopted in rule 481—31.1(137F) applies to temporary food establishments, the following subrules provide a simplified version of requirements for temporary food establishments. If the two rules are inconsistent, the standards in this rule apply.

ITEM 11. Amend paragraph **31.5(1)“c”** as follows:

*c.* All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that ~~potentially hazardous time/temperature control for safety~~ food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

ITEM 12. Amend paragraph **31.5(1)“d”** as follows:

*d.* Employees and volunteers shall not work at a temporary food establishment or farmers market ~~potentially hazardous time/temperature control for safety~~ food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

ITEM 13. Amend paragraph **31.5(2)“b”** as follows:

*b. Cold storage.* Refrigeration units shall be provided to keep ~~potentially hazardous time/temperature control for safety~~ foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of ~~less hazardous time/temperature control for safety~~ food ~~or the use of such a container~~ at events of short duration if the container maintains the temperature at 41°F or below.

ITEM 14. Amend paragraph **31.5(2)“c”** as follows:

*c. Hot storage.* Hot food storage units shall be used to keep ~~potentially hazardous time/temperature control for safety~~ food at 135°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 135°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

[Filed 10/31/18, effective 1/1/19]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4141C**

**MANAGEMENT DEPARTMENT[541]**

**Adopted and Filed**

**Rule making related to suspension and reinstatement of state funds**

The Management Department hereby adopts new Chapter 13, “Suspension and Reinstatement of State Funds,” Iowa Administrative Code.

MANAGEMENT DEPARTMENT[541](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 8.6 and Iowa Code chapter 27A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 27A.

*Purpose and Summary*

The adopted rule making establishes procedures and guidelines to deny state funds to a local entity intentionally violating the provisions of Iowa Code chapter 27A and to reinstate eligibility to receive state funds when a local entity comes into compliance with Iowa Code chapter 27A. These rules establish the process by which the Department of Management receives a final judicial determination that the local entity is out of compliance with Iowa Code chapter 27A and is ineligible to receive state funds and state funds are denied. These rules also establish the process by which the Department receives the declaratory judgment that the local entity is in full compliance with Iowa Code chapter 27A and is eligible to receive state funds and state funds are reinstated.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4008C**. A public hearing was held on October 24, 2018, at 9 a.m. in the State Capitol, Room 116, 1007 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. During the public comment period, 88 public comments were received. The theme of the comments was opposition to Iowa Code chapter 27A, as it removes local control from cities and counties, and it was argued that denial of funds would adversely impact communities. Upon review of all comments it was determined that none of the comments warranted a change in these rules.

The adopted rule making includes two changes from the Notice. Rule 541—13.1(27A), Definitions, was revised to add “or school districts” to the definition of “local entity.” The addition of this language was requested by the Administrative Rules Review Committee. In addition, references to 2018 Iowa Acts, Senate File 481, were replaced with references to the upcoming 2019 Iowa Code.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

At this time it is not possible to estimate the total fiscal impact of Iowa Code sections 27A.9 and 27A.10 and 541—Chapter 13.

*Jobs Impact*

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

*Waivers*

Waivers may be requested of the Department for any discretionary part of this rule making pursuant to Iowa Code chapter 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



## MANAGEMENT DEPARTMENT[541](cont'd)

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Adopt the following **new** 541—Chapter 13:

CHAPTER 13  
SUSPENSION AND REINSTATEMENT OF STATE FUNDS

**541—13.1(27A) Definitions.** For purposes of this chapter:

“*City*” means a municipal corporation but does not include a county, township, school district, or any special-purpose district or authority.

“*County*” means an administrative subdivision in the state governed by a locally elected board of supervisors and may be comprised of subdivisions including cities, townships, school districts, or any special-purpose district or authority.

“*Declaratory judgment*” means a judgment issued by a district court declaring a local entity is in full compliance with Iowa Code chapter 27A.

“*Department*” means the Iowa department of management pursuant to Iowa Code chapter 8.

“*Final judicial determination*” means a district court ruling on a civil action brought by the state attorney general’s office finding a local entity to have violated the provisions of Iowa Code chapter 27A.

“*Fiscal year*” means the time period beginning on July 1 and ending the following June 30 as defined in Iowa Code section 8.36.

“*Governing body*” means the mayor and city council of a city or the board of supervisors of a county.

“*Local entity*” means the governing body of a city or county and includes an officer or employee of a local entity or a division, department, or other body that is part of a local entity, including but not limited to a sheriff, police department, city attorney, or county attorney. “Local entity” does include local city and county boards and commissions in which membership in the board or commission is the result of an appointment by the city council or the county board of supervisors. “Local entity” does not include local city and county boards and commissions whose membership is determined by election or is specifically set forth by the Iowa Code. “Local entity” does not include multijurisdictional boards and commissions in which a city or county is one of multiple local government members or school districts.

“*State agencies*” means any boards, commissions, or departments, as defined by Iowa Code section 7E.4, or other administrative offices or units of the executive branch of the state.

“*State funds*” means those funds held by the state that originate from revenues, fees or receipts collected by the state and distributed to local entities. Funds held by the state that are not defined as state funds include:

1. Federal funds (unless provided to the state and awarded as a grant by the state).
2. Funds paid out per gubernatorial or presidential emergency proclamation.
3. Any revenue collected and administered by the state on behalf of a local entity due to a locally imposed tax, fee or fine.
4. Any state funds for the provision of wearable body protective gear used for law enforcement purposes.
5. Payment for public protection, utilities, or goods and services.
6. Payment of settlements.
7. Setoffs as defined by Iowa Code section 8A.504.

**541—13.2(27A) Denial of state funds.** State funds shall be denied to a local entity pursuant to Iowa Code chapter 27A by all state agencies for each state fiscal year that begins after the date on which a

MANAGEMENT DEPARTMENT[541](cont'd)

final judicial determination that the local entity intentionally violated Iowa Code chapter 27A is made in a civil action brought pursuant to Iowa Code chapter 27A.8.

**13.2(1)** The department will send written notification to all state agencies to deny state funds. Payments will continue to be made to the local entity until the beginning of the state fiscal year that begins after the date on which a final judicial determination is made, at which time payments will be denied.

**13.2(2)** If the local entity receives state funds through the county, the department will notify the county so that any needed changes may be made to apportionment systems for property tax credits, exemptions and replacements.

**13.2(3)** State agencies will contact federal granting agencies in writing to determine how to administer federal funds when state match funds are denied. State agencies may be required to discontinue drawing federal funds or issue repayments as instructed by federal granting agencies.

**13.2(4)** Funds will continue to be denied until the court issues a declaratory judgment declaring that the local entity is in full compliance with Iowa Code chapter 27A.

**541—13.3(27A) Reinstatement of eligibility to receive state funds.** Upon issuance by the court of a declaratory judgment declaring that the local entity is in full compliance with Iowa Code chapter 27A, the local entity's eligibility to receive state funds is reinstated.

**13.3(1)** The department will send written notification to all state agencies to reinstate state funds. Payments will be reinstated to the local entity beginning on the first day of the month following the date on which the declaratory judgment is issued.

**13.3(2)** If the local entity receives state funds through the county, the department will notify the county so that any needed changes may be made to apportionment systems for property tax credits, exemptions and replacements.

**13.3(3)** State agencies will contact federal partners in writing to determine how to reinstate the drawdown of federal funds when state match funds are reinstated.

These rules are intended to implement Iowa Code chapter 27A.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4142C**

## **REVENUE DEPARTMENT[701]**

**Adopted and Filed**

### **Rule making related to section 179 expensing**

The Revenue Department hereby amends Chapter 40, "Determination of Net Income," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 422.68.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 2417.

REVENUE DEPARTMENT[701](cont'd)

*Purpose and Summary*

These rules are intended to implement 2018 Iowa Acts, Senate File 2417, which, in part, conforms Iowa's tax laws to recent changes to the federal deduction for expensing certain depreciable business assets (section 179 deduction) but imposes Iowa-specific limitations on that deduction for certain years. These rules also implement the new special election available to taxpayers who receive section 179 deductions from pass-through entities under certain circumstances.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4022C**. A public hearing was held on October 17, 2018, at 9 a.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa. One person attended the public hearing but made no comment.

The Department received several comments related to this rule making that generally fall into two categories. The majority of these comments focused on issues related to calculating and claiming Iowa section 179 deduction amounts. The Department believes that all or most of these issues are addressed on the updated Iowa tax forms for 2018 and that there is no need to update the rules in response to these comments. These draft forms have already been provided to tax preparation software developers and to the Iowa Society of CPAs and will be finalized and made available to the general public soon.

The Department also received comments calling for S corporations claiming Iowa section 179 deductions at the entity level to be subject to the same \$70,000 Iowa section 179 limitation as individuals and partnerships for 2018. S corporations are subject to the \$25,000 Iowa section 179 limitation applicable to all corporations at the entity level for 2018. This is a statutory limitation. The Department has no authority to change it through administrative rule making. This limitation applies only to section 179 expensing claimed by the S corporation at the entity level; individual shareholders in S corporations are subject to the higher \$70,000 Iowa limitation. Under the statute, the Iowa section 179 limitations are the same for all taxpayers beginning in tax year 2019. In order to ensure clarity on this issue in the adopted rules, several references to "corporations" have been modified in order to illustrate that such references include both C corporations and S corporations.

Upon review of the Notice of Intended Action, it came to the Department's attention that the charts showing the applicable section 179 limitations by year in each of the three rules included in the Notice contained a reference to "trusts and estates." This reference is unnecessary, because trusts and estates are not permitted to claim section 179 expensing deductions for either federal or Iowa purposes. These references have been removed from the adopted rules to avoid confusion. There were also two incorrect cross references found in the examples in subparagraphs 53.23(2)"e"(2) and 59.24(2)"e"(2) that have been updated to correctly refer to paragraph 40.65(2)"e"(1)"1." Except for the changes noted in these paragraphs, these rules are identical to those published under Notice.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

These rules have no known fiscal impact beyond that of the legislation they are intended to implement. 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.

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 will become effective on December 26, 2018.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 701—40.65(422) and adopt the following **new** rule in lieu thereof:

**701—40.65(422) Section 179 expensing.**

**40.65(1) In general.** Iowa taxpayers who elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

**40.65(2) Claiming the deduction.**

*a. Timing and requirement to follow federal election.* A taxpayer who takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer who takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer who does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

*b. Qualifying for the deduction.* Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

*c. Amount of the Iowa deduction.* Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. For tax years beginning on or after January 1, 2018, and before January 1, 2019, the Iowa limitations applicable to individuals and corporations are not the same; see rule 701—53.23(422) for the section 179 limitations imposed on corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for the section 179 limitations imposed on financial institutions subject to the franchise tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
	Federal		Iowa	
Tax Year	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000

## REVENUE DEPARTMENT[701](cont'd)

2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000*	280,000
2019	Indexed amount unknown as of 8/2/18	Indexed amount unknown as of 8/2/18	100,000	400,000
2020 and later	Iowa limitations are the same as federal			
* The Iowa limitations for 2018 are applicable to individuals and pass-through entities other than corporations or financial institutions. For Iowa limitations applicable to corporations (both C and S corporations) and entities subject to the corporate income tax, or to financial institutions subject to the franchise tax, see rules 701—53.23(422) and 701—59.24(422), respectively.				

*d. Reduction.* Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 40.65(2) “c” for applicable limitations.

EXAMPLE: Taxpayer purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. The Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

*e. Amounts in excess of the Iowa limits.*

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

## REVENUE DEPARTMENT[701](cont'd)

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by the owner of that pass-through. See subrule 40.65(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Application of limitation to pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 40.65(2) "e"(1)"1" to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 40.65(2) "e"(1)"2."

EXAMPLE: Partner A (an individual and an Iowa resident) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) "e"(1)"1." C passes 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) through to A. A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A is eligible for the special election referenced in 40.65(2) "e"(1)"2."

*f. Income limitation.* The Iowa section 179 deduction for any given year is limited to the taxpayer's income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer's business income for a given year, any excess may be carried forward as described in paragraph 40.65(2) "g."

*g. Carryforward.* This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer's business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer's business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 40.65(2) "e," or in subrule 40.65(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2019. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2019 federal return. Taxpayer is also required to claim a section 179 deduction of \$100,000 on the 2019 Iowa return (because the federal deduction is equal to the Iowa limit for the year, the Iowa and federal deductions are the same). However, the taxpayer has only \$50,000 in business income for 2019, so the allowable deduction for that year is limited to \$50,000. The remaining \$50,000 may be carried forward and applied as a section 179 deduction (subject to all limitations) in 2020, and in any future years until the amount is fully deducted.

*h. Differences in basis.* Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department's website to calculate and track these differences.

**40.65(3) Section 179 deduction received from a pass-through entity.** In some cases, an individual or entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 40.65(2) "c" for a given year. The individual or entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

## REVENUE DEPARTMENT[701](cont'd)

*a. Tax years beginning before January 1, 2018.* For tax years beginning before January 1, 2018, the amount of any section 179 deduction received in excess of the Iowa deduction limitation for that year is not eligible for the special election.

*b. Special election available for tax years 2018 and 2019.* For tax years beginning on or after January 1, 2018, but before January 1, 2020, an individual or entity, other than a corporation (both C and S corporations) or an entity subject to the corporate income tax or franchise tax, that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—53.23(422) for special rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for special rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the individual or entity by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the individual or entity exceeds the federal section 179 deduction limitation for that year, the individual or entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

*c. Section 179 assets of an individual or entity.* An individual or entity that makes the special election may not claim an Iowa section 179 deduction for any assets the individual or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the individual or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: A is a sole proprietor who places in service \$20,000 worth of section 179 assets in tax year 2018 and claims the deduction for the full amount for federal purposes. A is also a partner in Partnership B, an out-of-state partnership with no Iowa filing obligation. Partnership B also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$100,000 of that deduction through to A. For federal purposes, A has a total of \$120,000 in section 179 deductions. Because A has section 179 deductions from a pass-through that exceed the Iowa limitation for the year, A is eligible for the special election. A makes the special election and claims the maximum Iowa section 179 deduction of \$70,000 on the amount passed through from Partnership B. Under the special election, A will be allowed to deduct the remaining \$30,000 passed through from Partnership B over the next five years, as described in paragraph 40.65(3) "e." However, because A made the special election, A will be required to depreciate the entire \$20,000 cost of the assets A placed in service as a sole proprietor.

*d. Calculating the special election.* An eligible individual or entity electing to take advantage of the special election must first add together all section 179 deductions which the individual or entity received from all relevant pass-through entities. The individual or entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the individual or entity will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. The remaining amount from paragraph 40.65(3) "d" must be divided into five equal shares.

(2) Claiming the special election deduction. The individual or entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any

## REVENUE DEPARTMENT[701](cont'd)

amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 40.65(2) "g."

EXAMPLE: A is an Iowa resident who is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes, because the partnership has no obligation to file an Iowa return. A claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning A will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, A is eligible for the \$100,000 deduction carried forward under the election, but A only has \$50,000 in business income. The deduction is limited to business income, so A can only use \$50,000 of the deduction in this year. However, A will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

*f. Basis.* The individual's or entity's basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

*g. Later tax years.* For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2018 Iowa Acts, Senate File 2417.

ITEM 2. Rescind rule 701—53.23(422) and adopt the following new rule in lieu thereof:

**701—53.23(422) Section 179 expensing.**

**53.23(1) In general.** Iowa taxpayers that elect to expense certain depreciable business assets in the year the assets were placed in service under section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

**53.23(2) Claiming the deduction.**

*a. Timing and requirement to follow federal election.* A taxpayer that takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer that takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer that does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

*b. Qualifying for the deduction.* Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

*c. Amount of the Iowa deduction.* Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. For tax years beginning on or after January 1, 2018, and before January 1, 2019, the Iowa limitations applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax and to financial institutions subject to the franchise tax are not the same as the limitations applicable to individuals and other entities; see rule 701—40.65(422) for the section 179 limitations imposed on individuals and other noncorporate entities, and see rule 701—59.24(422) for the section 179 limitations subject to financial institutions subject to the franchise tax.



## REVENUE DEPARTMENT[701](cont'd)

Section 179 Deduction Allowances Under Federal and Iowa Law				
Tax Year	Federal		Iowa	
	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	25,000*	200,000
2019	Indexed amount unknown as of 8/2/18	Indexed amount unknown as of 8/2/18	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

\* The Iowa limitations for 2018 are applicable to corporations (both C and S corporations), entities subject to the corporate income tax, and financial institutions subject to the franchise tax. For Iowa limitations applicable to individuals and pass-through entities which are not corporations, see rule 701—40.65(422).

*d. Reduction.* Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 53.23(2) “c” for applicable limitations.

EXAMPLE: Taxpayer, a corporation, purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. For corporations, the Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$200,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$225,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

*e. Amounts in excess of the Iowa limits.*

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions

## REVENUE DEPARTMENT[701](cont'd)

and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Taxpayer, a corporation, purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$25,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit for corporations for 2018). The taxpayer can depreciate the remaining \$75,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by an owner of that pass-through. See subrule 53.23(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Special information for pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 53.23(2) "e"(1)"1" to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 53.23(2) "e"(1)"2."

EXAMPLE: A, Inc. (a corporation doing business exclusively in Iowa) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C, which also does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) "e"(1)"1." C passes through 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) to A, Inc. A, Inc. also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A, Inc. is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A, Inc. received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A, Inc. is eligible for the special election referenced in 53.23(2) "e"(1)"2."

*f. Income limitation.* The Iowa section 179 deduction for any given year is limited to the taxpayer's income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer's business income for a given year, any excess allowable Iowa section 179 deduction may be carried forward as described in paragraph 53.23(2) "g."

*g. Carryforward.* This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer's business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer's business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 53.23(2) "e," or in subrule 53.23(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

*h. Difference in basis.* Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department's website to calculate and track these differences.

**53.23(3) Section 179 deduction received from a pass-through entity.** In some cases, an entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 53.23(2) "c" for a given year. The entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

*a. Tax years beginning before January 1, 2019.* For tax years beginning before January 1, 2019, the amount of any section 179 deduction received by a corporation (both C and S corporations) or an

## REVENUE DEPARTMENT[701](cont'd)

entity subject to the corporate income tax in excess of the Iowa deduction limitation for that year is not eligible for the special election.

*b. Special election available for tax year 2019.* For tax years beginning on or after January 1, 2019, but before January 1, 2020, a corporation (both C and S corporations) or an entity subject to the corporate income tax that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—40.65(422) for special rules applicable to individuals and other noncorporate entities, and see rule 701—59.24(422) for special rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the corporation or entity subject to the corporate income tax by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the corporation or entity subject to the corporate income tax exceeds the federal section 179 deduction limitation for that year, the corporation or other entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

*c. Section 179 assets of a corporation or entity subject to the corporate income tax.* A corporation or entity subject to the corporate income tax that makes this special election may not claim an Iowa section 179 deduction for any assets the corporation or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the corporation or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: A, Inc., a corporation doing business in Iowa, places in service \$20,000 worth of section 179 assets in tax year 2019 and claims the deduction for the full amount for federal purposes. A, Inc. is also a member of B, LLC, an entity that has elected to be taxed as a partnership for federal purposes and does not do any business in Iowa. B, LLC also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$150,000 of that deduction through to A, Inc. For federal purposes, A, Inc. has a total of \$170,000 in section 179 deductions. Because A, Inc. has section 179 deductions from a pass-through that exceed the Iowa limitation for 2019, A, Inc. is eligible for the special election. A, Inc. makes the special election and claims the maximum Iowa section 179 deduction of \$100,000 on the amount passed through from B, LLC. Under the special election, A, Inc. will be allowed to deduct the remaining \$50,000 passed through from B, LLC over the next five years, as described in paragraph 53.23(3)“e.” However, because A, Inc. made the special election, A, Inc. will be required to depreciate the entire \$20,000 cost of the assets A, Inc. placed in service in 2019.

*d. Calculating the special election.* A corporation or other entity subject to the corporate income tax that elects to take advantage of the special election must first add together all section 179 deductions which the corporation or other entity received from all relevant pass-through entities. The corporation or other entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the corporation or other entity will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. The remaining amount from paragraph 53.23(3)“d” must be separated into five equal shares.

(2) Claiming the special election deduction. The corporation or other entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 53.23(2)“g.”

## REVENUE DEPARTMENT[701](cont'd)

EXAMPLE: D, Inc., a corporation doing business in Iowa, is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes because the partnership has no obligation to file an Iowa return. D, Inc. claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning the corporation will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, D, Inc. is eligible for the \$100,000 deduction carried forward under the election, but the corporation only has \$50,000 in business income. The deduction is limited to business income, so the corporation can only use \$50,000 of the deduction in this year. However, D, Inc. will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

*f. Basis.* The individual's or entity's basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

*g. Later tax years.* For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.35 as amended by 2018 Iowa Acts, Senate File 2417.

ITEM 3. Rescind rule 701—59.24(422) and adopt the following new rule in lieu thereof:

**701—59.24(422) Section 179 expensing.**

**59.24(1) In general.** Iowa taxpayers that elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

**59.24(2) Claiming the deduction.**

*a. Timing and requirement to follow federal election.* A taxpayer that takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer that takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer that does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

*b. Qualifying for the deduction.* Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

*c. Amount of the Iowa deduction.* Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. For tax years beginning on or after January 1, 2018, and before January 1, 2019, the Iowa limitations applicable to financial institutions subject to the franchise tax and to corporations (both C and S corporations) and other entities subject to the corporate income tax are not the same as the limitations applicable to individuals and other entities; see rule 701—40.65(422) for the section 179 limitations imposed on individuals and other noncorporate entities, and see rule 701—53.23(422) for the section 179 limitations imposed on corporations (both C and S corporations) and other entities subject to the corporate income tax.

## REVENUE DEPARTMENT[701](cont'd)

Section 179 Deduction Allowances Under Federal and Iowa Law				
Tax Year	Federal		Iowa	
	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	25,000*	200,000
2019	Indexed amount unknown as of 8/2/18	Indexed amount unknown as of 8/2/18	100,000	400,000
2020 and later	Iowa limitations are the same as federal			
* These Iowa limitations for 2018 are applicable to financial institutions subject to the franchise tax, corporations (both C and S corporations), and entities subject to the corporate income tax. For Iowa limitations applicable to individuals and pass-through entities which are not financial institutions or corporations, see rule 701—40.65(422).				

*d. Reduction.* Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 59.24(2) “c” for applicable limitations.

EXAMPLE: Taxpayer, a financial institution doing business in Iowa, purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. For financial institutions, the Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$200,000. This means that for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$225,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

*e. Amounts in excess of the Iowa limits.*

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions

## REVENUE DEPARTMENT[701](cont'd)

and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Taxpayer, a financial institution doing business in Iowa, purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$25,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit for financial institutions for 2018). The taxpayer can depreciate the remaining \$75,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by an owner of that pass-through. See subrule 59.24(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Special information for pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 59.24(2) "e"(1)"1" to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 59.24(2) "e"(1)"2."

EXAMPLE: Bank A (a financial institution doing business exclusively in Iowa) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C, which also does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) "e"(1)"1." C passes through 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) to Bank A. Bank A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. Bank A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because Bank A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, Bank A is eligible for the special election referenced in 59.24(2) "e"(1)"2."

f. *Income limitation.* The Iowa section 179 deduction for any given year is limited to the taxpayer's income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer's business income for a given year, any excess allowable Iowa section 179 deduction may be carried forward as described in paragraph 59.24(2) "g."

g. *Carryforward.* This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer's business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer's business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 59.24(2) "e," or in subrule 59.24(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

h. *Difference in basis.* Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department's website to calculate and track these differences.

**59.24(3) Section 179 deduction received from a pass-through entity.** In some cases, a financial institution that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 59.24(2) "c" for a given year. The financial institution may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

## REVENUE DEPARTMENT[701](cont'd)

*a. Tax years beginning before January 1, 2019.* For tax years beginning before January 1, 2019, the amount of any section 179 deduction received by a financial institution subject to the franchise tax in excess of the Iowa deduction limitation for that year is not eligible for the special election.

*b. Special election available for tax year 2019.* For tax years beginning on or after January 1, 2019, but before January 1, 2020, a financial institution subject to the franchise tax that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—40.65(422) for special rules applicable to individuals and other noncorporate entities, and see rule 701—53.23(422) for special rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax.

(1) This special election applies only to section 179 deductions passed through to the financial institution by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the financial institution exceeds the federal section 179 deduction limitation for that year, the financial institution may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

*c. Section 179 assets of a financial institution.* A financial institution that makes this special election may not claim an Iowa section 179 deduction for any assets the financial institution placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the financial institution claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Bank A, a financial institution doing business in Iowa, places in service \$20,000 worth of section 179 assets in tax year 2019 and claims the deduction for the full amount for federal purposes. Bank A is also a member of B, LLC, an entity that has elected to be taxed as a partnership for federal purposes and does not do any business in Iowa. B, LLC also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$150,000 of that deduction through to Bank A. For federal purposes, Bank A has a total of \$170,000 in section 179 deductions. Because Bank A has section 179 deductions from a pass-through that exceed the Iowa limitation for 2019, Bank A is eligible for the special election. Bank A makes the special election and claims the maximum Iowa section 179 deduction of \$100,000 on the amount passed through from B, LLC. Under the special election, Bank A will be allowed to deduct the remaining \$50,000 passed through from B, LLC over the next five years, as described in paragraph 59.24(3)“e.” However, because Bank A made the special election, Bank A will be required to depreciate the entire \$20,000 cost of the assets Bank A placed in service in 2019.

*d. Calculating the special election.* A financial institution that elects to take advantage of the special election must first add together all section 179 deductions which the financial institution received from all relevant pass-through entities. The financial institution must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the financial institution will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. This remaining amount from paragraph 59.24(3)“d” must be separated into five equal shares.

(2) Claiming the special election deduction. The financial institution may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any

REVENUE DEPARTMENT[701](cont'd)

amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 59.24(2) “g.”

EXAMPLE: Bank D, a financial institution doing business in Iowa, is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes because the partnership has no obligation to file an Iowa return. Bank D claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning the bank will be allowed to take a \$100,000 Iowa special election deduction in each of the next five years.

In 2020, Bank D is eligible for the \$100,000 deduction carried forward under the election, but the bank only has \$50,000 in business income. The deduction is limited to business income, so the bank can only use \$50,000 of the deduction in 2020. However, Bank D will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

*f. Basis.* The financial institution’s basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

*g. Later tax years.* For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.35 as amended by 2018 Iowa Acts, Senate File 2417.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4143C**

## **REVENUE DEPARTMENT[701]**

**Adopted and Filed**

### **Rule making related to research activities credit**

The Revenue Department hereby amends Chapter 42, “Adjustments to Computed Tax and Tax Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 15.335, 422.10 and 422.33 as amended by 2018 Iowa Acts, Senate File 2417.

#### *Purpose and Summary*

This rule making amends the Department’s rules relating to the research activities credit (RAC) for both individual and corporate income tax. 2018 Iowa Acts, Senate File 2417, amended the corresponding Iowa Code sections. This rule making reflects those legislative changes and also removes unnecessary or outdated language from the rules.



REVENUE DEPARTMENT[701](cont'd)

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4025C**. A public hearing was held on October 17, 2018, at 10 a.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa. Six people attended the hearing, and the Department received two public comments. Both comments sought additional fact-specific guidance on the types of entities that would be eligible to claim the RAC. The Department responded directly to the commenters but did not feel changes to the rules were warranted.

No substantive changes from the Notice have been made. The only changes that have been made were to correct a reference in subrules 42.11(1) and 52.7(1) to now cite 2018 Iowa Acts, Senate File 2417, section 183, which amends the definition of “manufacturing.”

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The statutory change underlying this rule making was estimated in the Legislative Services Agency’s Fiscal Note for 2018 Iowa Acts, Senate File 2417, to increase General Fund revenues by \$4.5 million in FY 2019, \$7.2 million in FY 2020, \$7.5 million in FY 2021, \$7.8 million in FY 2022, \$8.1 million in FY 2023, and \$8.4 million in FY 2024.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—42.11(15,422) as follows:

**701—42.11(15,422) Research activities credit.** ~~Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state’s apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the Iowa research activities credit will be computed on the basis of the qualifying expenditures for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1999. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning~~

## REVENUE DEPARTMENT[701](cont'd)

~~on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes. The taxes imposed on individual income shall be reduced by a state tax credit for increasing research activities in this state. For individual income tax, the requirements of the research activities credit are described in Iowa Code section 422.10. This rule explains terms not defined in the statute and procedures for claiming the credit.~~

~~**42.11(1) Qualified expenditures in Iowa are:**~~

- ~~a. — Wages for qualified research services performed in Iowa.~~  
~~b. — Cost of supplies used in conducting qualified research in Iowa.~~  
~~c. — Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.~~  
~~d. — Sixty five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.~~

~~**42.11(2) Total qualified expenditures are:**~~

- ~~a. — Wages paid for qualified research services performed everywhere.~~  
~~b. — Cost of supplies used in conducting qualified research everywhere.~~  
~~c. — Rental or lease cost of personal property used in conducting qualified research everywhere.~~  
~~d. — Sixty five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.~~

~~“Qualifying expenditures for increasing research activities” is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.~~

~~A taxpayer may claim on the taxpayer’s individual income tax return the pro rata share of the credit for qualifying research expenditures incurred in Iowa by a partnership, subchapter S corporation, or estate or trust. The portion of the credit claimed by the individual must be in the same ratio as the individual’s pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust.~~

~~Any research credit in excess of the individual’s tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the taxpayer or may be credited to the estimated tax of the taxpayer for the following year.~~

~~**42.11(1) Definitions.**~~

~~“*Accountant*” means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.~~

~~“*Architect*” means a person licensed under Iowa Code chapter 544A or a similar law of another state.~~

~~“*Aviation and aerospace*” means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.~~

~~“*Collection agency*” means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.~~

~~“*Finance or investment company*” means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer’s money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. “Finance or investment company” includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.~~

~~“*Life sciences*” means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.~~

~~“*Manufacturing*” means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.~~

~~“*Publisher*” means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.~~

## REVENUE DEPARTMENT[701](cont'd)

“Real estate company” means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

“Retailer” means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

“Software engineering” means the detailed study of the design, development, operation, and maintenance of software.

“Transportation company” means a person whose primary business is the transportation of persons or property from one place to another.

“Wholesaler” means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

**42.11(2)** Requirement that the business claim and be allowed the federal credit. To claim this credit, a taxpayer’s business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer’s business is claiming the credit.

a. Being “allowed” the federal credit. For purposes of this subrule, a federal credit is “allowed” if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

b. Applicability of requirement to pass-throughs. If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

c. Impact of federal audit. If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent’s report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

d. Authority of the department. Nothing in this subrule shall limit the department’s authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.10, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

**42.11(3)** Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state.

a.—The credit equals the sum of the following:

(1)—Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2)—Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b.—In lieu of the credit computed under paragraph 42.11(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(e)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses

## REVENUE DEPARTMENT[701](cont'd)

(i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*e.*—~~In lieu of the credit computed under paragraph 42.11(3)“a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.~~

~~For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.~~

~~*d.*—For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 42.11(3)“b” and the alternative simplified credit described in paragraph 42.11(3)“c,” such amounts are limited to research activities conducted within this state. For purposes of this subrule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2014.~~

~~*e.*—An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro rata share of the individual’s earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual’s tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual’s tax liability for the following tax year.~~

~~*f.*—An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in 701—subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in 701—subrules 52.7(5) and 52.7(6).~~

~~*g.*—Tax years ending on or after July 1, 2005, but before July 1, 2009. For eligible businesses approved under the enterprise zone program and the high quality job creation program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. These expenses are not eligible for the federal credit for increasing research activities. These innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program shall not exceed \$1 million in the aggregate.~~

~~These expenses are available only for the additional research activities credit set forth in subrule 42.11(3), paragraph “f,” for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.29(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.11(3), paragraphs “a,” “b” and “c.”~~

~~*h.*—Tax years ending on or after July 1, 2009. For eligible businesses approved under the enterprise zone program prior to July 1, 2014, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. The enterprise zone program was repealed on July 1, 2014. However, any research activities credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.~~

## REVENUE DEPARTMENT[701](cont'd)

~~(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.~~

~~(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 42.42(1) shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.~~

~~(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 42.11(3), paragraph "f," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.42(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs "a," "b" and "c."~~

~~**42.11(4) Reporting of research activities credit claims.** Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.~~

~~**42.11(3) Calculating the credit.** For information on how the credit is calculated, see Iowa Code section 422.10.~~

~~**42.11(4) Claiming the tax credit.**~~

~~*a. Forms.* The credit must be claimed on the forms provided on the department's website and must include all information required by the forms.~~

~~*b. Allocation to the individual owners of an entity or beneficiaries of an estate or trust.* An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro rata share of the individual's earnings from a partnership, S corporation, estate or trust.~~

~~*c. Refundability.* Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.~~

~~*d. Transferability.* Tax credit certificates shall not be transferred to any other person.~~

~~*e. Enterprise zone claimants.* The enterprise zone program was repealed on July 1, 2014. However, any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.~~

~~This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by 2014 Iowa Acts, House File 2435 2018 Iowa Acts, Senate File 2417.~~

ITEM 2. Amend rule 701—52.7(422) as follows:

**701—52.7(422) Research activities credit.** Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a tax credit equal to 6.5 percent of the state's apportioned share of qualifying expenditures for increasing research activities. For purposes of this credit, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code. For tax years beginning on or after January 1, 1991, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code as in effect on January 1, 1998. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes. The "state's apportioned share of qualifying expenditures for increasing research activities" must be the ratio of the qualified expenditures in Iowa to total qualified expenditures times total qualifying expenditures for increasing research activities. The taxes imposed on corporate income shall be reduced by a state tax credit for increasing research activities in this state. For corporate income tax, the requirements of the

## REVENUE DEPARTMENT[701](cont'd)

research activities credit are described in Iowa Code section 422.33. This rule explains terms not defined in the statute and procedures for claiming the credit.

~~52.7(1) Qualified expenditures in Iowa are:~~

- ~~a. Wages for qualified research services performed in Iowa.~~
- ~~b. Cost of supplies used in conducting qualified research in Iowa.~~
- ~~c. Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.~~
- ~~d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.~~

~~52.7(2) Total qualified expenditures are:~~

- ~~a. Wages paid for qualified research services performed everywhere.~~
- ~~b. Cost of supplies used in conducting qualified research everywhere.~~
- ~~c. Rental or lease cost of personal property used in conducting qualified research everywhere.~~
- ~~d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.~~

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A shareholder in an S corporation may claim the pro rata share of the Iowa credit for increasing research expenditures on the shareholder's individual income tax return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research expenditures and the shareholder's pro rata share. The shareholder's pro rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the taxpayer for the following year.

~~52.7(3) Research activities credit for tax years beginning in 2000.~~ Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

~~a. The credit equals the sum of the following:~~

~~(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.~~

~~(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.~~

~~The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.~~

~~b. In lieu of the credit computed under paragraph 52.7(3) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.~~

~~For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.~~

## REVENUE DEPARTMENT[701](cont'd)

*c.*— In lieu of the credit computed under paragraph 52.7(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(e)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(e)(5)(A) and clause (ii) of Section 41(e)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*d.*— For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) “b” and the alternative simplified credit described in paragraph 52.7(3) “c,” such amounts are limited to research activities conducted within this state. For purposes of this subrule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2014.

*e.*— A shareholder in an S corporation may claim the pro rata share of the Iowa credit for increasing research activities on the shareholder’s individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation’s Iowa credit for increasing research activities and the shareholder’s pro rata share. The shareholder’s pro rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder’s pro rata share in the earnings of the S corporation.

Any research credit in excess of the corporation’s tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

**52.7(1) Definitions.**

“Accountant” means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.

“Architect” means a person licensed under Iowa Code chapter 544A or a similar law of another state.

“Aviation and aerospace” means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.

“Collection agency” means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.

“Finance or investment company” means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer’s money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. “Finance or investment company” includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.

“Life sciences” means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.

“Manufacturing” means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.

“Publisher” means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.

“Real estate company” means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

“Retailer” means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

## REVENUE DEPARTMENT[701](cont'd)

“Software engineering” means the detailed study of the design, development, operation, and maintenance of software.

“Transportation company” means a person whose primary business is the transportation of persons or property from one place to another.

“Wholesaler” means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

**52.7(2) Requirement that the business claim and be allowed the federal credit.** To claim this credit, a taxpayer’s business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer’s business is claiming the credit.

a. *Being “allowed” the federal credit.* For purposes of this subrule, a federal credit is “allowed” if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

b. *Applicability of requirement to pass-throughs.* If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

c. *Impact of federal audit.* If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent’s report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

d. *Authority of the department.* Nothing in this subrule shall limit the department’s authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.33, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

**52.7(3) Calculating the credit.** For information on how the credit is calculated, see Iowa Code section 422.33.

**52.7(4) Research activities credit for an eligible business. Claiming the tax credit.** Effective for tax years beginning on or after January 1, 2000, an eligible business may claim a tax credit for increasing research activities in this state during the period the eligible business is participating in the new jobs and income program with the Iowa department of economic development. An eligible business must meet all the conditions listed under Iowa Code section 15.329, which include requirements to make an investment of \$10 million as indexed for inflation and the creation of a minimum of 50 full-time positions. The research credit authorized in this subrule is in addition to the research activities credit described in 701—subrule 42.11(3) or the research credit described in subrule 52.7(3).

a.—The additional research activities credit for an eligible business is computed under the criteria for computing the research activities credit under 701—subrule 42.11(3) or under subrule 52.7(3), depending on which of those subrules the initial research credit was computed. The same qualified research expenses and basic research expenses apply in computation of the research credit for an eligible business as were applicable in computing the credit in 701—subrule 42.11(3) or 52.7(3). In addition, if the alternative incremental credit method was used to compute the initial research credit under 701—subrule 42.11(3) or 52.7(3), that method would be used to compute the research credit for an eligible business. Therefore, if a taxpayer that met the qualifications of an eligible business had a research activities credit of \$200,000 as computed under subrule 52.7(3), the research activities credit for the eligible business would result in an additional credit for the taxpayer of \$200,000.

a. *Forms.* The credit must be claimed on the forms provided on the department’s website and must include all information required by the forms.

b. *Allocation to the individual owners of an entity or beneficiaries of an estate or trust.* If the eligible business is a partnership, S corporation, limited liability company, estate or trust where the income from the eligible business is taxed to the individual owners of the business, these individual



## REVENUE DEPARTMENT[701](cont'd)

owners may claim the additional research activities credit allowed to the eligible business. The research credit is allocated to each of the individual owners of the eligible business on the basis of the pro rata share of that individual's earnings from the eligible business.

*c. Refundability.* Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

*d. Transferability.* Tax credit certificates shall not be transferred to any other person.

*e. Enterprise zone claimants.* The enterprise zone program was repealed on July 1, 2014. Any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

~~52.7(5) Corporate tax research credit for increasing research activities within an enterprise zone.~~ Effective for tax years beginning on or after January 1, 2000, for awards made by the Iowa department of economic development prior to July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). For the amount of the credit for increasing research activities within an enterprise zone for awards made by the economic development authority on or after July 1, 2010, see subrule 52.7(6).

*a.*—The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.*—In lieu of the credit computed under paragraph 52.7(5) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning prior to January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

*c.*—In lieu of the credit computed under paragraph 52.7(5) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) are 9.10 percent and 3.90 percent, respectively.

*d.*—For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "b" and the alternative simplified credit described in paragraph 52.7(3) "c" of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2014.

## REVENUE DEPARTMENT[701](cont'd)

~~e.—Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.~~

~~52.7(6) Research activities credit for awards made by the economic development authority on or after July 1, 2010, but before July 1, 2014.~~ For eligible businesses approved under the enterprise zone program prior to July 1, 2014, by the economic development authority when an award is made on or after July 1, 2010, but before July 1, 2014, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. The enterprise zone program was repealed on July 1, 2014. Any research activities credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). The amount of the credit depends upon the gross revenues of the eligible business.

~~a.—The credit equals the sum of the following for eligible businesses with gross revenues of less than \$20 million.~~

~~(1) Sixteen and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.~~

~~(2) Sixteen and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.~~

~~b.—The credit equals the sum of the following for eligible businesses with gross revenues of \$20 million or more.~~

~~(1) Nine and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.~~

~~(2) Nine and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.~~

~~c.—In lieu of the credit computed under paragraphs 52.7(6)“a” and “b,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code depend upon the gross revenues of the eligible business.~~

~~(1) The percentages are 7 percent and 3 percent, respectively, for eligible businesses with gross revenues of less than \$20 million.~~

~~(2) The percentages are 2.1 percent and 0.9 percent, respectively, for eligible businesses with gross revenues of \$20 million or more.~~

~~d.—For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative simplified credit described in paragraph 52.7(3)“c” of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2014.~~

REVENUE DEPARTMENT[701](cont'd)

~~e.—Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.~~

~~52.7(7) Reporting of research activities credit claims. Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.~~

This rule is intended to implement Iowa Code sections 15.335 and 422.33 as amended by 2014 Iowa Acts, House File 2435 2018 Iowa Acts, Senate File 2417.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4144C**

## **REVENUE DEPARTMENT[701]**

**Adopted and Filed**

### **Rule making related to baseball and softball complex sales tax rebate**

The Revenue Department hereby amends Chapter 235, "Rebate of Iowa Sales Tax Paid," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 423.4; 2018 Iowa Acts, Senate File 2417; and 2016 Iowa Acts, Senate File 2312.

#### *Purpose and Summary*

This rule making clarifies the process for seeking a rebate of Iowa sales tax that is available to an owner or operator of a baseball and softball complex, in accordance with Iowa Code section 423.4(10).

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4009C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

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 of rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Amend rule 701—235.2(423) as follows:

**~~701—235.2(423) Sanctioned baseball~~ Baseball and softball tournament facility and movie site complex sales tax rebate. Effective July 1, 2012, qualifying**

**235.2(1) Generally.**

*a. Rebate approval.* The economic development authority and the enhance Iowa board are authorized by the general assembly and the governor to oversee the application and award process for the baseball and softball complex sales tax rebate, created in Iowa Code section 15F.207. An entity whose project is reviewed and recommended by the economic development authority and approved by the enhance Iowa board is entitled to rebate of qualifying sales tax in accordance with Iowa Code section 423.4(10) as amended by 2018 Iowa Acts, Senate File 2417, and this rule, not to exceed the amount awarded by the economic development authority.

*b. Qualifying rebates.* Qualifying rebates of Iowa state sales tax may be made to the owner or operator of a ~~sanctioned baseball and softball tournament facility and movie site complex~~ as defined in this rule for sales occurring on or after January 1, 2014, and ending January 1, 2024 the project completion date for a period of ten years or the date the award was made, whichever is later. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

**~~235.2(1)~~ 235.2(2) Definitions.** For the purpose of this program, the definitions in Iowa Code section 423.4(10) as amended by 2018 Iowa Acts, Senate File 2417, apply. In addition, the following definitions apply:

*“Change of control”* means any of the following:

1. Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the ~~baseball and softball tournament facility and movie site~~ such that more than 51 percent of the equity interests in the legal entity cease to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

2. The original owners of the legal entity that is the owner or operator of the ~~baseball and softball tournament facility and movie site~~ shall collectively cease to own more than 50 percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

*“Department”* means the department of revenue.

*“Iowa corporation”* means a corporation incorporated under the laws of Iowa where at least 51 percent of the corporation's equity interests are owned by individuals who are residents of Iowa.

*“Owner or operator”* means a for-profit legal entity where at least 51 percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of a ~~baseball and softball tournament facility and movie site~~ and is primarily a promoter of ~~baseball and softball tournaments.~~

REVENUE DEPARTMENT[701](cont'd)

“Population” means the population based upon the 2010 certified federal census.

“Sanctioned Eligible baseball and softball tournament facility and movie site complex” or “facility complex” means a facility located in this state that has a project completion date that is after July 1, 2016, is designed and built to host baseball and softball tournament complex and tourist destination, which facility is located on a maximum of 279 acres, located inside or within three miles of the city limits of a city with a population of at least 4,000 but not more than 5,500 residents, which city is located in a county with a population of at least 93,000 but not more than 100,000 residents and where the construction on the baseball and softball tournament facility commenced not later than one year following July 1, 2013, and the cost of the construction upon completion was at least \$38 million games and has a cost of construction upon completion that is at least \$10 million. The boundaries of a “complex” may be a portion or the entirety of a premises. After granting an award to a complex, the enhance Iowa board shall describe in writing to the department the physical boundaries of the complex and provide the department a map illustrating the approved boundaries of the complex.

“Placed into service” means the first day a complex is able to host a baseball or softball game.

235.2(2) Affidavit by owner or operator. The owner or operator of a baseball and softball tournament facility and movie site seeking a rebate of sales tax imposed and collected by retailers upon sales of any goods, wares, merchandise, admission tickets, or services furnished to purchasers at the facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue  
Sales Tax Rebate Affidavit

NAME OF AFFIANT	*	AFFIDAVIT FOR SANCTIONED
	*	BASEBALL AND SOFTBALL
ADDRESS OF AFFIANT	*	TOURNAMENT FACILITY AND
	*	MOVIE SITE

The undersigned duly swears that the named Baseball and Softball Tournament Facility and Movie Site complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

1. ~~The facility is sanctioned as a baseball and softball tournament facility and movie site;~~
2. ~~The sanctioned baseball and softball tournament facility and movie site is located on a maximum of 279 acres of Iowa land;~~
3. ~~The sanctioned baseball and softball tournament facility and movie site is located in a city with a population, as defined by the rules governing this program, of at least 4,000 but not more than 5,500 residents;~~
4. ~~The city in which the sanctioned baseball and softball tournament facility and movie site is located is in a county with a population, as defined by the rules governing this program, of at least 93,000 but not more than 100,000 residents;~~
5. ~~Construction of the sanctioned baseball and softball tournament facility and movie site was commenced on or before July 1, 2013;~~
6. ~~Cost of construction of the sanctioned baseball and softball tournament facility and movie site upon completion is at least \$38 million; and~~
7. ~~There has not been a “change of control” as defined in the rules governing this program regarding the legal ownership or operation of the baseball and softball tournament facility and movie site.~~

The undersigned duly swears that he or she is the owner or operator of the sanctioned baseball and softball tournament facility and movie site or that the undersigned is the authorized representative of the sanctioned baseball and softball tournament facility and movie site and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that

REVENUE DEPARTMENT[701](cont'd)

~~the sanctioned baseball and softball tournament facility and movie site has met all of the requirements as contained herein.~~

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 Name of Affiant \_\_\_\_\_

Date \_\_\_\_\_

Position of Affiant \_\_\_\_\_

~~235.2(3) Notification to the department of revenue. The owner or operator of the sanctioned baseball and softball tournament facility and movie site complex shall provide the department with a copy of the award notice from the enhance Iowa board.~~

~~235.2(4) Retailer identification.~~

~~a. Identification of retailers. The owner or operator shall provide the department with the identity of all retailers at the facility complex that will be collecting sales tax, provide sales tax permit numbers for each retailer, and shall keep the information current.~~

~~b. Notification to department. The owner or operator of the facility complex shall notify the department within ten days of the start-up or termination of a retailer from collecting sales tax at the facility complex. In addition, the owner or operator of the facility shall notify the department within ten days of the start-up of a retailer collecting sales tax at the facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the complex or after one calendar year expires since the retailer collected sales tax at the complex.~~

~~c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the complex before rebates are paid for sales made by that retailer.~~

~~235.2(5) Baseball and softball complex rebate request form and filing requirements. The owner or operator must submit a rebate request to the department on the authorized form. The form will be made available on the department's website. A properly completed form shall adhere to the following rules:~~

~~a. Who may file the claim. The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.~~

~~b. Information regarding retailers making sales at the complex. The following information shall be provided:~~

~~(1) Business name,~~

~~(2) Responsible party,~~

~~(3) Federal employer identification number (FEIN), and~~

~~(4) Sales tax permit number, which must be associated with an address at the complex.~~

~~c. Sales at the complex. Information on sales at the complex and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 235.2(5) "b" and Iowa Code section 423.4(10) as amended by 2018 Iowa Acts, Senate File 2417, are eligible for rebate.~~

~~d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.~~

~~e. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the claim.~~

~~f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the complex took place.~~

~~235.2(4) 235.2(6) Limitations Fund transfers. The sanctioned baseball and softball tournament facility and movie site rebate program applies only to transactions that occur on or after January 1, 2014, but before January 1, 2024, and for which sales tax was collected. Only the state sales tax is subject to rebate. The rebate is limited to the Iowa sales tax rate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to a facility are not authorized for transactions that occur on or after the date of the change of control of the facility. The amount of sales tax revenues transferred from the general fund to the baseball and softball tournament facility and movie site complex fund is that portion of sales tax receipts remaining in the general fund after the other department transfers, in the order prescribed: as described in 2018 Iowa Acts, Senate File 2417, section 174.~~

## REVENUE DEPARTMENT[701](cont'd)

- ~~a. Local option sales taxes to those taxing jurisdictions imposing local option taxes;~~  
~~b. If the sales tax rate is increased to greater than 6 percent, an amount of sales tax equal to the amount generated by the increase in the tax rate—limited to 3/8 of 1 percent of the sales tax rate that exceeds 6 percent—to the natural resources and outdoor recreation trust fund; and~~  
~~c. One sixth of the remaining sales tax revenues to the secure an advanced vision for education fund.~~

~~235.2(5)~~ **235.2(7)** *Termination of rebate program.* The rebate program terminates 30 days following the date on which \$5 million in total rebates has been provided. The rebate award for the sanctioned baseball and softball tournament facility and movie site each complex terminates on the earliest of the following dates:

- ~~a. January 1, 2024~~ Ten years after the project completion date; or  
~~b. Thirty days following the~~ The date on which \$16.5 million in total rebates equal to the amount of the rebate award have been provided to the complex; or  
~~c. Thirty days following the~~ The date of the change of control of the facility.

~~235.2(6)~~ **235.2(8)** *Sourcing of sales.*

~~a. Generally.~~ In general, sales are considered to occur “at the complex” if they occur within the boundaries identified in the physical description provided by the enhance Iowa board and are sourced to a location within those boundaries under Iowa Code section 423.15.

~~b. Advance ticket and admissions sales.~~ Advance ticket and admissions sales shall be considered occurring at the sanctioned baseball and softball tournament facility and movie site complex regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

~~Other types of sales eligible for rebate under this program include, but are not limited to, sales by vendors and sales at concessions, gift shops, and museums.~~

~~235.2(7) Requirements to obtain a rebate of state sales tax by the sanctioned baseball and softball tournament facility and movie site.~~

- ~~a. The rebate request must be submitted to the department on the authorized department form;~~  
~~b. The rebate request form must be filed quarterly with the department and in a timely manner;~~  
and  
~~c. All the information requested on the rebate request form must be completed.~~

This rule is intended to implement 2011 2018 Iowa Acts, Senate File 2417, section 174, and Iowa Code Supplement sections 423.2(11) and section 423.4 as amended by 2012 Iowa Acts, Senate File 2329 2018 Iowa Acts, Senate File 2417.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4145C**

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to raceway facility sales tax rebate**

The Revenue Department hereby amends Chapter 235, “Rebate of Iowa Sales Tax Paid,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

REVENUE DEPARTMENT[701](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 423.2 and 423.4 as amended by 2018 Iowa Acts, Senate File 2407.

*Purpose and Summary*

This rule making adopts new rule 701—235.3(423) relating to rebates of Iowa sales and use tax that are available to an owner or operator of a raceway facility that meets certain criteria set forth in Iowa Code section 423.4(11). The rule describes the process by which a qualifying owner or operator may seek rebates and provides additional information about how sales qualify for the rebate.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4023C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 31, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The Legislative Services Agency's Fiscal Note for 2018 Iowa Acts, Senate File 2407, estimates a transfer of \$744,000 from the General Fund to the Raceway Facility Tax Rebate Fund in FY 2019, \$200,000 in FY 2020 through FY 2024, and \$68,000 in FY 2025, at which time the rebate program cap will be reached.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Adopt the following **new** rule 701—235.3(423):

**701—235.3(423) Raceway facility sales tax rebate.** Qualifying rebates of Iowa state sales and use tax may be made to the owner or operator of a raceway facility that meets the requirements of Iowa Code section 423.4(11) as amended by 2018 Iowa Acts, Senate File 2407. The maximum rebate is limited to



## REVENUE DEPARTMENT[701](cont'd)

project costs incurred and paid on or after May 16, 2018, and before January 1, 2025, or \$1.8 million, whichever is less.

**235.3(1) Definitions.** For purposes of this rebate, unless further defined below, the terms used in this rule mean the same as defined in Iowa Code section 423.4(11) as amended by 2018 Iowa Acts, Senate File 2407.

*“Incurred date”* means the date on which the payment for the project cost was made or the performance of the work that gave rise to the payment occurred, whichever is later.

**235.3(2) Retailer identification.**

*a. Identification of retailers.* Prior to or in conjunction with the filing of its initial rebate request, the owner or operator shall provide the identity of all retailers at the raceway facility that will be collecting sales tax and provide the department with the sales tax permit number for each retailer. During the period in which rebates may be claimed, the owner or operator shall keep the information current.

*b. Notification to department.* The owner or operator shall notify the department within ten days of the termination or start-up of a retailer collecting sales tax at the raceway facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the raceway facility or after one calendar year expires since the retailer collected sales tax at the raceway facility.

*c. Verification by department.* The department shall verify the identity of a retailer collecting sales tax at the raceway facility before rebates are paid for sales made by that retailer.

**235.3(3) Project cost report and rebate form and filing requirements.** The owner or operator must submit a project cost report and rebate request to the department on the authorized form. The report and rebate form will be made available on the department’s website. A properly completed rebate form shall contain the following.

*a. Documentation and information required.*

- (1) Invoices for project costs.
- (2) An explanation of how each cost meets the definition of “project costs.”
- (3) The date each cost was incurred and the date each cost was paid.

*b. Additional information.* The department may request any other additional information, from any person, necessary to verify the rebate.

*c. Sworn statement.* The department may require a sworn statement regarding the truthfulness and eligibility of the report.

*d. Filing frequency.* The form and supporting documentation must be provided to the department within 90 days of the date the project cost was paid. Generally, this report is filed quarterly with the rebate request form. However, the project cost report may be filed more frequently if necessary to meet the 90-day filing requirement. Project cost reports and rebate forms will not be accepted on or after the date on which \$1.8 million in total rebates has been provided, or June 30, 2025, whichever is earlier.

**235.3(4) Raceway facility retailer sales report and filing requirements.** The owner or operator must submit a retailer sales report to the department on the authorized form. The form will be made available on the department’s website. A properly completed form shall contain the following.

*a. Who may file the claim.* The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

*b. Information regarding retailers making sales at the raceway facility.* The following information shall be provided:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number.

*c. Sales at the raceway facility.* Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 235.3(4) “b” and Iowa Code section 423.4(11) as amended by 2018 Iowa Acts, Senate File 2407, are eligible for rebate. Only sales occurring on or after January 1, 2015, and before January 1, 2025, are eligible for the rebate.

REVENUE DEPARTMENT[701](cont'd)

*d. Additional information.* The department may request any other additional information, from any person, necessary to verify the rebate.

*e. Sworn statement.* The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.

*f. Filing frequency.* The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

**235.3(5) Raceway facility retailer sales report for sales occurring on or after January 1, 2015, and before May 16, 2018.**

*a. Sales report required.* A comprehensive raceway facility retailer sales report comprising sales occurring at the raceway facility on or after January 1, 2015, and before May 16, 2018, must be filed by the owner or operator by March 30, 2019.

*b. Report requirements.* The report must include a list of retailers that meet the requirements of subrule 235.3(2), all information described in subrule 235.3(4), and any other information requested by the department to calculate the eligible sales that occurred at the raceway facility during that time period. The report shall be in the same or substantially similar format as the quarterly raceway facility retailer sales report required by subrule 235.3(4).

**235.3(6) Sourcing of sales.**

*a. Generally.* In general, sales are considered to occur at the raceway facility if they occur within the boundaries of the raceway facility portion of the fairgrounds and are sourced to that raceway facility under Iowa Code section 423.15.

*b. Advance ticket and admissions sales.* Advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the raceway facility is located must be imposed on the sales price of advance ticket and admissions sales.

**235.3(7) Local option sales tax.** Local option taxes imposed under Iowa Code chapter 423B are not eligible for rebate under this program.

This rule is intended to implement Iowa Code sections 423.2(11) and 423.4(11) as amended by 2018 Iowa Acts, Senate File 2407.

[Filed 10/31/18, effective 12/26/18]

[Published 11/21/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.

**ARC 4146C**

## **SECRETARY OF STATE[721]**

### **Adopted and Filed**

#### **Rule making related to local option sales and services tax elections**

The Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 47.1.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 423B and 2018 Iowa Acts, Senate File 2417.

SECRETARY OF STATE[721](cont'd)

*Purpose and Summary*

The Secretary of State has determined that as a result of 2018 Iowa Acts, Senate File 2417, rule 721—21.804(423B) is necessary to keep administrative rules in compliance with the Iowa Code. By defining “qualified counties,” Senate File 2417 adds a new category of counties and provides for a new method of initiating a local option sales and services tax election. This rule making allows for the new method of initiating a local option sales and services tax election, provided for in Iowa Code section 423B.1(4)“b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, to be utilized for the March 5, 2019, special election date.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 12, 2018, as **ARC 3989C**. One comment was received. The commenter suggested a change to subrule 21.804(5) to reflect the amendment made by 2018 Iowa Acts, Senate File 2417, section 242, to Iowa Code section 423B.7(7)“b” that requires that “qualified counties” use no less than 50 percent of a local option sales and services tax for property tax relief. Subrule 21.804(5) was updated to reflect this requirement.

*Adoption of Rule Making*

This rule making was adopted by the Secretary of State on October 24, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on December 26, 2018.

The following rule-making action is adopted:

Adopt the following **new** rule 721—21.804(423B):

**721—21.804(423B) Local option sales and services tax elections in qualified counties.** This rule applies to local option sales and services tax elections held in qualified counties on March 5, 2019, and shall not apply to any local option sales and services tax election held in qualified counties after March 5, 2019. For local option sales and services tax elections held in qualified counties after March 5, 2019, rule 721—21.800(423B) shall control.

SECRETARY OF STATE[721](cont'd)

**21.804(1)** For purposes of this rule, “qualified county” means a county with a population in excess of 400,000, a county with a population of at least 130,000 but not more than 131,000, or a county with a population of at least 60,000 but not more than 70,000, according to the 2010 federal decennial census.

**21.804(2)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

*a.* Each person signing the petition shall include the person’s address (including street number, if any) and the date that the person signed the petition.

*b.* Within 30 days after receipt of the petition, the county board of supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local option sales and services tax. In the notice the supervisors shall include the date of the election.

*c.* The local option sales and services tax election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “*a*” but no sooner than 84 days after the date upon which notice is given to the county commissioner of elections.

**21.804(3)** As an alternative to the method of initiating a local option tax election described in subrule 21.804(2), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) “*b*” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner of elections shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “*a*” but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

**21.804(4)** As an alternative to the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3), the governing body of a city located in a county that is a qualified county, or the governing body of a qualified county for the unincorporated area of the qualified county, may initiate a local option sales and services tax election by filing a motion with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) “*b*” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option sales and services tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a motion, the county commissioner shall notify affected jurisdictions of the local option sales and services tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “*a*” but no sooner than 62 days after the date upon which the commissioner received the motion triggering the election. This subrule applies to motions received by the county commissioner of elections on or after January 1, 2019.

**21.804(5)** Notice of local option sales and services tax election.

*a.* Not less than 60 days before the date that a local option sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

*b.* The city councils and the county supervisors, as applicable, shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed, which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option sales and services tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B. The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option sales and services tax revenues that will be used for property tax relief in the jurisdiction.

SECRETARY OF STATE[721](cont'd)

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

*c.* If either of the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) is utilized, the information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If the method of initiating a local option sales and services tax election described in subrule 21.804(4) is utilized, then the information to be included in the notice shall be provided to the county commissioner of elections by the governing body of the city or the county for the unincorporated area of the county, as applicable, not later than 62 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.804(5) “*b*”(1), 21.804(5) “*b*”(3), and 21.804(5) “*b*”(4), the following information shall be substituted in the notice and on the ballot:

- (1) One percent (1%) for the rate of the tax.
- (2) Fifty percent (50%) for property tax relief.
- (3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

*d.* The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[Filed 10/26/18, effective 12/26/18]

[Published 11/21/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.