



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form 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”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
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	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 7, 2007	September 26, 2007
8	Friday, September 21, 2007	October 10, 2007
9	Friday, October 5, 2007	October 24, 2007

PLEASE NOTE:

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

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

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

SUBSCRIPTION INFORMATION

In 2008, mail subscriptions to the Iowa Administrative Bulletin and the Iowa Administrative Code will be discontinued, and Internet updating and printing options will be instituted through the Iowa General Assembly's Internet home page: www.legis.state.ia.us.

Iowa Administrative Bulletin

July 2007 through December 2007 \$169

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*July 2007 through December 2007 \$263

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, September 11, 2007, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Use of tobacco products on capitol complex, 100.3, Notice **ARC 6188B** 8/29/07

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Loan participation program, 4.3(9), 4.6, Notice **ARC 6140B** 8/15/07

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All Iowa opportunity scholarship program, ch 8, Filed Emergency **ARC 6135B** 8/15/07

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Certification of documents—use of electronic signature, 6.1(9), Filed **ARC 6147B** 8/15/07

Compensation to peer reviewers, 10.1(4), Notice **ARC 6150B** 8/15/07

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Controlling air pollution—grain elevators, 20.2, 22.1(1)"d," 22.10, 22.100, 23.4(7), <u>Notice</u> ARC 6186B	8/29/07
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PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

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HUMAN SERVICES DEPARTMENT[441]

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INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

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IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits—2008 qualified allocation plan, 12.1, 12.2, <u>Filed</u> ARC 6195B	8/29/07
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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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33.40(5), 33.50(5), Notice ARC 6200B 8/29/07
- Swimming area at Clear Lake in Cerro Gordo County, 40.55, Notice ARC 6201B 8/29/07
- Commercial fishing on the Mississippi, 82.2(2), 82.2(8) to 82.2(10), Filed ARC 6199B 8/29/07
- Waterfowl and coot hunting seasons, 91.1(2) to 91.1(4), 91.3(2), 91.3(3), 91.3(7),
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- Help us stop hunger (HUSH) deer donation program, ch 116, Filed ARC 6198B 8/29/07

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PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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- Fees; changes to references to board and executive secretary, 2.1, 2.3(1), 2.3(3), 2.6, 2.8,
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- Prescription refills, 8.19(5), Notice ARC 6178B 8/29/07
- Authorized pharmacist—training required to administer immunizations, 8.33(1)"a,"
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- Automated medication distribution systems, 9.7, Filed ARC 6173B 8/29/07
- Temporary designation of controlled substances, 10.38, Filed Emergency ARC 6171B 8/29/07

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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COMMERCE DEPARTMENT[181]"umbrella"

- Associate real property appraisers; compensation of peer reviewers, 2.1, ch 4,
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- Appraisal logs; course requirements, 5.2(1), 6.2(3), 13.2(3), 14.2(3), Filed ARC 6189B 8/29/07

REGENTS BOARD[681]

- Board meeting schedule; vacancy in office of president pro tem, 11.1(1), Notice ARC 6177B 8/29/07

REVENUE DEPARTMENT[701]Withdrawals from Iowa educational savings plan trust; exclusion for certain victim compensation payments and
for Vietnam Conflict veterans bonus; research activities credit; checkoffs, 40.1, 40.53(3), 40.71, 40.72,

- 42.2(11)"b," 43.4(5), 52.7(3)"c," 52.7(5)"c," Notice ARC 6211B 8/29/07
- Film qualified expenditure tax credit; film investment tax credit, 40.70, 42.35, 42.36, 52.34, 52.35,
53.1, 53.25, 58.19, 58.20, Notice ARC 6167B 8/15/07
- Motor fuel—method of payment of taxes, electronic filing of reports, 67.3(1)"e," 67.3(2)"g,"
67.3(3)"g," 67.3(4)"d," 67.3(5)"c," 67.3(7)"d," 67.3(8)"d," 67.3(9)"f," 67.3(11)"d,"
67.3(12)"b"(2)"1," 67.6, 67.24, 68.2(2), Notice ARC 6209B 8/29/07

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Rate of compensation, 12.4, 12.5(1), 12.6(3)"a" and "b," 14.3, Filed ARC 6182B 8/29/07
- Claims for foreign language interpreters, 13.2(2), Notice ARC 6180B, also Filed Emergency ARC 6181B 8/29/07

TRANSPORTATION DEPARTMENT[761]

- Logo signing, ch 118, Notice ARC 6166B 8/15/07
- Vehicles—registration, plates, certificate of title, salvage, leasing licenses, recycling, permits; abandoned vehicles; manufactured or mobile home retailers, manufacturers, and distributors, amend chs 400, 401, 405, 411, 424, 425, 430, 431, 451, 480; rescind ch 421, Notice ARC 6133B 8/15/07

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

- Iowa veterans home, 10.1, 10.40(1)"c" to "i," Notice ARC 6157B 8/15/07

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.

EDITOR'S NOTE: Terms ending April 30, 2011.

Senator Jeff Angelo
P.O. Box 604
Creston, Iowa 50801

Senator Michael Connolly
2600 Renaissance Drive, #3
Dubuque, Iowa 52001

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator James Seymour
901 White Street
Woodbine, Iowa 51579

Joseph A. Royce
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P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative David Jacoby
2308 North Ridge Drive
Coralville, Iowa 52241

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

Representative Philip Wise
503 Grand Avenue
Keokuk, Iowa 52632

James Larew
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Dangerous wild animals, ch 77 IAB 8/15/07 ARC 6158B	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 5, 2007 2 p.m.
DENTAL EXAMINERS BOARD[650]		
Grounds for discipline—failure to preserve confidentiality, 30.4“14” IAB 8/15/07 ARC 6131B	Board Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	September 4, 2007 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Regional sports authority districts, ch 37 IAB 8/15/07 ARC 6144B (ICN Network)	(Origination Site) Main Conf. Rm., Second Floor 200 East Grand Ave. Des Moines, Iowa	September 5, 2007 1:30 to 3 p.m.
	Kuemper High School 109 S. Clark St. Carroll, Iowa	September 5, 2007 1:30 to 3 p.m.
	Clarinda High School 100 N. Cardinal Dr. Clarinda, Iowa	September 5, 2007 1:30 to 3 p.m.
	Eastern Iowa Community College, District 1 Rm. 300, Kahl Educational Ctr. 326 W. Third St. Davenport, Iowa	September 5, 2007 1:30 to 3 p.m.
	Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	September 5, 2007 1:30 to 3 p.m.
	Fort Dodge Public Library 424 Central Ave. Fort Dodge, Iowa	September 5, 2007 1:30 to 3 p.m.
	Iowa City High School 1900 Morningside Dr. Iowa City, Iowa	September 5, 2007 1:30 to 3 p.m.
	Keokuk Public Library 210 N. 5th St. Keokuk, Iowa	September 5, 2007 1:30 to 3 p.m.
	NIACC 500 College Dr. Mason City, Iowa	September 5, 2007 1:30 to 3 p.m.
	Oskaloosa Public Library 301 S. Market St. Oskaloosa, Iowa	September 5, 2007 1:30 to 3 p.m.
	East High School 5011 Mayhew Ave. Sioux City, Iowa	September 5, 2007 1:30 to 3 p.m.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] (Cont'd)

	Spencer High School 800 E. Third St. Spencer, Iowa	September 5, 2007 1:30 to 3 p.m.
	Hawkeye Community College - 1 1501 E. Orange Rd. Waterloo, Iowa	September 5, 2007 1:30 to 3 p.m.
Targeted small business procurement and financial assistance programs, amendments to chs 54, 55 IAB 8/15/07 ARC 6143B (ICN Network)	[See listing for ARC 6144B above]	
Targeted industries; information technology, chs 101 to 104 IAB 8/15/07 ARC 6138B (ICN Network)	[See listing for ARC 6144B above]	

EDUCATION DEPARTMENT[281]

Accreditation standards—protected classes, antiharrassment/antibullying policy, preschool programs, 12.1(1), 12.2, 12.3, 12.8(1)“a” IAB 8/15/07 ARC 6161B (ICN Network)	(Origination Site) ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2007 9 to 11 a.m.
	Dubuque AEA 2310 Chaney Rd. Dubuque, Iowa	September 11, 2007 9 to 11 a.m.
	Fayette Community Library 104 W. State St. Fayette, Iowa	September 11, 2007 9 to 11 a.m.
	Mason City High School Room 113 1700 4th St. SE Mason City, Iowa	September 11, 2007 9 to 11 a.m.
	Spencer High School 800 East 3rd St. Spencer, Iowa	September 11, 2007 9 to 11 a.m.
	Northwest AEA Room 103, Sioux Center Office 1382 4th Ave. NE Sioux Center, Iowa	September 11, 2007 9 to 11 a.m.
	Webster City High School 1001 Lynx Ave. Webster City, Iowa	September 11, 2007 9 to 11 a.m.
	Area Education Agency 267 Marshalltown Office 109 S. 12th St. Marshalltown, Iowa	September 11, 2007 9 to 11 a.m.

EDUCATION DEPARTMENT[281] (Cont'd)

	Waterloo West High School Baltimore and Ridgeway Waterloo, Iowa	September 11, 2007 9 to 11 a.m.
	Rm. 304, Kahl Educational Center 326 West 3rd St. Davenport, Iowa	September 11, 2007 9 to 11 a.m.
	Grant Wood AEA Revere Room 4401 6th St. SW Cedar Rapids, Iowa	September 11, 2007 9 to 11 a.m.
	Heartland AEA 6500 Corporate Dr. Johnston, Iowa	September 11, 2007 9 to 11 a.m.
	Central Campus Individual Learning Center Room 311471 1121 Jackson St. Sioux City, Iowa	September 11, 2007 9 to 11 a.m.
	Loess Hills AEA 24997 Highway 92 Council Bluffs, Iowa	September 11, 2007 9 to 11 a.m.
	Green Valley AEA Turner Room 1405 N. Lincoln Creston, Iowa	September 11, 2007 9 to 11 a.m.
	Southern Prairie AEA 2814 N. Court Street Ottumwa, Iowa	September 11, 2007 9 to 11 a.m.
	Great River AEA 3601 W. Avenue Rd. Burlington, Iowa	September 11, 2007 9 to 11 a.m.
Core content standards; phase II accreditation visit; accountability, 12.3, 12.4(11), 12.5, 12.8 IAB 8/15/07 ARC 6156B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 14, 2007 9 to 10 a.m.
Faculty salary allocation plan, 21.3(7) IAB 8/15/07 ARC 6154B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 7, 2007 11 a.m. to 12 noon
Used motor vehicle dealer education program, 21.75 IAB 8/15/07 ARC 6155B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 7, 2007 10 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality regulations for grain elevators, 20.2, 22.1(1), 22.10, 22.100, 23.4(7) IAB 8/29/07 ARC 6186B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	September 24, 2007 1 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Amana Room Kirkwood Community College Cedar Rapids, Iowa	September 26, 2007 1 p.m.
	Clay County Regional Events Ctr. 800 W. 18th St. Spencer, Iowa	October 2, 2007 1 p.m.
Air quality regulations for ethanol production facilities, 22.100, 33.3 IAB 8/1/07 ARC 6091B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	September 5, 2007 10 a.m.
CAIR and CAMR trading programs, 34.201, 34.210, 34.221, 34.301 IAB 8/1/07 ARC 6092B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	September 4, 2007 9 a.m.

INSURANCE DIVISION[191]

Licensure and continuing education, 10.4, 10.5(2), 10.24, 11.3, 11.14 IAB 8/29/07 ARC 6202B	330 Maple St. Des Moines, Iowa	September 18, 2007 9 a.m.
Military sales practices, ch 25 IAB 8/29/07 ARC 6203B	330 Maple St. Des Moines, Iowa	September 18, 2007 11 a.m.
Licensing of adjusters, ch 55 IAB 8/29/07 ARC 6204B	330 Maple St. Des Moines, Iowa	September 18, 2007 10 a.m.

NATURAL RESOURCE COMMISSION[571]

REAP selection criteria, 33.30(4), 33.40(5), 33.50(5) IAB 8/29/07 ARC 6200B	4th Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 28, 2007 10:30 a.m.
Zoning of Clear Lake, Cerro Gordo County40.55 IAB 8/29/07 ARC 6201B	4th Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 25, 2007 9 a.m.

NURSING BOARD[655]

Nursing education programs, ch 2 IAB 7/18/07 ARC 6040B	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	September 12, 2007 6 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Physician assistants, amendments to chs 325 to 329 IAB 8/15/07 ARC 6134B	Fifth Floor Board Conf. Room Lucas State Office Bldg. Des Moines, Iowa	September 5, 2007 9 to 9:30 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

National criminal history checks for teacher applicants, 11.21(4) IAB 7/18/07 ARC 6046B (See also ARC 6047B)	First Floor Conf. Room, Room 125 215 East 7th St. Des Moines, Iowa	September 5, 2007 10 a.m.
Public records and fair information practices, 25.3, 25.13, 25.15 IAB 7/18/07 ARC 6048B (See also ARC 6049B)	First Floor Conf. Room, Room 125 215 East 7th St. Des Moines, Iowa	September 5, 2007 9:30 a.m.
Fire service training, 259.302, 259.303, 259.304(1), 259.305 IAB 8/1/07 ARC 6064B (See also ARC 6065B)	First Floor Conf. Room, Room 125 215 East 7th St. Des Moines, Iowa	September 5, 2007 10:30 a.m.

STATE PUBLIC DEFENDER[493]

Claims for foreign language interpreters, 13.2(2) IAB 8/29/07 ARC 6180B (See also ARC 6181B herein)	Conference Room 422 Lucas State Office Bldg. Des Moines, Iowa	September 20, 2007 9 a.m.
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TRANSPORTATION DEPARTMENT[761]

Logo signing, amendments to ch 118 IAB 8/15/07 ARC 6166B	1st Floor S. Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	September 6, 2007 1 p.m. (If requested)
Clarification of rules, amendments to chs 400, 401, 405, 411, 421, 424, 425, 430, 431, 451, 480 IAB 8/15/07 ARC 6133B	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	September 6, 2007 10 a.m. (If requested)

UTILITIES DIVISION[199]

Certificates of franchise authority for cable and video service, ch 44 IAB 8/1/07 ARC 6124B	350 Maple St. Des Moines, Iowa	September 20, 2007 10 a.m.
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VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Iowa veterans home, 10.1, 10.40(1) IAB 8/15/07 ARC 6157B	Ford Memorial Conf. Room Iowa Veterans Home 1301 Summit Marshalltown, Iowa	September 5, 2007 1 p.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“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 which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
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 CIVIL RIGHTS COMMISSION[161]
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 Alcoholic Beverages Division[185]
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 Architectural Examining Board[193B]
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 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Savings and Loan Division[197]
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 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
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 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
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 Educational Examiners Board[282]
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 Libraries and Information Services Division[286]
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 EGG COUNCIL, IOWA[301]
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 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
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 Community Action Agencies Division[427]
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 Deaf Services Division[429]
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 Status of African-Americans, Division on the[434]
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LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
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 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medicine Board[653]
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PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 6188B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 8A.322, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 100, “Capitol Complex Operations,” Iowa Administrative Code.

This amendment is proposed to fully implement the current policy regarding the use of tobacco products on the capitol complex.

Any interested person may make written comments on this proposed amendment on or before September 18, 2007. Such written materials should be directed to Marianne Mickelson, DAS Rules Administrator, Hoover State Office Building, Level B, Des Moines, Iowa 50319, or may be sent by E-mail to Marianne.Mickelson@iowa.gov.

This amendment is intended to implement Iowa Code chapters 8A and 142B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend rule 11—100.3(142B) as follows:

11—100.3(142B) Smoking.

100.3(1) Use of tobacco products is prohibited in all executive branch space in capitol complex buildings *controlled by the executive branch* including tunnels and enclosures, unless otherwise designated by appropriate signs. ~~The secretary of the senate, the clerk of the house and the court administrator are responsible for areas under their control. It is the intent of the~~ The department to *shall* post signs at the entrances to capitol complex buildings to publicize this rule.

NOTE: The secretary of the senate, the clerk of the house and the court administrator are responsible for areas under their control.

100.3(2) Smoking Use of tobacco products is prohibited ~~outside capitol complex buildings on the grounds of the capitol complex,~~ except as permitted by the director in designated areas or ~~outside~~ structures *designated for smoking*. The department ~~will~~ *shall* post signs at designated ~~outside~~ smoking areas.

100.3(3) *This rule shall be enforced by peace officers of the department of public safety. Peace officers other than those employed by the department of public safety may enforce this rule at the request of the commissioner of public safety or at the request of a peace officer employed by the department of public safety.*

This rule is intended to implement Iowa Code *section* 8A.322, chapter 142B and Executive Order Number 68 signed November 23, 1998, by Governor Terry Branstad.

ARC 6186B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 22, “Controlling Pollution,” and Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

The purpose of the proposed amendments is to modify requirements for certain types of grain elevators and to modify requirements for feed mill equipment located at certain types of grain elevators by adopting new air quality rules and clarifying existing rules. The proposed rule making defines each type of facility and specifies for each type of facility the permitting options, emissions calculation methodology, emissions reporting and record keeping, and best management practices for controlling air pollution. A new particulate matter emissions standard for bin vents located at country grain elevators, country grain terminal elevators, and grain terminal elevators will also be established through amendments to subrule 23.4(7).

Owners and operators of air pollution sources, including owners and operators of grain elevators, are required to obtain permits and meet applicable air pollution standards. However, in 1978 the Sixty-Seventh Iowa General Assembly limited the Department’s ability to regulate country grain elevators (1978 Iowa Acts, chapter 1004, section 17). Since that time, the Department has not enforced the requirement that the owner or operator of a country grain elevator obtain air construction permits. However, the passage of the 1990 amendments to the federal Clean Air Act (CAA) created a new operating permit program for major sources of regulated air pollutants. As a result, the U.S. Environmental Protection Agency (EPA) required that the restrictions limiting the regulation of country grain elevators be removed to allow Iowa to have a federally approved operating permit program. In 1995, the Iowa General Assembly subsequently removed these restrictions (1995 Iowa Acts, chapter 2, section 2), and EPA granted federal approval of Iowa’s operating permit program in 1995. Removal of the restrictions necessitated that the Department review and permit air emissions at hundreds of country grain elevators and other similar facilities to bring them into compliance with the air construction permitting requirements of rule 567—22.1(455B).

In an effort to minimize the regulatory burden to the owners or operators of country grain elevators while still ensuring that Iowa’s air quality is protected, the Department began working with the Agribusiness Association of Iowa (AAI) to develop a streamlined mechanism for permitting. During this process, the Department discovered that more information about the grain elevator source sector in Iowa was needed to better characterize air emissions equipment and the typical operating limitations at grain elevators. This need, combined with the ongoing uncertainty about the air quality com-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

pliance status of each individual facility, resulted in a Departmental amnesty program for grain elevators.

The Department began the amnesty program in August 2003 by asking grain elevator owners and operators to complete a registration form. Submittal of the registration form granted a facility temporary amnesty from the requirement to obtain a construction permit and temporary amnesty from the emission limits for particulate matter specified in rule 567—23.4(455B). Through the amnesty program, the Department received detailed information regarding each facility's grain throughput and the grain storage capacities and types of air emissions equipment located at each facility. In total, 838 facilities registered for the amnesty program.

Facility information from the amnesty registrations, along with information received through an unofficial survey of the permitting requirements for grain elevators in surrounding states, assisted the Department and the workgroup in developing a permitting strategy.

The proposed amendments allow grain elevators in Iowa to be regulated in a manner similar to that of surrounding states. Regardless of the individual grain elevator's emissions, the Department is requiring that an owner or operator of a grain elevator apply best management practices (BMP) and comply with the fugitive dust standard. The Department is also requiring that an owner or operator of a grain elevator comply with the emissions controls specified in required construction permits. Application of BMP and the emissions controls specified in the required construction permits will serve to protect the ambient air and will minimize the impact of emissions from each facility. This strategy includes reducing the presence of fugitive dust which has occasionally been a problem even at some of the smaller grain elevators.

Of the 838 facilities submitting registrations for the amnesty program, 793 registrations were for country grain elevators, while 45 of the registrations were for grain terminal elevators. Equipment information for other types of grain elevators, for associated processes such as feed mill equipment, and for grain storage elevators also was included with some of the registrations submitted.

The regulatory strategy encompassed in the new rule proposed in Item 5 minimizes the burden to the owners or operators of the most common types of grain elevators in the state, while allowing the Department to focus its permitting and compliance resources on the facilities with emissions that are likely to have the greatest potential to impact human health and the environment.

Item 1 amends the definition of "country grain elevator" in rule 567—20.2(455B) to refer to the definition of "country grain elevator" in new subrule 22.10(1).

Item 2 adopts definitions of "grain processing" and "grain storage elevator" in rule 567—20.2(455B). The definition of "grain storage elevator" is derived from the definition contained in the federal New Source Performance Standards (NSPS) for grain elevators contained in 40 Code of Federal Regulations (CFR) Part 60, Subpart DD. The Department includes additional language to better distinguish grain storage elevators from other types of grain elevators. The definition of "grain processing" was developed by Department staff in conjunction with workgroup members, and is based on definitions used in nearby states. The Department proposes this definition because the proposed rules for grain elevators do not apply to a grain processing facility.

Item 3 amends the definition of "potential to emit" in rule 567—20.2(455B) to refer to the method for calculating potential to emit at country grain elevators as specified in new subrule 22.10(2).

Item 4 amends subrule 22.1(1) to adopt new paragraph "d," specifying that alternative permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment are set forth in rule 567—22.10(455B).

Item 5 adopts new rule 567—22.10(455B) that establishes air quality rules for grain elevators that are classified as country grain elevators, country grain terminal elevators, and grain terminal elevators. The new rule also includes the permitting requirements for feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

Grain processing plants and grain storage elevators are not eligible to use the provisions set forth in rule 567—22.10(455B). The Department has always required that an owner or operator of a grain processing facility obtain air construction permits for all equipment at the facility because grain processing facilities may emit air pollutants at levels that classify them as major stationary sources for the Prevention of Significant Deterioration (PSD) program and for the Title V operating permit program. Equipment at grain processing facilities also may be subject to federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Grain storage elevators are part of the grain processing operations at grain mills and soybean oil extraction plants and may be subject to federal NSPS. Grain storage elevators are not eligible to use the provisions set forth in rule 567—22.10(455B).

Rule 567—22.10(455B) contains four subrules specifying air quality requirements. The definitions applicable to rule 567—22.10(455B) are set forth in subrule 22.10(1). The methods for determining the potential emissions of particulate matter (PM) and particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀) are set forth in subrule 22.10(2). Subrule 22.10(3) sets forth the provisions for grain elevator classification and the requirements for permits, emissions control, record keeping and reporting. Subrule 22.10(4) contains the permitting requirements for feed mill equipment located at specific types of grain elevators.

The definition of "country grain elevator" is similar to the definition that is contained in existing rules 567—20.2(455B) and 567—22.100(455B). The Department is revising the definition to better distinguish country grain elevators from other types of grain elevators.

The definition of "country grain terminal elevator" was developed by Department staff to cover grain elevators with operations that are similar to both country grain elevators and grain terminal elevators, but that do not fall into either category.

The definition of "feed mill equipment" was developed by Department staff to apply to feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator. A stand-alone feed mill or feed mill equipment that is not located at a country grain elevator, country grain terminal elevator or grain terminal elevator is considered to be a type of grain processing and is not included under rule 567—22.10(455B).

The definition of "grain" is the definition contained in Iowa Code section 203.1(9), which states that "grain" means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

The definition of "grain processing" refers to the definition specified in the amendments to 567—20.2(455B).

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The definition of “grain storage elevator” refers to the definition specified in the amendments to 567—20.2(455B).

The definition of “grain terminal elevator” incorporates the definition in the grain elevator NSPS (40 CFR Part 60, Subpart DD). The Department is revising the definition to better distinguish grain terminal elevators from other types of grain elevators.

The definition of “permanent storage capacity” is the same as the definition contained in the federal grain elevator NSPS (40 CFR Part 60, Subpart DD).

Subrule 22.10(2) specifies the methods for determining the potential to emit (PTE) for PM₁₀ at country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment.

The method specified by the Department and in state rule for calculating potential emissions at country grain elevators was first published in a 1995 EPA memorandum and takes into account the seasonal throughput of country grain elevator operations. The Department has accepted the use of the EPA-developed calculation to determine PTE since 1995. The calculation method specified in subrule 22.10(2) also allows country grain elevators to account for additional control of PM and PM₁₀ emissions through BMP and other emissions control measures established in a registration or in a permit issued pursuant to subrule 22.10(3).

Proposed subrule 22.10(2) also stipulates that the owners or operators of grain terminal elevators, country grain terminal elevators and feed mill equipment shall calculate their PTE as set forth in the definition of “potential to emit” in rule 567—20.2(455B).

Some grain terminal elevators are subject to federal NSPS and have PTEs that trigger both construction and operating permitting requirements. Based on these considerations, the Department is clarifying that an owner or operator of a grain terminal elevator must calculate the PTE for each piece of emissions equipment at the facility (grain terminal elevators may not use the special facilitywide PTE calculation allowed for country grain elevators). For purposes of determining applicability for the PSD and Title V programs, fugitive emissions at sources with grain terminal elevators also must be included in PTE calculations.

The Department is aware of a small number of facilities that operate similarly to both country grain elevators and grain terminal elevators, but that do not fall into either category. This type of facility is termed “country grain terminal elevator” in proposed rule 567—22.10(455B). Because the operations and emissions at these country grain terminal elevators appear to be similar to grain terminal elevators, country grain terminal elevators also must calculate the PTE for each piece of emissions equipment at the facility.

The Department has always required an owner or operator of feed mill equipment to calculate the PTE for each piece of feed mill equipment at the facility.

Subrule 22.10(3) contains the requirements for construction permits, operating permits, emissions control, record keeping and reporting at country grain elevators, country grain terminal elevators and grain terminal elevators.

The Department estimated the grain elevators’ PTE for PM₁₀ using the information submitted on the amnesty registration forms. The Department then used the emissions thresholds typically used for permitting grain elevators in surrounding states and split the grain elevator source sector into four groups characterized by their PTE for PM₁₀. The PTE thresholds that trigger specific requirements are set at 15, 50, and 100 tons per year (tpy), as illustrated in the following table:

Grain Elevator Group	PTE for PM ₁₀ (in tons per year)
Group 1	< 15
Group 2	≥ 15 and ≤ 50
Group 3	> 50 and < 100
Group 4	≥ 100

The requirements for permitting, emissions control, and emissions reporting and record keeping increase for facilities with a greater PTE.

Country grain elevators, country grain terminal elevators and grain terminal elevators in the lowest PTE group, termed “Group 1” in the above table and in proposed rule 567—22.10(455B), are exempt from the requirement to obtain a construction permit. However, the owner or operator of a Group 1 facility is required to submit a registration and PTE calculations, on forms supplied by the Department, certifying that the facility’s PTE for PM₁₀ is less than 15 tpy. A registration form may be obtained from the Department or downloaded from the Department’s Web site at www.iowadnr.com/air/. Additionally, the owner or operator of a Group 1 facility is required to use BMP for controlling air pollution and for limiting fugitive dust from crossing the property line.

The owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator qualifying for the Group 2 category may use a Group 2 permit application for grain elevators on forms provided by the Department in lieu of obtaining a regular construction permit. A Group 2 permit application may be obtained from the Department or downloaded from the Department’s Web site at www.iowadnr.com/air/. The Group 2 permit for grain elevators is a combined permit application and permit that is specific for grain elevators that meet the eligibility criteria for Group 2 facilities. The Group 2 permit application for grain elevators should be easier for an owner or operator to complete than a regular construction permit application, and is expected to streamline the permit application process for eligible facilities.

The Group 2 permit for grain elevators will specify that the owner or operator of a Group 2 facility must oil the grain at the facility, or otherwise achieve facility-wide PM₁₀ emissions reductions that are equivalent to the reductions achieved through grain oiling. Additionally, the owner or operator of a Group 2 facility must: apply BMP; keep a record of the total annual grain handled in the past five years; and calculate the annual PTE for PM₁₀. A Group 2 facility owner or operator also must submit emissions inventories to the Department as specified in subrule 21.1(3).

An owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator that is a Group 3 facility is required to apply for and obtain air construction permits. The construction permits for these facilities may contain requirements for the installation of emissions controls that may include grain oiling or equivalent measures to meet applicable air quality emission and ambient air quality standards. Because the PTE for PM may exceed the PTE for PM₁₀, Group 3 facilities may potentially have a PTE for PM that is greater than or equal to 250 tons per year. Facilities with a PTE for PM or PM₁₀ that is greater than or equal to 250 tons per year are considered to be major stationary sources for the PSD program. Thus, the owner or operator of a Group 3 facility is required to calculate the PTE for both PM and PM₁₀ to ensure that annual emissions for both pollutants are less than 250 tons. An owner or operator of a Group 3 facility also must submit emissions inventories to the Department as specified in subrule 21.1(3).

The owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator that is a

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Group 4 facility must: apply for construction permits, as applicable; apply for an operating permit, as applicable; and submit to the Department annual emissions inventories that report all regulated air pollutants. The construction and operating permits for these facilities may contain requirements for installation of emissions controls that may include grain oiling or equivalent measures to meet applicable air quality standards.

The permitting, emissions control, record-keeping and reporting requirements of each of the four groups apply even if a country grain elevator, country grain terminal elevator or grain terminal elevator did not register for the amnesty program. These requirements apply to both new and existing facilities. The owner or operator of an existing facility must submit the appropriate registration form or permit application by March 31, 2008. The owner or operator of a new facility must apply for and obtain the appropriate registration or permit prior to initiating construction of air emissions equipment.

The Department is aware that a limited number of facilities may exist that do not meet the definition of "country grain elevator," "country grain terminal" or "grain terminal elevator." The Department currently does not have enough information on the equipment and associated air emissions at these other types of grain elevators. Thus, owners or operators of these other types of grain elevators are not eligible to use the alternative provisions in proposed rule 567—22.10(455B) for country grain elevators, country grain terminal elevators, and grain terminal elevators.

Subrule 22.10(4) sets forth the permitting provisions for feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator. The Department has always required that feed mills obtain construction permits. However, through the amnesty program and workgroup proceedings, the Department learned that feed mill equipment may be located at grain elevators and that the owners and operators of this equipment may not have obtained the required construction permits. The provisions set forth in subrule 22.10(4) provide an opportunity for the owners and operators of feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator to apply for the required construction permits and, if applicable, to comply with the requirements under the PSD and operating permit programs.

Item 6 amends the definition of "country grain elevator" in rule 567—22.100(455B) to refer to the definition of "country grain elevator" in new rule 567—22.10(455B).

Item 7 amends the definition of "potential to emit" in rule 567—22.100(455B) to refer to the method for calculating potential to emit for country grain elevators as specified in new subrule 22.10(2).

Item 8 amends subrule 23.4(7) to specify a new particulate matter emission limit for bin vents located at country grain elevators, country grain terminal elevators, and grain terminal elevators. The Commission, in approving this Notice of Intended Action, is particularly interested in any comments from the public on this proposed amendment.

The Department's August 2003 amnesty program included temporary amnesty from the emission limits for particulate matter specified in rule 567—23.4(455B). Bin vent information obtained from the facilities that registered for the amnesty program indicated that the majority of the grain elevator bin vents affected by this rule making have been operated uncontrolled since the bins were constructed. Available particulate matter emissions testing data reviewed by the Department for grain elevator bin vents affected by this rule

making indicate that a representative level of uncontrolled particulate matter emissions from a grain elevator bin vent is 1.0 grain per dry standard cubic foot (gr/dscf) of exhaust gas. Because of the ambiguous status of the regulatory requirements for existing bin vents during the period that the state statute limited the Department's authority to regulate grain elevators, the Department is allowing particulate matter emissions from existing grain elevator bin vents affected by this rule making to continue to meet a 1.0 gr/dscf of exhaust gas emission limit.

The 0.1 gr/dscf of exhaust gas emission limit was in place before the statute that limited the Department's authority to regulate grain elevators existed. Construction of new bins at other facilities with throughputs similar to those at country grain terminal elevators and grain terminal elevators has shown that emissions of particulate matter from the new bins can be controlled to meet the existing 0.1 gr/dscf of exhaust gas emission limit. The amendment to subrule 23.4(7) reaffirms that particulate matter emissions from new bin vents at a country grain terminal elevator or grain terminal elevator can be reasonably controlled to the 0.1 gr/dscf of exhaust gas emission limit but that retrofitting of controls on existing bin vents is impractical due to safety and cost concerns.

Any person may make written suggestions or comments on the proposed amendments on or before October 3, 2007. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to christine.paulson@dnr.state.ia.us.

The Department will hold three informational meetings and three public hearings regarding this rule making. At the informational meeting, department staff will be available to answer questions on the proposed amendments. At the public hearings, comments on the proposed amendments may be submitted orally or in writing.

An informational meeting, followed immediately by a public hearing, will be held on Monday, September 24, 2007, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa. A second informational meeting, followed immediately by a public hearing, will be held on Wednesday, September 26, 2007, at 1 p.m. in the Amana Room, Kirkwood Community College, Cedar Rapids, Iowa. A third informational meeting, followed immediately by a public hearing, will be held on Tuesday, October 2, 2007, at 1 p.m. at the Clay County Regional Events Center, 800 West 18th Street, Spencer, Iowa. All comments must be received no later than October 3, 2007.

Any person who intends to attend the public hearings and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)**, definition of "country grain elevator," as follows:

~~"Country grain elevator" means any grain elevator that receives more than 50 percent of its grain, as defined by 40 CFR 60.301(a) as amended through August 3, 1978, pro-~~

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duced by farms in the vicinity. This definition does not include grain terminal elevators or grain storage elevators, as defined in paragraph 23.1(2)“ooo.” shall have the same definition as “country grain elevator” set forth in 567—subrule 22.10(1).

ITEM 2. Amend rule 567—20.2(455B) by adopting the following **new** definitions in alphabetical order:

“Grain processing” means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for “feed mill equipment,” as “feed mill equipment” is defined in rule 567—22.10(455B).

“Grain storage elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity (grain storage capacity which is inside a building, bin, or silo) of more than 35,200 m³ (ca. 1 million U.S. bushels).

ITEM 3. Amend rule 567—20.2(455B), definition of “potential to emit,” introductory and first unnumbered paragraphs, as follows:

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, “maximum capacity” means the greatest amount of grain received by the elevator during one year of the previous five-year period, multiplied by an adjustment factor of 1.2. If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit the provisions set forth in 567—subrule 22.10(2) shall apply.

ITEM 4. Amend subrule 22.1(1) by adopting **new** paragraph “d” as follows:

d. Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

ITEM 5. Amend 567—Chapter 22 by adopting **new** rule 567—22.10(455B) as follows:

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equip-

ment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)“ooo”), may apply.

22.10(1) Definitions. For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“Country grain elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Country grain terminal elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;

3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Feed mill equipment,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“Grain,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“Grain processing” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“Grain storage elevator” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“Grain terminal elevator,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of more than 88,100 m³ (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;

3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;

4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

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“Permanent storage capacity” means grain storage capacity which is inside a building, bin, or silo.

22.10(2) Methods for determining potential to emit (PTE). The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM₁₀ for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) Classification and requirements for permits, emissions control, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators. The requirements for construction permits, operating permits, emissions control, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before [effective date of rule to be inserted]. A “new” Group 1 facility is one that commenced construction or reconstruction on or after [effective date of rule to be inserted].

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM₁₀ per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3)“a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM₁₀ on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emission limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3)“a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement best management practices according to the department manual, Best Management Practices (BMP) for Grain Elevators (August 2007), scheduled to be adopted by the commission on November 6, 2007, and adopted by reference herein (available from the department, upon request, and on the department’s Web site at www.iowadnr.com/air/).

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM₁₀ emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions, removals or modifications to equipment. If the owner or operator determines that PM₁₀ emissions at a Group 1 facility will increase to 15 or more tons per year, the owner or operator shall comply with the require-

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ments set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to 15 or more tons per year, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM_{10} per year and is less than or equal to 50 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before [effective date of rule to be inserted]. A "new" Group 2 facility is one that commenced construction or reconstruction on or after [effective date of rule to be inserted].

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM_{10} prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emission limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2

facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM_{10} emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will increase the facility's PTE for PM_{10} such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM_{10} at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before [effective date of rule to be inserted]. A "new" Group 3 facility is one that commenced construction or reconstruction on or after [effective date of rule to be inserted].

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3) to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM₁₀ at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction, modification or reconstruction before [effective date of rule to be inserted]. A "new" Group 4 facility is one that commenced construction or reconstruction on or after [effective date of rule to be inserted].

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3) to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP require-

ments for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM₁₀ or at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM₁₀ is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM₁₀ is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as "feed mill equipment" is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of "existing" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before [effective date of rule to be inserted]. The owner or operator of "new" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after [effective date of rule to be inserted].

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of "existing" feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of "new" feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or

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operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM₁₀ for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

ITEM 6. Amend rule 567—22.100(455B), definition of “country grain elevator,” as follows:

“Country grain elevator” means any grain elevator that receives more than 50 percent of its grain, as defined by 40 CFR 60.301(a) as amended through August 3, 1978, produced by farms in the vicinity. This definition does not include grain terminal elevators or pertain to grain storage elevators, as defined in paragraph 23.4(2)“ooo.” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

ITEM 7. Amend rule 567—22.100(455B), definition of “potential to emit,” introductory and first unnumbered paragraphs, as follows:

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, “maximum capacity” means the greatest amount of grain received by the elevator during one year of the previous five-year period, multiplied by an adjustment factor of 1.2. If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit the provisions set forth in subrule 22.10(2) shall apply.

ITEM 8. Amend subrule 23.4(7) as follows:

23.4(7) Grain handling and processing plants. ~~No person shall cause, allow or permit the operation~~ *The owner or operator* of equipment at a permanent installation, for the handling or processing of grain, grain products and grain by-products such that ~~shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas., except as follows:~~

a. *The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as “country grain elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.*

b. *The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in subrule 567—22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.*

c. *The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.*

ARC 6183B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment will make the following changes to eligibility policy for Medicaid coverage for working persons with disabilities:

- Eliminate the requirement for a review of eligibility and reassessment of the premium amount every six months. Eligibility and premium amount will be determined once a year.
- Provide that a member’s premium amount will be set for the entire 12-month enrollment period and will not be changed during that period unless the member verifies a reduction in income sufficient to qualify for a lower premium amount.
- Provide that policy changes to both premium amounts and federal poverty level increments used to assess premiums will be implemented annually on April 1.
- Clarify the requirement that eligibility is conditional on payment of the premium assessed for the month of coverage.
- Remove the limit on the number of times that eligibility may be reinstated following a late premium payment.

No other Medicaid coverage group for disabled persons requires a six-month review. This change will align review policy with that of other coverage groups and remove a burdensome requirement on members.

Setting a single premium for the entire enrollment period and aligning changes due to insurance rates and poverty levels on a single date will eliminate confusion and streamline procedures. Under current policies, a member’s premium could change as many as three times a year, due to the semi-annual review, the annual changes in the premium amounts in January, and the annual changes in the poverty level increments in the spring. Frequent changes increase the expense of member notification and of producing program information materials and often require correction of premiums that have been paid in advance at an incorrect amount.

Removing the limit on reinstatements when the member pays the premium in the month after the month of coverage will reduce the procedural burdens for the member and for Department staff for filing and processing new applications

HUMAN SERVICES DEPARTMENT[441](cont'd)

and will ensure more timely delivery of benefits to the member.

This amendment does not provide for waivers in specified situations because all members should be subject to the same premium responsibilities. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before September 18, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Iowa Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **75.1(39)**, paragraph "**b**," as follows:

Amend the introductory paragraph and the two unnumbered paragraphs as follows:

b. ~~A monthly premium shall be assessed when Eligibility for a person whose gross income of the eligible individual is greater than 150 percent of the federal poverty level for an individual is conditional upon payment of a premium. Gross income includes all earned and unearned income of the conditionally eligible individual person. A monthly premium shall be assessed at the time of application and at the annual review. The premium amounts and the federal poverty level increments used to assess premiums will be adjusted annually on April 1.~~

(1) Beginning with the month of application, the monthly premium amount shall be established for a ~~six-month~~ 12-month period based on projected average monthly income for the ~~six-month~~ 12-month period. The monthly premium established for a ~~six-month~~ period shall not be increased ~~due to an increase in income for any reason~~ during the ~~six-month~~ 12-month period. ~~The premium shall not be reduced due to a change in the federal poverty level but may be reduced or eliminated prospectively during the 12-month period if a reduction in projected average monthly income is documented verified.~~

(2) Eligible persons are required to complete and return Form 470-3118 or 470-3118(S), Medicaid Review, with income information during the ~~sixth~~ twelfth month of the annual ~~review enrollment~~ period to determine the premium ~~amount to be assessed for the next 12-month enrollment period.~~

Renumber subparagraphs (1) through (9) as subparagraphs (3) through (11), respectively.

Amend renumbered subparagraph (4) as follows:

(4) Eligibility is contingent upon the payment of any assessed premiums. Medical assistance eligibility shall not be made effective for a month until the premium ~~assessed~~ for the month is ~~received~~ paid. The premium must be paid within three months of the month of coverage or of the month of initial billing, whichever is later, for the person to be eligible for the month.

Amend renumbered subparagraph (7) as follows:

(7) An individual's case may be reopened ~~no more than once every six months~~ when Medicaid eligibility is canceled

for nonpayment of premium. However, the premium must be paid in full within the calendar month following the month the payment was due for reopening.

ARC 6208B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 76, "Application and Investigation," Iowa Administrative Code.

The proposed amendment would update the rule on the health insurance data match program required by 2004 Iowa Acts, chapter 1175, section 119(1)(c). The program matches coverage data from Iowa-based insurance carriers with Department files on Medicaid members to ensure that Medicaid is the payer of last resort.

The amendment allows greater flexibility and efficiency in securing the data-sharing agreements. As part of the Iowa Medicaid Enterprise, the Department has a contract with Health Management Systems, Inc. for revenue collection services, which designates the contractor as responsible for performing the insurance data match on the Department's behalf. The contractor has existing agreements with insurers to share data. The amendment provides that the contractor's existing agreement with a carrier will suffice as a data match agreement with the Department, rather than requiring the carrier to enter into a separate agreement.

The amendment provides that an agreement entered into with the Department's designee may be in the format approved by the designee. The Department's data use agreement has been formalized as Form 470-4415, Agreement for Use of Data, so the language of that agreement is removed from the rule and the form number is referenced.

The amendment also clarifies that after the initial submission of two years' data on insureds, carriers are required to submit only changes to the initial data provided. This would include any new insured persons and changes to coverage for insured persons that were previously reported.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before September 18, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

HUMAN SERVICES DEPARTMENT[441](cont'd)

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 441—76.13(249A) as follows:

Amend subrule 76.13(1) as follows:

76.13(1) Agreement required. Any insurance carrier providing a health benefit plan in Iowa subject to regulation by the Iowa commissioner of insurance shall enter into and maintain an agreement with the department *or its designee* to provide the data necessary to enable the department to match insureds against medical assistance recipients *Medicaid members* and identify third-party payers for medical assistance recipients *members*.

a. ~~A carrier that is providing a health insurance benefit plan in Iowa as of July 1, 2004, shall enter into an agreement in accordance with subrule 76.13(2) by August 1, 2004, to provide data as described in paragraph 76.13(1)“b” beginning September 1, 2004.~~

b. The *initial provision* of data provided shall include the data necessary to enable the department to match insureds and identify third-party payers for the two-year period before the *initial* provision of the data.

b. *Ongoing monthly matches may be limited to changes in the data previously provided, including additional insureds, with the effective dates of the changes.*

Rescind subrule 76.13(2) and adopt the following **new** subrule in lieu thereof:

76.13(2) Agreement form.

a. An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.

b. An agreement with the department's designee shall be in a form approved by the designee.

ARC 6212B

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination

Pursuant to the authority of Iowa Code section 331.440(6), the Department of Human Services terminates the rule making initiated by the Notice of Intended Action amending Chapter 153, "Funding for Local Services," Iowa Administrative Code, which was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5880B**. That Notice of Intended Action was filed to solicit comments on amendments that were Adopted and Filed Without Notice and published in the Iowa Administrative Bulletin on the same date as **ARC 5879B**.

Those amendments clarified the definition of "county of residence" for the State Payment Program and provided for the transfer of a person's county of residence if it seems more reasonable for the county where the services are provided to be responsible for management duties. The amendments became effective on July 1, 2007. The Department has received no comments on the Notice of Intended Action and has determined that further rule making on this issue is unnecessary.

ARC 6184B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 99B.13 and 2007 Iowa Acts, Senate File 510, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 104, "Amusement Devices," and Chapter 105, "Registered Amusement Devices," Iowa Administrative Code.

The proposed amendments implement legislative changes by adding references to the Special Class "C" liquor license to the list of establishments permitted to have registered amusement devices and by further defining the revocation, suspension, denial, and appeal processes. The amendments reduce the frequency of reporting for registered amusement device owners and distributors from semiannually to annually. The amendments update citations and dates. The amendments also correct Chapter 104 by making consistent the intent that Chapter 104 apply to all amusement devices and by making the provisions consistent with this intent.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 18, 2007. Suggestions and comments should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, Third Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; E-mail steven.mandernach@dia.iowa.gov; fax (515)242-6863.

No fiscal impact is anticipated.

These amendments are intended to implement Iowa Code section 99B.10B as amended by 2007 Iowa Acts, Senate File 510.

The proposed amendments are not subject to waiver as they adopt statutory requirements and confer a benefit upon the regulated community by reducing reporting requirements.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6185B**. The content of that submission is incorporated by reference.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

INSURANCE DIVISION

Notice of Proposed Workers' Compensation Rate Filing

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects the premium rates for workers' compensation insurance.

The rate filing proposes an overall decrease in rates of 0.3%. The filing has a proposed effective date of January 1, 2008.

INSURANCE DIVISION(cont'd)

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by September 13, 2007, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, 330 Maple, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by September 24, 2007.

ARC 6202B**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 10, "Licensing of Insurance Producers," and Chapter 11, "Continuing Education for Insurance Producers," Iowa Administrative Code.

The rules in Chapter 10 set out the requirements, procedures and fees relating to the qualification, licensure and appointment of insurance producers. The rules in Chapter 11 set out the continuing education requirements for insurance producers. The proposed amendments to the rules implement changes to procedures necessitated by changes in technology and changes in the Division's relationships with outside entities. The Division intends that Iowa insurance companies and producers will comply with these rules beginning January 1, 2008.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 18, 2007. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on September 18, 2007, at 9 a.m. at the offices of the Iowa Insurance Division, 330 Maple St., Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 522B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 10.4(5) as follows:

10.4(5) Amendments to insurance producer licenses shall be done either by an outside vendor or by the division, as directed by the division. Any licensed insurance producer desiring to become licensed in an additional line of authority shall:

a. Submit a completed uniform application form ~~either to the division's outside testing service or to the division, through the NIPR Gateway or~~ as directed by the division, specifying the line(s) of authority requested to be added. Instructions are available at the division's Web site: www.iid.state.ia.us; and

b. ~~Pass an examination for~~ For each line of authority requested to be added, *pass any required examination.*; and

c. ~~Pay the fee to amend an insurance producer license.~~

ITEM 2. Amend subrule 10.4(8) as follows:

10.4(8) To receive a license for the variable products line of authority, the applicant must:

a. Hold an active Iowa insurance license with a life insurance line of authority;

b. Pass the *Financial Industry Regulation Authority* examinations necessary to obtain an Iowa securities license; and

c. File an application ~~with~~ *through the NIPR Gateway or as directed* by the division to amend the license to add the variable products line of authority.

ITEM 3. Amend subrule 10.5(2) as follows:

10.5(2) Any licensed nonresident producer desiring to become licensed in an additional line of authority shall submit to the division using the NIPR Gateway:

a. ~~A~~ *a* completed application form specifying the line(s) of authority requested to be added; and

b. ~~The appropriate fee.~~

ITEM 4. Amend rule 191—10.24(522B) by rescinding subrule **10.24(6)** and renumbering subrules **10.24(7)** and **10.24(8)** as **10.24(6)** and **10.24(7)**.

ITEM 5. Amend rule 191—11.3(505,522B) by rescinding subrule **11.3(2)** and renumbering subrules **11.3(3)** to **11.3(9)** as **11.3(2)** to **11.3(8)**.

ITEM 6. Amend rule 191—11.14(505,522B) by rescinding subrule **11.14(1)** and renumbering subrules **11.14(2)** and **11.14(3)** as **11.14(1)** and **11.14(2)**.

ARC 6203B**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8 and 2007 Iowa Acts, House File 499, section 7, the Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 25, "Military Sales Practices," Iowa Administrative Code.

The purpose of these proposed rules is to set forth standards, based on model rules adopted by the National Association of Insurance Commissioners, to protect active duty ser-

INSURANCE DIVISION[191](cont'd)

vice members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The model rules were developed to meet mandates of the United States Congress set forth in the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290 (2006). The Division intends that Chapter 25 will become effective January 1, 2008, and that insurance producers and insurance companies operating in Iowa will comply with these rules beginning January 1, 2008.

Any interested person may make written suggestions or comments on this proposed new chapter on or before September 18, 2007. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on September 18, 2007, at 11 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

These rules are intended to implement 2007 Iowa Acts, House File 499, section 7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 25
MILITARY SALES PRACTICES

191—25.1(505) Purpose and authority.

25.1(1) The purpose of this chapter is to set forth standards to protect active duty service members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

25.1(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this chapter.

25.1(3) This chapter is issued under the authority of 2007 Iowa Acts, House File 499, section 7.

25.1(4) This chapter shall become effective [insert effective date of these rules] and shall apply to acts or practices committed on or after [insert effective date of these rules].

191—25.2(505) Scope. This chapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States armed forces.

191—25.3(505) Exemptions.

25.3(1) This chapter shall not apply to solicitations or sales involving:

- a. Credit insurance;
- b. Group life insurance or group annuities where in-person, face-to-face solicitation of individuals by an insurance producer does not occur or where the contract or certificate does not include a side fund;
- c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a

conversion privilege is being exercised, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner, or when a term conversion privilege is exercised among corporate affiliates;

d. Individual stand-alone health policies, including disability income policies;

e. Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

f. Life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

g. Contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(5) Settlements of or assumptions of liabilities associated with personal injury litigation or of any dispute or claim resolution process; or

(6) Prearranged funeral contracts.

25.3(2) Nothing in this rule shall be construed to abrogate the ability of nonprofit or other organizations to educate members of the United States armed forces in accordance with Department of Defense DoD Instruction 1344.07, Personal Commercial Solicitation on DoD Installations or successor directive.

25.3(3) For purposes of this chapter, general advertisements, direct mail and Internet marketing shall not constitute solicitation. Telephone marketing shall not constitute solicitation, provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the telephone communication. However, nothing in this rule shall be construed to exempt an insurer or insurance producer from the requirements of this chapter in any in-person, face-to-face meeting established as a result of the solicitation exemptions identified in this rule.

191—25.4(505) Definitions. For purposes of this chapter, the following definitions shall apply.

"Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (national guard and reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

"Department of Defense (DoD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

"Door to door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selec-

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tively from household to household without prior specific appointment.

“General advertisement” means an advertisement having as its sole purpose the promotion of the reader’s or viewer’s interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

“Insurer” means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

“Known” or “knowingly” means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. Is a service member; or
2. Is a service member with a pay grade of E-4 or below.

“Life insurance” means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

“Military installation” means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

“MyPay” is a Defense Finance and Accounting Service (DFAS) Web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

“Service member” means any active duty officer (commissioned and warrant) or enlisted member of the United States armed forces.

“Side fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
3. A premium deposit fund which:
 - Contains only premiums paid in advance which accumulate at interest;
 - Imposes no penalty for withdrawal;
 - Does not permit funding beyond future required premiums;
 - Is not marketed or intended as an investment; and
 - Does not carry a commission, either paid or calculated.

“Specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time.

“United States armed forces” means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

191—25.5(505) Practices declared false, misleading, deceptive or unfair on a military installation.

25.5(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

a. Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

b. Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

c. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

d. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

e. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee.

f. Posting unauthorized bulletins, notices or advertisements.

g. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

h. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer’s files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the United States armed forces.

25.5(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

a. Using DoD personnel, directly or indirectly, as representatives or agents in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

b. Using an insurance producer to participate in any United States armed forces-sponsored education or orientation program.

191—25.6(505) Practices declared false, misleading, deceptive or unfair regardless of location.

25.6(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

a. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member’s pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member’s MyPay account or other similar Internet or electronic medium for such purposes. This subrule does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

b. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this rule, a formal banking relationship is established when the depository institution:

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(1) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and the regulations promulgated thereunder; and

(2) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

c. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship as defined in paragraph 25.6(1)"b."

d. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

e. Using DoD personnel, directly or indirectly, as representatives or agents in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

f. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

g. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for the service member's attendance at any event where an application for life insurance is solicited.

h. Advising a service member with a pay grade of E-4 or below to change the service member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

25.6(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

a. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States armed forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

Nothing in this subrule shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

b. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party organization that promotes the welfare of or assists a member of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member

into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government or the United States armed forces.

25.6(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

a. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

b. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product costs nothing or is free.

25.6(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

a. Making any representation regarding the availability, suitability, amount or cost of or exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI which is false, misleading or deceptive.

b. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive.

c. Suggesting, recommending or encouraging a service member to cancel or terminate the service member's SGLI policy, or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States armed forces.

25.6(5) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

a. Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

b. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

c. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

d. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, p.16.

e. Excluding individually issued annuities, when an in-person, face-to-face sale is conducted with an individual known to be a service member, failing at the time the application is taken to provide the applicant:

(1) An explanation of any free-look period with instructions on how to cancel if a policy is issued; and

(2) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of 191—Chapter 15 and Iowa Code chapter 507B shall be deemed sufficient to meet this requirement for a written disclosure.

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25.6(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

a. Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

b. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(1) "Insurable needs" means the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents.

(2) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

c. Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(1) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(2) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at the insured's age 100, the policy's maturity date or the policy's final expiration date; and

(3) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premium due.

d. Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

e. Selling to an individual known to be a service member any life insurance product that excludes coverage if the insured's death is related to war, declared or undeclared, or to any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

191—25.7(505) Reporting requirements. No insurer may participate in any military sales unless that insurer has implemented a system to report to the Iowa insurance commissioner in a manner prescribed by the commissioner any military sales disciplinary actions about which the insurer had actual awareness, or in the exercise of ordinary care should have

known, at the time of the action, and unless the insurer also has reported such action to the commissioner. Failure to comply with this rule shall be a violation of this chapter and shall subject the insurer to penalties set forth in rule 25.8(505).

191—25.8(505) Violation and penalties.

25.8(1) Any insurance producer or insurer found after hearing to have violated a provision of this chapter shall be deemed to have committed an unfair trade practice under Iowa Code chapter 507B and shall be subject to the penalties set forth in Iowa Code chapter 507B.

25.8(2) Any insurance producer or insurer found after hearing to have violated a provision of this chapter may be subject to the penalties set forth in Section 10(d) of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290 (2006).

191—25.9(505) Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end all provisions of these rules are declared to be severable.

These rules are intended to implement Iowa Code chapter 505 and 2007 Iowa Acts, House File 499, section 7.

ARC 6204B**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8 and 2007 Iowa Acts, House File 499, section 26, the Insurance Division hereby gives Notice of Intended Action to adopt a new Chapter 55, "Licensing of Adjusters," Iowa Administrative Code.

The proposed chapter sets out requirements, procedures and fees relating to the qualifications, licensure and appointment of public adjusters, pursuant to 2007 Iowa Acts, House File 499, sections 24 to 29, and in accordance with a model act adopted by the National Association of Insurance Commissioners. The Division intends that persons operating as public adjusters in Iowa will comply with these rules beginning January 1, 2008.

Any interested person may make written suggestions or comments on this proposed new chapter on or before September 18, 2007. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on September 18, 2007, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

These rules are intended to implement 2007 Iowa Acts, House File 499, sections 24 to 29.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 55
LICENSING OF ADJUSTERS

191—55.1(82GA,HF499) Purpose. The purpose of this chapter is to govern the qualifications and procedures for licensing public adjusters in this state and to specify the duties of and restrictions on public adjusters, including limitation of such licensure to assisting only insureds with first-party claims.

191—55.2(82GA,HF499) Definitions. As used in this chapter, unless the context otherwise requires:

“Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or any other legal entity.

“Catastrophic disaster,” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the governor of the state or district in which the disaster occurred.

“Commissioner” means the Iowa insurance commissioner.

“Division” means the Iowa insurance division.

“Fingerprints” means an electronic impression of the lines on a human finger taken for the purposes of identification.

“First-party claim” means a claim filed by a person insured under the insurance policy against which the claim is made.

“Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the “home state.”

“Individual” means a natural person.

“Insured” means a person insured under the insurance policy against which the claim is made.

“NAIC” means the National Association of Insurance Commissioners.

“NIPR Gateway” means the communication network developed and operated by the National Insurance Producer Registry that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of, among other things, public adjuster information regarding license

applications, license renewals, appointments and terminations. The National Insurance Producer Registry is a non-profit affiliate of the NAIC. The NIPR's Web site is www.licenseregistry.com.

“Person” means an individual or a business entity.

“Producer database” means the national database of insurance producers maintained by the NAIC.

“Public adjuster” means any person who, for compensation or any other thing of value, acts on behalf of an insured by doing any of the following:

1. Acting for or aiding an insured in negotiating for or in effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

2. Advertising for employment as a public adjuster of first-party claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured.

3. Directly or indirectly soliciting the business of investigating or adjusting losses, or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.

“Uniform business entity application” means the current version of the NAIC's uniform business entity application for resident and nonresident business entities.

“Uniform individual application” means the current version of the NAIC's uniform individual application for resident and nonresident individuals.

191—55.3(82GA,HF499) License required to operate as public adjuster.

55.3(1) A person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the division in accordance with this chapter.

55.3(2) A person licensed as a public adjuster in accordance with this chapter shall assist only insureds with first-party claims.

55.3(3) Notwithstanding subrule 55.3(1), a license as a public adjuster shall not be required of the following:

a. An attorney-at-law admitted to practice in this state, when acting in the attorney's professional capacity as an attorney;

b. A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

c. A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;

d. A licensed health care provider, or an employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

e. A person who settles subrogation claims between insurers.

191—55.4(82GA,HF499) Application for license.

55.4(1) A person applying for a public adjuster license shall make application on a uniform individual application or uniform business entity application available from the division by mail, through the division's Web site (www.iid.state.ia.us), or as otherwise directed by the division.

55.4(2) Each individual resident applying for a public adjuster license shall be required to submit an electronic set of fingerprints with the application, through the division's testing vendor, which shall be used by the division to determine the eligibility of the applicant for a license.

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191—55.5(82GA,HF499) Issuance of resident license.

55.5(1) License of individual. A resident individual acting as a public adjuster is required to obtain a resident public adjuster license. Application shall be made using the uniform individual application. Before approving the application, the division shall find that the applicant:

- a. Either is eligible to designate this state as the individual's home state, or is a nonresident who is not eligible for a license under rule 55.8(82GA,HF499);
- b. Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in rule 55.17(82GA,HF499);
- c. Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the division;
- d. Is financially responsible to exercise the license and has provided proof of financial responsibility as required in rule 55.10(82GA,HF499);
- e. Has paid the fees set forth in rule 55.20(82GA,HF499);
- f. Maintains an office in the home state of residence with public access by reasonable appointment or regular business hours;
 - g. Is at least 18 years of age; and
 - h. Has successfully passed the public adjuster examination pursuant to rule 55.6(82GA,HF499).

55.5(2) License of business entity. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the division shall find that the business entity has:

- a. Paid the fees set forth in rule 55.20(82GA,HF499);
- b. Designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state; and
- c. Designated a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

55.5(3) The division may require the applicant for either type of license to supply any documents reasonably necessary to verify the information contained in the application.

191—55.6(82GA,HF499) Public adjuster examination.

55.6(1) A resident individual applying for a public adjuster license under this chapter shall pass a written examination, unless exempt pursuant to rule 55.7(82GA,HF499). The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this rule shall be conducted as prescribed by the division.

55.6(2) Each resident individual applying for an examination shall remit a nonrefundable fee as prescribed by the division and set forth in rule 55.20(82GA,HF499).

55.6(3) A resident individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being scheduled for another examination.

55.6(4) The division may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the fee set forth in rule 55.20(82GA,HF499).

191—55.7(82GA,HF499) Exemptions from examination.

55.7(1) An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete an examination in this state. However, an individual who moves to this state and who was previously licensed as a public adjuster in another state based on a public adjuster examination shall make application within 90 days of establishing legal residence to become a resident licensed public adjuster pursuant to rule 55.5(82GA,HF499). No examination shall be required of that individual to obtain a public adjuster license. This exemption is available only:

- a. If the individual is currently licensed in the other state or if the application is received within 12 months of the cancellation of the applicant's previous license; and
- b. If the other state issues a certification that the applicant is licensed and in good standing in that state or was licensed and in good standing at the time of cancellation or if the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed and in good standing.

55.7(2) An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete an examination. This exemption is only available if the application is received within 12 months of the termination of the applicant's previous license in this state and if, at the time of termination, the applicant was in good standing in this state.

191—55.8(82GA,HF499) Nonresident license reciprocity.

55.8(1) Unless denied licensure pursuant to rule 55.12(82GA,HF499), an individual for whom Iowa is not the individual's home state, but whose home state awards nonresident public adjuster licenses to residents of Iowa on the same basis, must satisfy the following requirements to obtain an Iowa nonresident public adjuster license:

- a. Be licensed as a resident public adjuster and in good standing in the individual's home state;
- b. Submit a proper request for licensure to the division through the NIPR Gateway; and
- c. Pay the appropriate fees required, as set forth in rule 55.20(82GA,HF499).

55.8(2) The division may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

55.8(3) As a condition to continuation of a public adjuster license issued under this rule, the licensed public adjuster shall maintain a resident public adjuster license in the licensed public adjuster's home state. The nonresident public adjuster license issued under this chapter shall terminate and be surrendered immediately to the division if the home state public adjuster license terminates for any reason, unless the individual has been issued a license as a resident public adjuster in the individual's new home state. The individual shall notify the state or states where nonresident public adjuster licenses are issued as soon as possible, but no later than 30 days after the change to the new state's resident public adjuster license. The licensed public adjuster shall include both the new and the old addresses in the notice. A new state resident public adjuster license is required for the Iowa nonresident public adjuster license to remain valid. The new state resident public adjuster license must have reciprocity with Iowa as set forth in subrule 55.8(1) for the nonresident public adjuster license not to terminate. No fee or license application is required. If the new resident state is actively partici-

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pating in the producer database, a letter of certification is not required. A nonresident licensed public adjuster who moves to Iowa and wishes to retain the nonresident license must file a change of address with the division within 90 days of the change of legal residence.

55.8(4) If an individual's home state does not license public adjusters or does not award nonresident public adjuster licenses to residents of Iowa on the same basis, the nonresident individual shall follow the procedures for obtaining a license set out in rule 55.5(82GA, HF499).

191—55.9(82GA, HF499) Terms of licensure. Unless denied licensure under this chapter or under 2007 Iowa Acts, House File 499, sections 24 to 29, persons who have met the requirements of this chapter and 2007 Iowa Acts, House File 499, sections 24 to 29, shall be issued a public adjuster license.

55.9(1) Content of license. The license shall contain the public adjuster's name, city and state of business address, license number, the date of issuance, the expiration date, and any other information the division deems necessary. The license number shall be the same as the public adjuster's National Insurance Producer Registry (NIPR) national producer number (NPN). The division will not send a paper license to the public adjuster, but public adjusters may download and print licenses through the division's Web site, www.iid.state.ia.us.

55.9(2) Term of license. A public adjuster license shall remain in effect for a term of two years, unless revoked, terminated or suspended, and may be continually renewed as long as the request for renewal is received, the fee set forth in rule 55.20(82GA, HF499) is paid, and any other requirements for license renewal are met by the renewal due date. The license term shall be as follows:

a. For an individual public adjuster, the two-year-and-one-month period of time beginning on the first day of the public adjuster's birth month and ending on the last day of the public adjuster's birth month in the renewal year.

b. For a business entity public adjuster, the two-year-and-one-month period of time, including the year of application, beginning on the first day of the month of the business entity's formation date and ending on the last day of the month of the business entity's formation date. By arrangement with the division, a business entity may choose a different month for its license term.

55.9(3) Suspension for returned payment. If the division issues or renews a public adjuster license and subsequently determines that payment by check for the license or renewal was returned to the division by a bank without payment, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the division are paid, at which time the license may be reinstated. The individual may request a hearing within 30 days of receipt of notice by the division that the license was suspended.

55.9(4) Change in name, address or state of residence.

a. Name change. If a licensed public adjuster's name is changed, the licensed public adjuster must file notification with the division within 30 days of the name change. Notification may be filed via electronic mail to producer.licensing@iid.state.ia.us, or through the NIPR Gateway, if available. The notification must include the licensed public adjuster's:

- (1) Former name;
- (2) License number; and
- (3) New name.

b. Address change. If a licensed public adjuster's address is changed, including an E-mail address, the licensed public adjuster must file notification with the division within 30 days of the address change. Notification may be filed via electronic mail to producer.licensing@iid.state.ia.us, or through the NIPR Gateway, if available. The notification must include the licensed public adjuster's:

- (1) Name;
- (2) License number;
- (3) Previous address; and
- (4) New address. A licensed public adjuster may designate a business address instead of a resident address at the option of the licensed public adjuster.

c. Change in state of residence. A nonresident licensed public adjuster who moves from one state to another state or an Iowa resident licensed public adjuster who moves to another state and wishes to retain an Iowa license must comply with subrule 55.8(3).

55.9(5) Reporting of actions.

a. A licensed public adjuster shall report to the division any administrative action taken against the licensed public adjuster in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

b. Within 30 days of the initial pretrial hearing date, a licensed public adjuster shall report to the division any criminal prosecution of the licensed public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

c. A licensed public adjuster shall report to the division all college student aid commission or child support recovery unit actions taken under or in connection with Iowa Code chapter 261 or 252J and all court orders entered in such actions.

55.9(6) Failure to notify the division or to file reports required by this rule is a violation of this chapter and will subject licensed public adjusters to penalty pursuant to subrule 55.19(82GA, HF499).

55.9(7) Renewal of license.

a. A person licensed as a public adjuster must apply for renewal of the license prior to the expiration date of the license.

b. Public adjuster licenses may be renewed only through the NIPR Gateway, or as otherwise directed by the division.

c. Failure to renew a license and to pay appropriate fees prior to the expiration date of the license will result in expiration of the license.

d. A resident public adjuster may reinstate an expired license up to 12 months after the license expiration date by submitting a request to the division and by paying a reinstatement fee and license renewal fees, as set forth in rule 55.20(82GA, HF499). A resident public adjuster who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

e. A nonresident public adjuster may reinstate an expired license up to 12 months after the license expiration date by submitting a request to the division through the NIPR Gateway and by paying a reinstatement fee and license renewal fee. A nonresident public adjuster who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

f. A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating cir-

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cumstance may make a request to the division for a waiver of those procedures.

55.9(8) Division functions.

a. If a licensed public adjuster has provided an E-mail address to the division, the division has the option to send information to the licensed public adjuster through E-mail rather than through United States mail.

b. In order to assist in the performance of the division's duties, the division may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions that the division may deem appropriate, including the collection of fees and data related to licensing.

191—55.10(82GA, HF499) Evidence of financial responsibility.

55.10(1) Prior to the issuance of a license as a public adjuster and for the duration of the license, an applicant shall secure evidence of financial responsibility in a format prescribed by the division through a surety bond. The surety bond shall be executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

a. Shall be in the minimum amount of \$20,000;

b. Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in the applicant's capacity as a public adjuster; and

c. Shall not be terminated unless at least 30 days' prior written notice will have been filed with the division and submitted to the licensed public adjuster.

55.10(2) The division may request the evidence of financial responsibility at any time the division deems relevant.

55.10(3) A public adjuster shall immediately notify the division if evidence of financial responsibility terminates or becomes impaired. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

191—55.11(82GA, HF499) Continuing education.

55.11(1) An individual who holds a public adjuster license shall satisfactorily complete a minimum of 24 credits of continuing education, including 2 credits of ethics, reported on a biennial basis in conjunction with the license renewal cycle. "Credit" means 50 minutes of instruction or reading material in an acceptable topic of continuing education.

55.11(2) This rule shall not apply to a licensed public adjuster holding a nonresident public adjuster license who has met the continuing education requirements of the adjuster's home state and whose home state gives credit to residents of this state on the same basis.

55.11(3) Only continuing education courses approved by the division pursuant to 191—Chapter 11, substituting "public adjuster" for "insurance producer," shall be used to satisfy the continuing education requirement of subrule 55.11(1).

191—55.12(82GA, HF499) License denial, nonrenewal or revocation.

55.12(1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with Iowa Code section 505.7A or take corrective action pursuant to Iowa Code section 505.8 as amended by 2007 Iowa Acts, House File 499, section 6, or any combination of actions, for any one or more of the following causes:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

b. Failing to complete continuing education as required by rule 55.11(82GA, HF499);

c. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;

d. Obtaining or attempting to obtain a license through misrepresentation or fraud;

e. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing adjuster business;

f. Intentionally misrepresenting the terms of an insurance contract;

g. Having been convicted of a felony;

h. Having admitted to or having been found to have committed any insurance unfair trade practice or insurance fraud;

i. Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

j. Having an insurance license or a public adjuster license, or the equivalent, denied, suspended, or revoked in any other state, province, district or territory;

k. Cheating, including improperly using notes or any other reference material, to complete an examination for any adjuster license;

l. Failing to comply with an administrative or court order imposing a child support or student loan obligation, following procedures of rules 191—10.20(522B) and 191—10.21(522B), replacing the words "producer" with "public adjuster";

m. Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;

n. Misrepresenting to a claimant that the public adjuster is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster, unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when the public adjuster is appointed by the insurer and the appointment is accepted by the public adjuster;

o. Failing to maintain evidence of financial responsibility as required by rule 55.10(82GA, HF499);

p. For a business entity licensed as a public adjuster, failing to designate only licensed individual public adjusters to exercise the business of the business entity's license;

q. Failing to report to the division any notifications or actions required to be reported pursuant to rule 55.9(82GA, HF499); or

r. Failing to file reports required by this chapter.

55.12(2) In the event that the action by the commissioner is to deny an application for or not to renew a license, the commissioner shall notify the applicant or licensed public adjuster and advise, in writing, the applicant or licensed public adjuster of the reason for the nonrenewal or denial of the applicant's or licensed public adjuster's license. The applicant or licensed public adjuster may request a hearing pursuant to 191—Chapter 3 and Iowa Code chapter 17A.

55.12(3) The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensed public adjuster's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the

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business entity and the violation was neither reported to the commissioner nor corrective action taken.

55.12(4) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to Iowa Code section 505.7A, or to other corrective action pursuant to Iowa Code section 505.8 as amended by 2007 Iowa Acts, House File 499, section 6.

55.12(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and Iowa Code chapters 505 and 522C against any person who is under investigation for or charged with a violation of this chapter and 2007 Iowa Acts, House File 499, sections 24 to 29, even if the person's license has been surrendered or has lapsed by operation of law.

191—55.13(82GA, HF499) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

55.13(1) Definitions and scope.

a. The term "reinstatement" as used in this rule means the reinstatement of a suspended license.

b. The term "reissuance" as used in this rule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter.

c. This rule does not apply to the reinstatement of an expired license.

55.13(2) Any person licensed in Iowa as a public adjuster whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

b. An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant's license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

c. A person licensed as a public adjuster may request reinstatement of a suspended license prior to the end of the suspension term.

d. Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph 55.13(2)"c"), revocation, or acceptance of the forfeiture of a license.

55.13(3) All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

55.13(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and

conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter and 2007 Iowa Acts, House File 499, sections 24 to 29. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapters 22 and 505.

55.13(5) When a public adjuster's license has been suspended for a period of time which extends beyond the public adjuster's license expiration date, the license will terminate at the license expiration date, and the public adjuster must request reinstatement pursuant to subrule 55.10(2). If suspension for a period of time ends prior to the public adjuster's license expiration date, the division shall reinstate the license at the end of the suspension period. The commissioner is not prohibited from bringing an additional immediate action if the public adjuster has engaged in misconduct during the period of suspension.

55.13(6) A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture shall become effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

55.13(7) A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture shall become effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter and 2007 Iowa Acts, House File 499, sections 24 to 29.

191—55.14(82GA, HF499) Contract between public adjuster and insured.

55.14(1) Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

- a. Legible full name of the adjuster signing the contract, as specified in division records;
- b. Permanent home state business address and telephone number;
- c. Public adjuster license number;
- d. Title of "Public Adjuster Contract";
- e. Insured's full name, street address, insurance company name and policy number, if known or upon notification;
- f. Description of the loss and its location, if applicable;
- g. Description of services to be provided to the insured;
- h. Signatures of the public adjuster and the insured;
- i. Date contract was signed by the public adjuster and date the contract was signed by the insured;
- j. Attestation language stating that the public adjuster is fully bonded pursuant to state law; and
- k. Full salary, fee commission, compensation or other considerations the public adjuster is to receive for services.

55.14(2) The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

a. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

b. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by

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type, with dollar estimates set forth in the contract and with any additional expenses as approved by the insured.

c. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the division. Such a redaction shall constitute a dishonest practice in violation of paragraph 55.12(1)“i.”

55.14(3) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

a. Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

b. Inform the insured that the loss recovery amount might not be increased by the insurer; and

c. Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

55.14(4) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damage caused by the insured loss on which the public adjuster is engaged. The term “firm” shall include any corporation, partnership, association, joint-stock company or person.

55.14(5) A public adjuster contract may not contain any contract term that:

a. Allows the public adjuster’s percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as a percentage of each check issued by an insurance company;

b. Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

c. Imposes collection costs or late fees; or

d. Precludes a public adjuster from pursuing civil remedies.

55.14(6) Prior to the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process as set forth in Appendix I.

55.14(7) The contract shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster’s original contract shall be available at all times for inspection without notice by the division.

55.14(8) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest.

55.14(9) The public adjuster shall give the insured written notice of the insured’s rights as provided in Iowa Code chapter 555A, and the insured may rescind the contract as provided in Iowa Code chapter 555A. The contract shall not be construed to prevent an insured from pursuing any civil reme-

edy after the three-business-day revocation or cancellation period.

55.14(10) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days following the receipt by the public adjuster of the cancellation notice.

191—55.15(82GA, HF499) Escrow accounts. A public adjuster who receives, accepts or holds, on behalf of an insured, any funds toward the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow account in a financial institution that is insured by an agency of the federal government in the public adjuster’s home state or where the loss occurred.

191—55.16(82GA, HF499) Record retention.

55.16(1) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this rule shall include the following:

a. The name of the insured;

b. The date, location and amount of the loss;

c. A copy of the contract between the public adjuster and the insured;

d. The name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

e. An itemized statement of the insured’s recoveries;

f. An itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

g. A register of all moneys received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;

h. The name of the public adjuster who executed the contract;

i. The name of the attorney representing the insured, if applicable, and the name of the claims representative of the insurance company; and

j. Evidence of financial responsibility in a format prescribed by the insurance division.

55.16(2) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the division at all times.

55.16(3) Records submitted to the division in accordance with this rule that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the division and shall not be subject to Iowa Code chapter 22.

191—55.17(82GA, HF499) Standards of conduct of public adjuster.

55.17(1) A public adjuster shall serve with objectivity and complete loyalty the interest of the public adjuster’s client and shall render to the insured in good faith such information, counsel and service, as within the knowledge, understanding and opinion of the licensed public adjuster, as will best serve the insured’s insurance claim needs and interest.

55.17(2) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured’s insurance contract.

55.17(3) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this chapter or 2007 Iowa Acts, House File 499, sections 24 to 29.

55.17(4) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than

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the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in subrule 55.14(4).

55.17(5) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in subrule 55.14(4).

55.17(6) The public adjuster shall abstain from referring or directing the insured to obtain needed repairs or services in connection with a loss from any person, unless disclosed to the insured:

- a. With whom the public adjuster has a financial interest; or
- b. From whom the public adjuster may receive direct or indirect compensation for the referral.

55.17(7) Licensed public adjusters may not solicit a client for employment between the hours of 8 p.m. and 9 a.m.

55.17(8) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

55.17(9) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or if the loss or coverage otherwise exceeds the public adjuster's current expertise.

55.17(10) A public adjuster shall not knowingly make any false oral or written material statements regarding any person engaged in the business of insurance to any insured client or potential insured client;

55.17(11) No public adjuster, while so licensed by the division, may represent or act as a company adjuster, or independent adjuster in any circumstance.

55.17(12) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

55.17(13) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

191—55.18(82GA, HF499) Public adjuster fees.

55.18(1) A public adjuster may charge the insured a reasonable fee for public adjuster services.

55.18(2) A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this chapter and is not so licensed.

55.18(3) In the event of a catastrophic disaster, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than 10 percent of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

191—55.19(82GA, HF499) Penalties. Failure to comply with this chapter or with 2007 Iowa Acts, House File 499, sections 24 to 29, shall subject a person to penalties set forth in 2007 Iowa Acts, House File 499, section 29.

191—55.20(82GA, HF499) Fees.

55.20(1) Fees may be paid by check or credit card.

55.20(2) The fee for obtaining an electronic fingerprint pursuant to subrule 55.4(3) shall be set by the outside vendor under contract with the division and approved by the division.

55.20(3) The fee for issuance or renewal of an individual public adjuster license is \$50 for two years.

55.20(4) The fee for issuance or renewal of a business entity public adjuster license is \$50 for two years.

55.20(5) The fee for reinstatement of a public adjuster license is \$50.

55.20(6) The division may charge a reasonable fee for the compilation and production of public adjuster licensing records.

191—55.21(82GA, HF499) Severability. If any rule or portion of a rule of this chapter, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this chapter, or the applicability or its provisions to other persons, shall not be affected.

These rules are intended to implement 2007 Iowa Acts, House File 499, sections 24 to 29.

APPENDIX I

DISCLOSURE DOCUMENT

REGARDING THE CLAIM PROCESS

(1) Property insurance policies obligate the insured to present a claim to the insured's insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three types are as follows:

(a) "Company adjusters" means the insurance adjusters who are employees of insurance companies. They represent the interests of the insurance companies and are paid by the insurance companies. They will not charge the insureds fees.

(b) "Independent adjusters" means the insurance adjusters who are hired on a contract basis by insurance companies to represent the insurance companies' interests in the settlement of claims. They are paid by the insurance companies. They will not charge the insureds fees.

(c) "Public adjusters" means the insurance adjusters who do not work for any insurance companies. They work for insureds to assist in the preparation, presentation and settlement of claims. The insureds hire them by signing contracts agreeing to pay them fees or commissions based on a percentage of the settlements, or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so.

(3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney or any other person regarding the settlement of the insured's claim. Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured's legal counsel.

(4) The public adjuster is not a representative or employee of the insurer.

(5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

ARC 6194B**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3(1)"b" and section 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19, the Iowa Finance Authority hereby gives Notice of Intended Action to adopt new Chapter 15, "Purchasing," Iowa Administrative Code.

The purpose of these amendments is to adopt administrative rules relating to purchasing and competitive bidding as directed by 2007 Iowa Acts, Senate File 431, section 19. The proposed rules establish methods for competitive bidding for use in the purchase of goods and services, set forth when formal and informal competitive bidding processes are to be used, and regulate other aspects of purchase contracting by the Authority.

Proposed Chapter 15 does not provide for waivers. Persons seeking waivers must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on September 18, 2007. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov. Persons who wish to comment orally should contact Mark Thompson at (515)725-4937.

These rules are intended to implement Iowa Code section 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

**CHAPTER 15
PURCHASING**

265—15.1(16) Applicability of competitive bidding. Items, including goods or services, that are expected to cost in the aggregate in excess of \$50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the authority, or through the department of administrative services whenever such procurement is in the best interests of the authority, as determined by the authority. Items, including goods or services, expected to cost \$50,000 or less in the aggregate may be obtained in any manner deemed appropriate by the authority.

Notwithstanding the foregoing, the authority may exempt any item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the executive director of the authority determines, in the executive director's sole discretion, that the au-

thority's best interests will be served by exemption from the bidding process.

265—15.2(16) Methods of obtaining bids or proposals used by the authority. Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the authority shall choose the method of bidding to be utilized.

15.2(1) Formal bids.

a. To solicit formal bids, the authority shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the authority. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

b. The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

c. Formal bids received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened, they shall be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations shall be maintained at the authority for one year following the date on which the bids were opened.

d. An award shall be made within 60 calendar days from the date of the bid opening, unless a different time frame is stated by the authority in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

15.2(2) Informal bids.

a. Informal bids may be obtained by the authority through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the authority shall contact selected vendors supplying the goods or services sought by the authority and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

b. Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a printout shall be used to record the bid received. Following the submission deadline, the authority shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the authority for one year following the submission deadline.

c. If an award is not made within the time frame indicated by the authority when requesting bids, all bids shall be deemed rejected.

15.2(3) Request for proposals. Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the authority may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the authority's require-

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ments and goals to allow the vendor to propose a solution to the authority's requirements.

a. The authority shall prepare a written request for proposals and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the authority.

b. An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the authority in the request for proposals or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

c. At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process, including the submission deadline; administrative requirements for submitting the proposal and the format required by the authority; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the authority anticipates may affect the terms of the vendor's proposal.

265—15.3(16) Items purchased through the department of administrative services. Goods and services may be obtained by the authority through the department of administrative services (DAS) whenever procurement through DAS is in the best interests of the authority. Items procured through DAS may be obtained by DAS in any manner it deems appropriate.

265—15.4(16) Advertising solicitations. Formal bids and requests for proposals issued by the authority shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the due date and time of opening of the bid or proposal, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

265—15.5(16) Contract purchases. The authority may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

265—15.6(16) Blanket purchase agreements. If the authority foresees a requirement for frequent purchases of off-the-shelf items, the authority may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

265—15.7(16) Bids and proposals to conform to specifications. All bids and proposals must conform to the specifications indicated by the authority. Bids and proposals that do not conform to the specifications stated may be rejected. The authority reserves the right to waive deficiencies in the bids or proposals if in the judgment of the authority its best interests would be served by the waiver.

265—15.8(16) Time of delivery. When evaluating bids or proposals, the authority may consider the time of delivery when determining the successful vendor.

265—15.9(16) Cash discounts. When evaluating bids or proposals, the authority may consider cash discounts.

265—15.10(16) Ties. The authority shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the authority shall document the drawing.

265—15.11(16) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the authority prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the authority prior to the submission deadline indicated by the authority. Formal bids and proposals shall be marked by the authority with the date and time received by the authority. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

265—15.12(16) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the authority if the authority finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the authority.

265—15.13(16) Financial security. The authority may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the authority, or any other form specified by the authority.

265—15.14(16) Rejection of bids and proposals. The authority reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the authority's requirements, or for any other reason if the authority determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the authority at any time deemed convenient by the authority.

265—15.15(16) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa Finance Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must

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actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the authority's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

These rules are intended to implement Iowa Code section 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19.

ARC 6169B**LABOR SERVICES DIVISION[875]****Notice of Termination**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5790B**. The Notice of Intended Action proposed to adopt by reference the most recent platform lift standards of the American Society of Mechanical Engineers and replace "and" with "or" in subrule 71.2(2) setting forth the requirements for safety tests.

ARC 6200B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to amend Chapter 33, "Resource Enhancement and Protection Program: County, City and Private Open Spaces Grant Programs," Iowa Administrative Code.

These proposed amendments clarify the selection criteria that committees shall use to evaluate grant applications under this program.

Any interested person may make written comments on these proposed amendments on or before September 28, 2007. Such written materials should be directed to Ross Harrison, REAP Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact Ross Harrison at (515)281-5973.

A public hearing will be held on September 28, 2007, at 10:30 a.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 455A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 33.30(4) as follows:

33.30(4) Project selection criteria. Under the competitive grants program, a project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. Criteria and scoring systems must be distributed to all counties at least 90 days prior to project application deadline. Criteria will be reviewed at least annually to determine if amendments are needed. ~~Criteria and weight factor(s) shall include, but are not limited to, the following: The committee shall evaluate and rank the resource enhancement and protection (REAP) private cost-share grant applications using the following weighted criteria:~~

- ~~a. Public demand or need. (2)~~
- ~~b. Project uniqueness. (2)~~
- ~~c. Quality of site or project, or both. (3)~~
- ~~d. Urgency of proposed action. (2)~~
- ~~e. Multiple benefits to be provided. (2)~~

~~(This includes multiple recreational benefits, environmental quality benefits, and other similar benefits.)~~

~~f. Relationship to the Iowa statewide comprehensive outdoor recreation plan, Iowa open spaces protection plan and other current and relevant state, regional and local plans. (4)~~

- ~~g. Quality of public communications plan. (1)~~
- ~~h. Economic benefits to local, regional or state area. (1)~~
- ~~i. Geographic distribution. (1)~~

~~a. The committee may award up to four points for a demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan, the county resource enhancement plan, and other relevant local, state and federal plans.~~

~~b. The committee may award up to three points for the quality of the site or the project, or both.~~

~~(1) Quality of site. For land acquisition projects, the committee may award points for the combined consideration of the following characteristics:~~

~~1. Level of significance. Relative rarity of the natural resources found on the project site, including but not limited to native vegetation, documented presence of state or federally listed threatened and endangered species, or other uncommonly occurring but native resources.~~

~~2. Resource representation. Quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.~~

~~3. Relation to public land. Proximity to existing wildlife management areas, existing parks and other public recreation areas, or other greenbelt areas already under public ownership and management.~~

~~(2) Quality of project. For construction projects, the committee may award points for plans that demonstrate the highest and best site-specific quality of design, including projects that use materials that incorporate energy savings or other conservation practices; for plans that include in-~~

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novations or construction methods in the design and development of the project; and for projects whose actual design and construction will exceed commonly accepted design and construction standards.

c. The committee may award up to two points for each of the following:

(1) *Multiple benefits.* Project provides the greatest number of public benefits/services to meet the public's diverse outdoor recreation interests.

(2) *Public need.* Demonstrated need for the project; increased public use of the project area as a result of the award, as documented through surveys and other testing methods; letters of support; and planning processes that consider social, demographic, ecological and economic considerations.

(3) *Urgency of project.* Specific factors or immediate threats to the project area that constitute urgency for acquisition or development, including but not limited to urban expansion, residential development, agricultural activities or clearing.

(4) *Unique project characteristics.* Documented relative rarity or uniqueness of the natural, cultural and historical resources found on the project site, including but not limited to the presence of rare or unique plant and animal species; rare, unique or protected ecosystems; and historical markers and other historically or culturally significant finds.

d. The committee may award up to one point for each of the following:

(1) *Communication plan.* Project sponsor's effort to inform and advise constituents and users about the importance of the proposed project and the plans to promote the proposed project to expected user groups.

(2) *Economic benefit.* Estimate of positive impact to local tourism, existing businesses, encouragement of new businesses, and values to nearby property owners.

ITEM 2. Amend subrule 33.40(5) as follows:

33.40(5) Criteria for project evaluation. ~~Criteria and weight factors to be used in scoring projects shall include, but are not limited to, the following: The committee shall evaluate and rank the projects using the following weighted criteria:~~

- ~~a. Quality of site or project, or both. (3)~~
- ~~b. Direct recreational benefits. (2)~~
- ~~c. Local need. (2)~~
- ~~d. Number of people benefited. (2)~~
- ~~e. Relationship to Iowa state comprehensive outdoor recreation plan, Iowa open spaces protection plan and other current and relevant state, regional and local plans. (4)~~
- ~~f. Environmental benefits. (2)~~
- ~~g. Quality of public communications plan. (1)~~

Up to 2 bonus and 3 penalty points may also be assigned based on prior grants, the size and number of grants already underway or approved within the applicant's community, or performance on past projects.

a. The committee may award up to four points for the relationship to relevant regional and statewide programs based on the demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan, the county resource enhancement plan, and other relevant local, state and federal plans.

b. The committee may award up to three points for the quality of the site or the project, or both:

(1) *Quality of site for land acquisition projects.* The committee may award points for the combined consideration of the following characteristics:

1. *Level of significance.* Relative rarity of the natural resources found on the project site, including but not limited to

native vegetation, the documented presence of state or federally listed threatened and endangered species, or other uncommonly occurring but native resources.

2. *Resource representation.* The quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.

3. *Level of threat.* Specific factors or immediate threats to the project area that constitute urgency for acquisition and development, including but not limited to urban expansion, residential development, agricultural activities, or clearing.

4. *Relation to public land.* Proximity to existing wildlife management areas, existing parks, other public recreation areas or other greenbelt areas already under public ownership and management.

(2) *Quality of project.* For construction projects, the committee may award points for plans that demonstrate the highest and best site-specific quality of design, including projects that use materials that incorporate energy savings or other conservation practices; for plans that include innovations or construction methods in the design and development of the project; and for projects whose actual design and construction will exceed commonly accepted design and construction standards.

c. The committee may award up to two points for each of the following:

(1) *Environmental benefits.* Projects that demonstrate a benefit to the surrounding environment, including but not limited to incorporation of land improvements that may have a positive impact on the larger ecosystem, such as timber or prairie establishment, wetland or filter strip development.

(2) *Public benefit.* A realistic estimate of the number of users of the project area and consideration of secondary benefits such as impacts to local tourism, surrounding businesses and adjacent property owners.

(3) *Local support.* Demonstrated need for the project and increased public use of the project area as a result of the award as documented through surveys and other testing methods, letters of support, and planning processes that consider social, demographic, ecological and economic considerations.

d. The committee may award up to one point for a communication plan that identifies the project sponsor's effort to inform and advise constituents and users about the importance of the proposed project, and the plans to promote the proposed project to expected user groups.

ITEM 3. Amend subrule 33.50(5) as follows:

33.50(5) Criteria. The following criteria and their respective weights shall be used by the committee, along with other criteria which are determined by the committee to be relevant. The committee shall evaluate and rank the projects using the following weighted criteria:

- ~~a. Level of significance. (3)~~
- ~~b. Resource representation. (3)~~
- ~~c. Level of threat. (3)~~
- ~~d. Relationship to existing public land. (3)~~
- ~~e. Relationship to state comprehensive outdoor recreation plan, Iowa open spaces protection plan and other current and relevant state, regional and local plans. (3)~~
- ~~f. Rare or unique species or communities. (2)~~
- ~~g. Public benefits. (2)~~
- ~~h. Tourism and economic development potential. (1)~~
- ~~i. Geographic distribution. (1)~~
- ~~j. Multiple use potential. (1)~~
- ~~k. Available funds relative to project costs. (1)~~
- ~~l. Quality of public communications plan. (1)~~

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a. The committee may award up to three points for each of the following:

(1) *Level of significance.* The relative rarity of the natural resources found on the project site, including but not limited to native vegetation and the documented presence of state or federally listed threatened and endangered species or other uncommonly occurring but native resources.

(2) *Resource representation.* The quality of the project site, including but not limited to the size and diversity of the project area and the vegetation and wildlife it supports.

(3) *Level of threat.* Specific factors and immediate threats to the project area that constitute urgency for acquisition and development, including but not limited to urban expansion, residential development, agricultural activities, or clearing.

(4) *Relation to public land.* The proximity to existing wildlife management areas, existing parks, and other public recreation or greenbelt areas already under public ownership and management.

(5) *Relationship to relevant regional and statewide programs.* A demonstrated relationship to the state comprehensive outdoor recreation plan, the Iowa open spaces protection plan or the county resource enhancement plan. The committee may evaluate other relevant local, state and federal plans at its discretion.

b. The committee may award up to two points for each of the following:

(1) *Rare or unique species communities.* The documented presence of state and federally listed threatened and endangered species. (In addition to 33.50(5)“a”(1) above.)

(2) *Public benefits.* A demonstrated benefit to the public, including but not limited to expanded recreational or educational opportunities and incorporation of land improvements that may have a positive impact on the ecosystem, such as bank stabilization, wetland development, or filter strips.

c. The committee may award up to one point for each of the following:

(1) *Tourism and economic development potential.* Impact on local tourism, including any enhancements to the economy in the vicinity of the project.

(2) *Geographic distribution.* Project site is located in a city or county that has not received a REAP grant.

(3) *Multiple use potential.* Project site provides more than one public use, e.g., the project provides hunting, fishing and hiking opportunities to the public.

(4) *Additional funds.* Level of funds obligated in excess of the minimum cost-share requirements.

(5) *Quality of public communication plan.* Project sponsor's effort to inform and advise constituents and users about the importance of the proposed project, and plans to promote the proposed project to expected user groups.

ARC 6201B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of In-

tended Action to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

This amendment provides for the designation of public swimming areas at Clear Lake in Cerro Gordo County by placement of regulatory buoys in such a way as to define the swimming area.

Any person may make written comments on this proposed amendment on or before September 25, 2007. Such comments and written material should be directed to the Law Enforcement Bureau, Wallace State Office Building, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. Persons who wish to convey their comments orally should contact Steve Dermand of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on September 25, 2007, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who attend the public hearing and have special needs such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 456A.25.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 571—Chapter 40 by adopting the following **new** rule:

571—40.55(462A) Zoning of Clear Lake, Cerro Gordo County. Areas may be specifically designated for swimming with the use of regulatory buoys.

ARC 6179B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 124.301, 124B.11, and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 2, “Pharmacist Licenses,” Chapter 3, “Pharmacy Technicians,” Chapter 8, “Universal Practice Standards,” Chapter 10, “Controlled Substances,” Chapter 12, “Precursor Substances,” and Chapter 17, “Wholesale Drug Licenses,” Iowa Administrative Code.

The amendments were approved at the July 31, 2007, regular meeting of the Board of Pharmacy.

The proposed amendments eliminate the term “examiners” from the name of the Board and changes references to the Board's chief administrative officer from “executive sec-

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retary” or “executive secretary/director” to “executive director.” These proposed amendments implement legislative changes enacted in 2007 Iowa Acts, Senate File 74.

The proposed amendments also increase fees related to the issuance of new and renewed pharmacist licenses, including examination, reexamination, and license transfer processing fees. The amendments propose increasing fees related to the issuance of new and renewed pharmacy and wholesale drug licenses, new and renewed pharmacy technician and controlled substances registrations, and new and renewed precursor substances permits. The amendments change all fee amounts to the amounts that have been charged since fiscal year 2005 for the various licenses, permits, and registrations.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on September 18, 2007. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124B.11, 147.94, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 657—2.1(147,155A), introductory paragraph, as follows:

657—2.1(147,155A) Licensure by examination. The board of pharmacy examiners, in conjunction with the National Association of Boards of Pharmacy (NABP), shall provide for the administration of pharmacist licensure examinations.

ITEM 2. Amend subrule 2.3(1) as follows:

2.3(1) Fees to the board. The biennial license fee shall be the fee established by rule 2.11(147,155A), including surcharge. The processing fee shall be \$40. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the processing fee shall be \$80.~~ No refunds of the processing fee shall be made for cancellation or withdrawal of applications. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check. No refund of fees shall be made for failure to complete all licensure requirements within the period specified in subrule 2.1(2).

ITEM 3. Amend subrule 2.3(3) as follows:

2.3(3) Submission of forms and fees. The biennial license fee including surcharge, the processing fee, the administration fees, and the examination registration fees shall accompany the applications and registration forms and shall be submitted to the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or as otherwise directed by the board.

ITEM 4. Amend rule **657—2.6(147)**, first unnumbered paragraph, as follows:

Each applicant for reexamination shall file an application on forms provided by the board. Processing fees of \$30 \$40

each will be charged to take NAPLEX or MPJE, Iowa Edition, and shall be paid to the board as provided in subrule 2.3(1). ~~For the period beginning July 1, 2006, and ending June 30, 2007, the processing fee shall be \$40 each.~~ In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

ITEM 5. Amend rule 657—2.8(155A), introductory paragraph, as follows:

657—2.8(155A) Transfer of examination scores. The board of pharmacy examiners participates in the NAPLEX score transfer program offered by NABP. This program allows candidates for pharmacist licensure to take the standardized NAPLEX in one state and have the score from that examination transferred to other participant states in which the candidate is seeking licensure. MPJE scores cannot be transferred.

ITEM 6. Amend subrule 2.9(4) as follows:

2.9(4) Fees. The fee for license transfer shall consist of the biennial license fee established by rule 2.11(147,155A) including surcharge and a processing fee of \$50. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the processing fee shall be \$100.~~ No refunds of the processing fee shall be made for cancellation or withdrawal of an application. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy Examiners and may be remitted in the form of personal check, money order, or certified check.

ITEM 7. Amend rule 657—2.11(147,155A), introductory paragraph, as follows:

657—2.11(147,155A) License expiration and renewal. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, except a new pharmacist license issued between April 1 and June 29, which license shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$100 fee plus applicable surcharge pursuant to 657—30.8(155A). ~~For the period beginning July 1, 2006, and ending June 30, 2007, the license renewal certificate shall be issued upon completion of the renewal application and timely payment of a \$200 fee plus applicable surcharge pursuant to 657—30.8(155A).~~

ITEM 8. Amend subrule 2.12(2) as follows:

2.12(2) Continuing education unit required. The nationally accepted measurement of continuing education is referred to as CEU (continuing education unit), and the board of pharmacy examiners employs that measurement. Ten contact hours of approved continuing education are equivalent to one CEU. The board of pharmacy examiners will require 3.0 CEUs each renewal period.

ITEM 9. Amend rule 657—2.14(155A) as follows:

657—2.14(155A) Fees for additional license certificates. Only original license certificates issued by the board of pharmacy examiners for licensed pharmacists are valid. Additional original license certificates for licensed pharmacists may be obtained from the board of pharmacy examiners for a prepaid fee of \$20 each. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

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ITEM 10. Amend rule **657—3.1(155A)**, definition of “board,” as follows:

“Board” means the Iowa board of pharmacy examiners.

ITEM 11. Amend subrule 3.10(1) as follows:

3.10(1) Initial fee. The fee for obtaining an initial registration shall be \$30 plus applicable surcharge pursuant to 657—30.8(155A). ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for initial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).~~

ITEM 12. Amend subrule 3.10(2) as follows:

3.10(2) Renewal fee. The renewal fee for obtaining a biennial registration shall be \$30 plus applicable surcharge pursuant to 657—30.8(155A). ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for biennial registration shall be \$40 plus applicable surcharge pursuant to 657—30.8(155A).~~

ITEM 13. Amend subrule 3.10(4) as follows:

3.10(4) Form of payment. Fee payment shall be in the form of a personal check, certified or cashier’s check, or money order payable to Iowa Board of Pharmacy Examiners.

ITEM 14. Amend rule 657—3.29(155A), introductory paragraph, as follows:

657—3.29(155A) Denial of registration. The executive secretary/director ~~director~~ or designee may deny an application for registration as a pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or non-prescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

ITEM 15. Amend rule **657—8.12(126,147)**, paragraph “3,” as follows:

3. No reference shall be made to controlled substances listed in Schedules II through V of the latest revision of the Iowa uniform controlled substances Act and the rules of the Iowa board of pharmacy examiners.

ITEM 16. Amend subrule **8.34(1)**, definitions of “board,” “drug therapy management criteria,” and “IBME,” as follows:

“Board” means the board of pharmacy examiners.

“Drug therapy management criteria” means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy examiners.

“IBME” means the Iowa board of ~~medical examiners~~ medicine.

ITEM 17. Amend subrule 8.35(4), introductory paragraph, as follows:

8.35(4) License expiration and renewal. General pharmacy licenses, hospital pharmacy licenses, special or limited

use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for a new or renewal license shall be \$150.~~

ITEM 18. Amend rule 657—10.2(124), introductory paragraph, as follows:

657—10.2(124) Application forms. Application forms may be obtained from the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Forms are also available on the board’s Web site, www.state.ia.us/ibpe. Registration renewal forms will be mailed to each registrant approximately 60 days before the expiration date of the registration. A registrant who has not received a renewal form 45 days before the expiration date of the registration is responsible for contacting the board to request an application.

ITEM 19. Amend rule 657—10.3(124), introductory paragraph, as follows:

657—10.3(124) Registration and renewal. For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of \$50. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for registration or timely renewal of a biennial registration shall be \$100.~~

ITEM 20. Amend subrule 10.3(1) as follows:

10.3(1) Time and method of payment. Registration and renewal fees shall be paid at the time the application for registration or renewal is submitted. Payment should be made in the form of a personal, certified, or cashier’s check or a money order made payable to the Iowa Board of Pharmacy Examiners. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

ITEM 21. Amend subrule 10.12(8) as follows:

10.12(8) Final board order when hearing waived. If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive secretary/director ~~director~~ of the board may cancel the hearing and issue, on behalf of the board, the board’s final order on the order to show cause.

ITEM 22. Amend subrule 10.37(1), introductory paragraph, as follows:

10.37(1) Application for exception. Any person seeking to have any compound, mixture, or preparation containing any depressant or stimulant substance listed in any of the schedules in Iowa Code chapter 124 excepted from the application of all or any part of that chapter may apply to the board of ~~pharmacy examiners~~ for such exception.

ITEM 23. Amend rule 657—10.39(124,126) as follows:

657—10.39(124,126) Excluded substances. The Iowa board of pharmacy examiners hereby excludes from all schedules the current list of “Excluded Nonnarcotic Products” identified in Title 21, CFR, Part 1308, Section 22. Copies of the list of excluded products may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

ITEM 24. Amend subrule 12.7(1), introductory paragraph, as follows:

12.7(1) Applications. Application forms may be obtained from and completed applications shall be submitted to the

PHARMACY BOARD[657](cont'd)

Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Permit renewal forms will be mailed to each current permit holder approximately 60 days before the expiration date of the permit. A permit holder who has not received a renewal form 45 days prior to expiration of a current permit is responsible for contacting the board to request an application for renewal.

ITEM 25. Amend subrule 12.7(2), introductory paragraph, as follows:

12.7(2) Initial permit, renewal, and fees. The fee for an initial permit or permit renewal shall be paid at the time that the application for the permit or permit renewal is submitted for filing. Payment shall be made in the form of a personal, business, certified, or cashier's check or money order made payable to the Iowa Board of Pharmacy Examiners. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

ITEM 26. Amend subrule **12.7(2)**, paragraph "a," as follows:

a. Initial and renewal fees. For each initial permit or timely renewed permit, an applicant shall pay a fee of \$100. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for each initial permit or timely renewed permit shall be \$200.~~

ITEM 27. Amend rule **657—17.1(155A)**, definition of "board," as follows:

"Board" means the Iowa board of pharmacy examiners.

ITEM 28. Amend subrule 17.3(2), introductory paragraph, as follows:

17.3(2) License expiration and renewal. A wholesale drug license shall be renewed before January 1 of each year. The fee for a new or renewal license shall be \$100. ~~For the period beginning July 1, 2006, and ending June 30, 2007, the fee for a new or renewal license shall be \$300.~~

ARC 6178B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment was approved at the July 31, 2007, regular meeting of the Board of Pharmacy.

The proposed amendment provides that a prescriber may authorize no more than 12 refills of a noncontrolled prescription drug or device to be filled within 18 months of the original date of the prescription drug order and clarifies the meaning of the term "refill."

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not

later than 4:30 p.m. on September 18, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code section 155A.29 as amended by 2007 Iowa Acts, Senate File 67, section 5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 657—8.19(124,126,155A) by adopting **new** subrule 8.19(5) as follows:

8.19(5) Refills. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued. A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

ARC 6190B**REAL ESTATE APPRAISER
EXAMINING BOARD[193F]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 2, "Definitions," to rescind Chapter 4, "Associate Real Property Appraiser," and to adopt a new Chapter 4 with the same title, and to amend Chapter 8, "Investigations and Disciplinary Proceedings," Iowa Administrative Code.

The proposed amendment to Chapter 2 corrects the definition of an associate real property appraiser or associate appraiser in accordance with 2007 Iowa Acts, Senate File 137. New Chapter 4 is the result of a complete rewrite of the current chapter; redundant information was removed, and the chapter was rewritten with the intent of making it easier to read. The proposed amendment to Chapter 8 clarifies compensation for peer reviewers in accordance with the Professional Licensing and Regulation Bureau's revised contract.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before September 18, 2007. Comments should be addressed to Sylvia King, Professional Licensing and Regulation Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to sylvia.king@iowa.gov.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **193F—2.1(543D)**, definition of “associate real property appraiser” or “associate appraiser” as follows:

“Associate real property appraiser” or “associate appraiser” means an individual who *is has* registered with the board but who does not meet the experience requirements for certification in a certified residential or a certified general classification. ~~The associate appraiser has met the educational requirements and successfully completed either the certified residential or certified general real estate appraiser examination. The associate appraiser must work under the supervision of a certified general or certified residential real property appraiser depending on which examination the associate appraiser successfully completes. However, an associate residential real property appraiser may be supervised by a certified general real property appraiser.~~ *as an associate real property appraiser, as defined in Iowa Code section 543D.2(5), and who is training to become a certified residential or certified general real property appraiser.*

ITEM 2. Rescind 193—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4

ASSOCIATE REAL PROPERTY APPRAISER

NOTE: The AQB adopted changes to the qualification criteria effective January 1, 2008. The changes include increased education requirements that can be found in 193F—Chapter 13 for certified residential appraisers and in 193F—Chapter 14 for certified general appraisers.

193F—4.1(543D) Qualifications to register as an associate appraiser.

4.1(1) Education. A person applying for registration as an associate appraiser shall, at a minimum, satisfactorily complete the following AQB-approved, qualifying education modules required under the educational standards applicable on and after January 1, 2008, for certification as a certified residential appraiser or certified general appraiser:

- a. The 30-hour module on basic appraisal principles;
- b. The 30-hour module on basic appraisal procedures; and
- c. The 15-hour national USPAP course or its equivalent.

4.1(2) Application form. After completing the education outlined in subrule 4.1(1), a person applying for registration as an associate appraiser shall apply for registration on the form provided by the board. The form and the appropriate application fee shall be submitted to the board.

4.1(3) Registration denial. The board may deny an application for registration as an associate appraiser on any ground upon which the board may impose discipline against an associate appraiser, as provided in 193F—Chapter 7.

193F—4.2(543D) Supervision of associate appraisers.

4.2(1) Direct supervision. An associate appraiser is subject to the direct supervision of a certified real property appraiser. Qualifications for a supervisory appraiser are outlined in 193F—Chapter 15. An associate appraiser may be supervised by more than one supervisory appraiser.

4.2(2) Scope of practice. The scope of practice of an associate appraiser is the same as the scope of practice of the supervisory appraiser. An associate appraiser supervised by a certified residential appraiser shall accordingly be restricted to the scope of practice of a certified residential appraiser, while an associate appraiser supervised by a certified general appraiser shall be subject to the same scope of practice as a certified general appraiser.

4.2(3) Logs. An associate appraiser shall maintain an appraisal experience log that includes all information required by the AQB as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. Required log entries shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. Address of appraised property;
- d. Description of work performed by the associate appraiser and scope of review and supervision of the supervising appraiser;
- e. Number of work hours; and
- f. Signature of supervising appraiser and the date signed.

4.2(4) Monitoring of logs. The associate appraiser shall have the appraisal log reviewed and signed by the supervisory appraiser at least monthly. Upon written request by the board, the associate appraiser and the supervisory appraiser shall submit a copy of the associate appraiser's log by letter, fax or E-mail within ten calendar days. The failure of an associate appraiser or supervisory appraiser to submit the requested log is a ground for disciplinary action. A separate appraisal log shall be maintained for each supervisory appraiser.

193F—4.3(543D) Renewal of associate appraiser registration. An associate appraiser registration must be renewed on a biennial basis as more fully described in 193F—Chapter 9. An associate appraiser is subject to the same continuing education requirements as are applicable to a certified appraiser as a precondition for renewal. Continuing education requirements are outlined in 193F—Chapter 11.

193F—4.4(543D) Progress toward certification as a certified residential appraiser or certified general appraiser.

4.4(1) Trainee classification. The associate appraiser classification is intended for those persons training to become certified appraisers and is not intended as a long-term method of performing appraisal services under the supervision of a certified appraiser in the absence of progress toward certification. As a result, the board may impose deadlines for achieving certification, or for satisfying certain prerequisites toward certification, for those persons who apply to renew an associate appraiser registration more than two times following January 1, 2008. Deadlines, if any, would be imposed as a condition for the third or subsequent renewal after January 1, 2008.

4.4(2) Factors to consider.

a. The board may consider the following noninclusive list of factors when deciding whether to impose a deadline for achieving certification:

(1) An associate appraiser's access to the educational courses required for certification;

(2) Whether the associate appraiser had completed the college-level coursework required for certification in advance of registering as an associate appraiser or whether such coursework is in progress;

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

(3) The associate appraiser's access to supervisory appraisers, the volume of the supervisory appraiser's practice, and the type of certification the associate is training to achieve;

(4) The progress toward certification the associate appraiser had made prior to the imposition of new certification standards as of January 1, 2008; and

(5) Such additional factors as may be relevant to the board's determination as to whether the associate appraiser is making good-faith progress toward certification.

b. While the board's policy is to work with associate appraisers and their supervisors in a cooperative manner, an associate appraiser who does not demonstrate good-faith progress toward certification shall be subject to the imposition of deadlines as described in subrule 4.4(1).

4.4(3) Progress reports. In order to assess an associate appraiser's progress toward certification, the board may request periodic progress reports from the associate appraiser and from the associate appraiser's supervisory appraiser or appraisers. Progress reports on the steps an associate appraiser has taken toward certification and the associate appraiser's plans for completing certification prerequisites shall be submitted to the board within ten calendar days of the board's written request. The failure of an associate appraiser or supervisory appraiser to submit the requested progress report is a ground for disciplinary action.

193F—4.5(543D) Applying for certification as a certified residential appraiser or certified general appraiser. An associate appraiser may apply for certification as a certified residential real property appraiser by satisfying the requirements of 193F—Chapters 5 and 13, or as a certified general real property appraiser by satisfying the requirements of 193F—Chapters 6 and 14. The requirements for each type of certification include education, experience, examination and work product review.

These rules are intended to implement Iowa Code chapters 543D and 272C.

ITEM 3. Amend subrule 8.10(3) as follows:

8.10(3) Compensation. PRC members may receive per diem compensation equal to that received by board members for performing board duties as the board may provide by contract. Within established budget limitations, PRC members may be reimbursed for reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties. The PRC shall not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

ARC 6177B**REGENTS BOARD[681]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 262.9(1), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 11, "Board of Regents Organization and General Rules," Iowa Administrative Code.

The proposed amendment revises subrule 11.1(1) to reflect the current meeting schedule of the Board of Regents and how a vacancy in the office of president pro tem is filled.

Any interested person may make written comments on this amendment on or before September 18, 2007, addressed to Marcia Brunson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or E-mail at mbruns@iastate.edu.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

This amendment is intended to implement Iowa Code section 262.9(1).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 11.1(1) as follows:

11.1(1) President and president pro tem. ~~The president of the board of regents is elected by the board from its members at the April meeting in even-numbered years for a two-year term and until a successor is elected and qualified. Prior to May 1 in even-numbered years, a president shall be elected by the board of regents from its members for a two-year term to commence on May 1 in even-numbered years.~~ A president pro tem shall be elected at the same meeting at which the board president is elected. If a vacancy occurs in the office of board president, the president pro tem shall serve as president until such time as a new president is elected by the board. *If a vacancy occurs in the office of president pro tem, a successor shall be elected by the board of regents from its members as soon as practicable.*

ARC 6211B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

These amendments are proposed as a result of 2007 Iowa Acts, House Files 319 and 923, and 2007 Iowa Acts, Senate Files 70 and 578.

Item 1 amends rule 701—40.1(422) to reference new rules 701—40.70(422) through 701—40.72(422).

Item 2 amends rule 701—40.53(422) to state in subrule 40.53(3) that withdrawals made from the Iowa educational savings plan trust for purposes other than qualified education expenses must be included in net income to the extent a de-

REVENUE DEPARTMENT[701](cont'd)

duction was allowed on prior Iowa returns and to update the implementation clause.

Item 3 adopts new rule 701—40.71(422), which provides for an exclusion for individual income tax for certain victim compensation awards, and 701—40.72(422), which provides for an exclusion for individual income tax for a bonus received under the Vietnam Conflict veterans bonus program administered by the Iowa Department of Veterans Affairs.

Item 4 amends subrule 42.2(11) to include federal revisions made in 2006 to the research activities credit for individual income tax.

Item 5 amends rule 701—43.4(68A,422,456A) to clarify in subrule 43.4(5) the determination on what checkoffs will be included on an individual income tax return if the General Assembly on the same day enacts more checkoffs than there is space for inclusion on the individual income tax form and to update the implementation clause.

Item 6 amends subrules 52.7(3) and 52.7(5) to include federal revisions made in 2006 to the research activities credit for corporation income tax and updates the implementation clause for rule 701—52.7(422).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 1, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 18, 2007. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 21, 2007.

These amendments are intended to implement Iowa Code sections 422.10 and 422.33 as amended by 2007 Iowa Acts, House File 319; Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate Files 70 and 578 and House File 923; and Iowa Code section 422.12E as amended by 2007 Iowa Acts, House File 923.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 701—40.1(422) as follows:

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 40.2(422) to 40.9(422). The remaining provisions of this rule and 40.12(422) to 40.69 72(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

ITEM 2. Amend rule 701—40.53(422) as follows:

Amend subrule 40.53(3), introductory paragraph, as follows:

40.53(3) Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted. If a participant cancels a beneficiary's account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, *or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses*, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923.

ITEM 3. Amend 701—Chapter 40 by adopting the following **new** rules:

701—40.71(422) Exclusion for certain victim compensation payments. Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.

2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.

3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

701—40.72(422) Exclusion of Vietnam Conflict veterans bonus. For tax years beginning on or after January 1, 2007, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 578.

REVENUE DEPARTMENT[701](cont'd)

ITEM 4. Amend subrule **42.2(11)**, paragraph “b,” first unnumbered paragraph, as follows:

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 “b” of this subrule, 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, 2006 2007.

ITEM 5. Amend rule 701—43.4(68A,422,456A) as follows:

Amend subrule **43.4(5)**, last unnumbered paragraph, as follows:

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. *If the same session of the general assembly enacts more checkoffs on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections section 422.12D and section 422.12E as amended by 2007 Iowa Acts, House File 923 and 2006 Iowa Acts, chapters 1110, 1182 and 1158.

ITEM 6. Amend rule 701—52.7(422) as follows:

Amend subrule **52.7(3)**, paragraph “c,” as follows:

c. 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 “b” of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2006 2007.

Amend subrule **52.7(5)**, paragraph “c,” as follows:

c. 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 subrule 52.7(3) of this rule, such amounts are limited to research activities conducted within the quality jobs enterprise zone. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2006 2007.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 2007 Iowa Acts, House File 2461 319.

ARC 6209B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59 and 452A.76, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 67, “Administration,” and Chapter 68, “Motor Fuel And Undyed Special Fuel,” Iowa Administrative Code.

Items 1 through 10 and 12 amend rules to reflect the fact that the Department receives most all payments by electronic transmission and very few by check.

Item 11 amends rule 701—67.6(452A) to require that all licensees, except those with fewer than 5,000 gallons of product reflected on their return or report, file schedules which support their return by electronic transmission.

Item 13 amends subrule 68.2(2) to extend from 2007 to 2012 the existing formula providing for a variable tax each year based on the number of gallons of ethanol blended gasoline distributed in the preceding year.

Item 14 amends the implementation clause for rule 701—68.2(452A).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 1, 2007, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 18, 2007. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 21, 2007.

Items 1 through 10 and 12 are clarifying amendments. Item 12 is a procedural reporting change, and items 13 and 14

REVENUE DEPARTMENT[701](cont'd)

implement 2007 Iowa Acts, Senate File 601, sections 113 and 114.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **67.3(1)**, paragraph "e," as follows:

e. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 2. Amend subrule **67.3(2)**, paragraph "g," as follows:

g. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 3. Amend subrule **67.3(3)**, paragraph "g," as follows:

g. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 4. Amend subrule **67.3(4)**, paragraph "d," as follows:

d. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 5. Amend subrule **67.3(5)**, paragraph "c," as follows:

c. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 6. Amend subrule **67.3(7)**, paragraph "d," as follows:

d. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 7. Amend subrule **67.3(8)**, paragraph "d," as follows:

d. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 8. Amend subrule **67.3(9)**, paragraph "f," as follows:

f. ~~Canceled checks and check register~~ *Record of payment*.

ITEM 9. Amend subrule **67.3(11)**, paragraph "d," as follows:

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be designed so that the supporting documents, such as sales invoices and purchase invoices, are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source, such as invoice or ~~check~~ *payment*, to a financial statement or tax return or report; or the reverse, that is, to have an auditable system.)

ITEM 10. Amend subrule **67.3(12)**, paragraph "b," subparagraph (2), numbered paragraph "1," as follows:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for motor fuel tax purposes the retained records should contain the following minimal information: bills of

lading or manifests; invoices; sales and purchase records; returns, reports, and supporting schedules; ~~canceled checks and check register~~ *records of payments*; export schedules; exemption certificates; and delivery tickets. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

ITEM 11. Amend rule 701—67.6(452A), introductory paragraph, as follows:

701—67.6(452A) Timely filing of returns, reports, remittances, applications, or requests. The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information are not considered "filed" until such time as the taxpayer signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after July 1, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, terminals, blenders, and nonterminal storage facilities with at least 400,000 5,000 gallons of product on their return or report must also file the schedules which support the return or report by electronic transmission.

ITEM 12. Amend rule **701—67.24(452A)**, sixth unnumbered paragraph, as follows:

Failure to pay tax timely (including unhonored ~~checks~~ *payments*, failure to pay and late payments).

ITEM 13. Amend subrule 68.2(2) as follows:

68.2(2) Except as otherwise provided in this subrule, until June 30, 2007 2012, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

REVENUE DEPARTMENT[701](cont'd)

Ethanol %	Ethanol Tax	Gasoline Tax
00/50	19.0	20.0
50+/55	19.0	20.1
55+/60	19.0	20.3
60+/65	19.0	20.5
65+/70	19.0	20.7
70+/75	19.0	21.0
75+/80	19.3	20.8
80+/85	19.5	20.7
85+/90	19.7	20.4
90+/95	19.9	20.1
95+/100	20.0	20.0

Except as otherwise provided in this subrule, after June 30, 2007 2012, an excise tax of 20 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

ITEM 14. Amend rule 701—68.2(452A), implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.3 as amended by 2005 2007 Iowa Acts, House File 868 Senate File 601, section and sections 452A.8, and section 452A.85 as amended by 2005 Iowa Acts, Senate File 413.

ARC 6180B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 13, “Claims for Other Professional Services,” Iowa Administrative Code.

This proposed amendment conforms State Public Defender administrative rules with a directive issued by the State Court Administrator, effective September 1, 2007.

Interested persons may make written comments or suggestions on the proposed amendment on or before September 20, 2007. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515)281-7289, or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on September 20, 2007, at 9 a.m. in Conference Room 422 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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 State Public Defender and advise of specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as ARC 6181B. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapters 13B and 815.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

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 James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for August is 7.00%.

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 Iowa Banks and Iowa Savings Associations 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 August 9, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 1.85%
- 32-89 days Minimum 2.85%
- 90-179 days Minimum 3.20%
- 180-364 days Minimum 3.60%
- One year to 397 days Minimum 3.75%
- More than 397 days Minimum 3.90%

These are minimum rates only. The one year and less 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.

NOTICE—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:

September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%

December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%
April 1, 2007 — April 30, 2007	6.75%
May 1, 2007 — May 31, 2007	6.50%
June 1, 2007 — June 30, 2007	6.75%
July 1, 2007 — July 31, 2007	6.75%
August 1, 2007 — August 31, 2007	7.00%
September 1, 2007 — September 30, 2007	7.00%

ARC 6193B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments revise the Medicaid reimbursement methodology for hospital inpatient psychiatric services. Currently, Iowa Medicaid reimburses inpatient hospital psychiatric services based on a diagnosis-related group (DRG) methodology. Enhanced DRG weights are developed for DRGs associated with psychiatric treatment provided in a hospital with a certified psychiatric unit. The hospital-specific base rates and DRG weights are updated every three years and are inflated during non-rebasing years if the Iowa General Assembly approves funding. The last rebasing was effective October 1, 2005.

Provisions of 2006 Iowa Acts, chapter 1116, section 36, direct the Department to provide prospective reimbursement for hospital inpatient psychiatric services effective October 1, 2006, at the cost of the services, subject to Medicaid program upper payment limit rules and to the funding made available by amending the contract with the Medicaid managed care provider for mental health services. Amendment of the contract with the Medicaid managed care provider for mental health services provides sufficient funds to reimburse inpatient hospital psychiatric services on a per diem basis, based on costs, consistent with the reimbursement methodology in use for physical rehabilitation hospitals.

Therefore, these amendments provide that beginning with services rendered October 1, 2006, Iowa Medicaid will reimburse inpatient hospital psychiatric services provided in a certified psychiatric unit on a prospective per diem basis. The per diem rate effective October 1, 2006, will be calculated using the same cost report data that was used to calculate the hospital's base rate effective October 1, 2005, inflated by 3 percent. The per diem rate will be rebased every three years at the same time the hospital DRG rebasing and recalibration are completed. The next rebasing will be effective October 1, 2008. Annual inflation adjustments will be applied during non-rebasing years if the Iowa General Assembly approves funding.

These amendments do not provide for waivers in specified situations because they confer a benefit in the form of higher reimbursement rates and because all providers should be reimbursed on the same basis.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6013B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 8, 2007.

The Department finds that these amendments confer a benefit in the form of higher reimbursement rates. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1116, section 36.

These amendments became effective on August 10, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to 79.1(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 6013B**, IAB 7/4/07.

[Filed Emergency After Notice 8/9/07, effective 8/10/07]
[Published 8/29/07]

[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6185B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 99B.13 and 2007 Iowa Acts, Senate File 510, the Department of Inspections and Appeals hereby amends Chapter 104, "Amusement Devices," and Chapter 105, "Registered Amusement Devices," Iowa Administrative Code.

The amendments implement legislative changes by adding references to the Special Class "C" liquor license to the list of establishments permitted to have registered amusement devices and by further defining the revocation, suspension, denial, and appeal processes. The amendments reduce the frequency of reporting for registered amusement device owners and distributors from semiannually to annually. The amendments update citations and dates. The amendments also correct Chapter 104 by making consistent the intent that Chapter 104 apply to all amusement devices and by making the provisions consistent with the intent.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because 2007 Iowa Acts, Senate File 510, was effective July 1, 2007, and amendments are needed to conform to statutory changes.

Furthermore, the Department finds that these amendments confer a benefit by reducing the reporting frequency for registered amusement devices from semiannually to annually. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 6184B** to allow for public comment. This emergency filing permits the Department to implement the new provisions of law.

These amendments will become effective on September 1, 2007.

These amendments are intended to implement Iowa Code section 99B.10B as amended by 2007 Iowa Acts, Senate File 510.

No fiscal impact is anticipated.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend **481—Chapter 104**, title, as follows:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

CHAPTER 104
GENERAL PROVISIONS
FOR ALL AMUSEMENT DEVICES

ITEM 2. Amend rule 481—104.2(99B) as follows:

481—104.2(99B) Device restrictions. An ~~electrical and mechanical~~ amusement device, *except for an amusement device which shall be registered pursuant to 2007 Iowa Acts, Senate File 510, section 2(1)“f,”* may be owned, possessed, or offered for use by any person at any location, ~~which has a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license issued pursuant to Iowa Code chapter 123, but only if the amusement device complies~~ All amusement devices shall comply with all of the following:

1. The device must be electrical, which includes both electronic and video, or mechanical, or a combination of both.

2. The device shall not be designed or adapted to issue or pay coins or currency.

3. The device may be designed or adapted to award free games without additional consideration.

4. The device may be designed or adapted to award merchandise or tickets or tokens redeemable for merchandise not to exceed a retail value of more than \$5 per play or game.

5. The device may be designed or adapted to issue tickets or tokens, but not coins or currency. However, the device shall not be designed or adapted to issue tickets or tokens that may be used to play any device or game.

6. The device shall not have a “knock-off” switch to release either free games or credits awarded by the device. However, credits may be released by the insertion of coins, currency, or tokens to activate a new game. Free games may only be utilized for playing the device and may not be released in any other manner.

7. The device shall not be capable of being altered to enable a person using the device to increase or decrease the chances to win a game or other prize by paying more than is ordinarily required to play the game.

8. The device must be designed or adapted to accept only coins, currency, or tokens to play the game. However, the device shall not be designed or adapted to accept tokens that have been awarded as a prize.

9. *The device must be registered if it meets the registration requirements set forth in rule 481—104.5(99B).*

ITEM 3. Amend rule 481—104.4(99B) as follows:

481—104.4(99B) Prizes. Prizes may be awarded for use of an amusement device.

104.4(1) Merchandise with a retail value of no more than \$5 *per transaction* may be awarded.

104.4(2) One or more free games may be awarded by the device.

104.4(3) If the device is designed or adapted to issue tickets or tokens, the following apply:

a. Tickets or tokens awarded by an amusement device shall not be used to purchase or play a game.

b. Tickets or tokens shall not be redeemed for coins or currency.

c. Tickets or tokens may be redeemed for merchandise if the retail value of the merchandise does not exceed \$5 *per transaction*.

d. Tickets or tokens may be accumulated to purchase merchandise not greater than \$5 *per transaction* in retail value.

e. Tickets or tokens may be redeemed for food and beverage if the combined value of the food and beverage does not exceed \$5 *per transaction*.

f. If the entire amount of the ticket or token issued by the amusement device is not redeemed for merchandise, the balance shall not be redeemed for cash.

g. Tickets or tokens shall only be redeemed on the premises where the amusement device is located and only for merchandise sold in the normal course of business on the premises.

104.4(4) *Merchandise prizes shall not be repurchased.*

ITEM 4. Amend rule 481—104.5(99B) as follows:

481—104.5(99B) License not required Registration. A gambling license issued pursuant to Iowa Code chapter 99B is not required to own, possess, or offer an amusement device for use. *An amusement device must be registered if it meets the registration requirements set forth in 2007 Iowa Acts, Senate File 510, section 2(1)“f.” Additional licenses under Iowa Code chapter 99B are not required.*

ITEM 5. Amend rule 481—104.6(99B) as follows:

481—104.6(99B) Violations. Failure to comply with the limitations imposed on the use and possession of amusement devices in Iowa Code section 99B.10 *as amended by 2007 Iowa Acts, Senate File 510, section 2,* constitutes unlawful gambling, which may result in the following *consequences. Additional consequences apply for registered amusement devices pursuant to 481—Chapter 105 and Iowa Code section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2.*

1. Conviction for illegal gambling under the provisions of Iowa Code chapter 725.

2. ~~Suspension or revocation of a wine or beer permit or of a liquor license under the provisions of Iowa Code chapter 123.~~

3. ~~Forfeiture of property under the provisions of Iowa Code chapter 809.~~

4. ~~Violation of any laws pertaining to gambling may result in revocation of a registration.~~

5. ~~The department may revoke a registration or refuse to issue a registration for cause.~~

6. ~~A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B.~~

7. ~~A registration may be revoked upon the violation of any rule adopted by the department under this chapter.~~

8. ~~A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.~~

9. ~~The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.~~

10. ~~A person under the age of 21 shall not participate in the operation of an electrical and mechanical amusement device. A person who violates the provisions of Iowa Code section 99B.10C(1) commits a scheduled violation under Iowa Code section 805.8C(4).~~

11. ~~A person who owns or leases an electrical and mechanical amusement device and knowingly allows a person under the age of 21 to participate in the operation of an electrical and mechanical amusement device or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of 21 is guilty of a simple misdemeanor.~~

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 6. Amend rule **481—105.1(10A,99B)**, definitions of “amusement device registration availability,” “owner,” and “registered amusement device,” as follows:

“Amusement device registration availability” means a registration position which becomes available when a distributor or owner is going out of business, fails to renew a registration ~~within time frames established by the department by the renewal due date~~, has an electrical and mechanical device seized by law enforcement and the seizure is upheld through a forfeiture hearing, or when any other legal order has been issued which pertains to violations of Iowa Code chapter 99B, 123, or 123A. ~~The maximum number of registration positions available is 6,928.~~

“Owner” means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable electrical and mechanical amusement device required to be registered under ~~Iowa Code section 99B.10(4) 2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)“m” is allowed up to four machines at a single location.

“Registered amusement device” means an electrical and mechanical amusement device in operation subject to registration by the department pursuant to ~~Iowa Code section 99B.10(4) 2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word “change” as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

ITEM 7. Amend rule 481—105.2(99B) as follows:

481—105.2(99B) Registered amusement device restrictions. Each registered amusement device shall *only* be located on premises for which a Class “A,” Class “B,” Class “C,” *special Class “C,”* or Class “D” liquor control license or a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123.

105.2(1) The number of electrical and mechanical amusement devices registered by the department shall not exceed 6,928, the total number of devices registered by the department as of ~~the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.~~

105.2(2) The department shall not initially register an electrical and mechanical amusement device that is required to be registered pursuant to ~~Iowa Code section 99B.10(4) 2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ to an owner for a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 on or after ~~the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.~~

105.2(3) An owner or distributor at a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 shall not relocate an amusement device registered as provided in this chapter to a location other than the location of the device on ~~the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004,~~ and shall not transfer, assign, sell, or lease an amusement device as provided in this chapter to another person for which only a

Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 after ~~the effective date of 2004 Iowa Acts, chapter 1118, April 28, 2004.~~

EXAMPLE 1: An electrical and mechanical amusement device is registered with the department and is located at a convenience store that has a Class “C” beer permit.

1. If the amusement device needs to be repaired, the owner may repair it without losing the registration position or buying a new registration tag. *A repair constitutes any changes to a device as long as the type of game and the number of devices in a location is not changed.*

2. If the amusement device needs to be replaced because it is defective, it must be replaced with the same game in order to keep the registration position.

3. The amusement device cannot be moved from one location to another under a Class “B” or a Class “C” beer permit, even if the number of registered devices at a location does not change.

4. If a location with a Class “B” or a Class “C” beer permit had only one amusement device registered on April 28, 2004, the maximum number of devices allowed at that location shall be one.

105.2(4) ~~On or after July 1, 2005, an owner of an electrical and mechanical amusement device located on a premises that does not have a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license or a Class “B” or a Class “C” beer permit issued pursuant to Iowa Code chapter 123 shall not offer the amusement device for use by the public. However, the owner of an amusement device shall be permitted to sell the device to a distributor registered by the department or to a person authorized to offer the device to the public pursuant to Iowa Code section 99B.10(4) for which a Class “A,” Class “B,” Class “C,” or Class “D” liquor control license has been issued pursuant to Iowa Code chapter 123. The purchaser must obtain a new registration tag for the device by applying to the department for a registration availability. The purchaser may not place the device for use by the public until a registration tag is received for the device. The seller must notify the department within ten days of the change in ownership of the device and return the registration tag, if available, to the department.~~

105.2(5) ~~By July 1, 2004, each electrical and mechanical~~ Each registered amusement device at a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the amusement device a security mechanism which prevents a person from operating the amusement device by not allowing the acceptance of money until the machine is activated by the owner or owner’s designee. A sign shall be posted stating that a person must be 21 years of age or older to operate the registered amusement device.

EXAMPLE 2: A patron in a convenience store tries to put money in an amusement device, but the amusement device will not take the money. The patron approaches the person working behind the counter, who then asks the patron for an ID. If the patron is 21 years of age or older, the amusement device is activated, thereby allowing the patron to play the amusement device. ~~The owner or owner’s designee shall re-activate the security mechanism security mechanism shall be immediately reactivated~~ once the patron has finished playing the amusement device.

105.2(6) The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section 99B.10 *as amended by 2007 Iowa Acts, Senate File 510, section 2, and*

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rule 481—104.2(99B) *this chapter, 481—Chapter 104, and any other applicable laws or rules.*

105.2(7) The registered amusement device shall not be designed or adapted to facilitate gambling, nor shall the device be capable of playing poker, blackjack, or keno.

105.2(8) If the department, or the department's designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, manufacturer's representative, ~~or the distributor, or owner,~~ may be revoked.

105.2(9) A person owning or leasing an ~~electrical and mechanical~~ *a registered* amusement device shall not advertise or promote the availability of the amusement device to the public as anything other than an electrical and mechanical amusement device. Situations that constitute advertising and promoting include, but are not limited to, posted signs, newspaper/magazine advertisements, radio and television ~~ads~~ *advertisements*, word of mouth and Internet posting.

105.2(10) ~~A person who is interested in being included on a waiting list for an amusement device registration position may obtain an application form by telephone at (515)242-5264. A registration position request shall be processed by the department in the same order in which the application is received. Each person shall have no more than one registration position request on the waiting list at one time. After receipt of an amusement device registration position from the waiting list, the person may make an additional request for a registration position. If the person does not pay the appropriate registration fees within ten calendar days of the notification of registration availability, the person shall forfeit the position to the next applicant on the waiting list, and the person's name shall be moved to the bottom of the waiting list. If there is no amusement device registration availability, a person may be included on a waiting list for an amusement device registration position.~~

a. A person shall appear on the waiting list only once for a single registration position.

b. A person may be added to the waiting list by using the Web-based amusement device registration system located at <https://dia.iowa.gov/gmms/>.

c. A person may request to be added to the waiting list by calling or writing the department at Department of Inspections and Appeals, Social and Charitable Gaming Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; (515)281-6848.

d. The department shall maintain the waiting list in chronological order with the person requesting addition to the waiting list first being first on the list.

e. When a registration position becomes available, the department shall notify the first person on the waiting list of the amusement device registration availability. If multiple positions become available, the department may notify as many persons on the waiting list as there are available positions.

f. The department shall notify the person on the waiting list of the amusement device registration availability by mail or by E-mail if the person has provided an E-mail address.

g. The person on the waiting list shall have ten days from the time the notification was sent to submit a registered amusement device application and the fee.

h. If the person does not submit the registration application, fee and proof of purchase within ten days, the person shall forfeit the position on the waiting list and shall be removed from the waiting list.

105.2(11) ~~A new~~ *An initial* amusement device registration shall only be allowed at a location that has a Class "A," Class "B," Class "C," *special Class "C,"* or Class "D" liquor control license issued pursuant to Iowa Code chapter 123.

EXAMPLE 3: An amusement device is located in a bar that has the appropriate liquor license. On April 28, 2004, this location had only one amusement device. An additional amusement device may be added to this location.

1. If the amusement device needs to be repaired, it may be repaired without the loss of the device's registration position.

2. If the amusement device is defective and needs to be replaced, it can be replaced with the same game under the original registration without the incurring of additional charges.

3. If the amusement device is replaced with a new amusement device that has a different game, ~~a new registration tag shall be purchased from the department before the device is moved to the premises, the process for initial registration shall be followed pursuant to this chapter and Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510. The replacement of the amusement device creates an amusement device registration availability, and the position will be offered to the next person on the waiting list pursuant to this rule.~~

105.2(12) If a person purchases an amusement device that is registered with the department, the registration tag, if available, must be removed from the purchased amusement device and returned to the department. The department shall be notified in writing within ten calendar days of the change in ownership of any amusement device. The purchased device shall be removed from the inventory of the original owner, thus creating a registration position on the waiting list. The purchaser must apply for a registration position on the waiting list for the device.

105.2(13) An amusement device that is registered with the department and located in a warehouse may be placed in a location that has a Class "A," Class "B," Class "C," *special Class "C,"* or Class "D" liquor license issued pursuant to Iowa Code chapter 123. Such a device may also be used as a replacement device.

105.2(14) The registration application for all new amusement devices must be accompanied by the receipt, invoice, or bill of sale containing the seller's name, company name, and address ~~and~~, transaction date, *and motherboard serial number.*

ITEM 8. Amend subrule 105.5(2) as follows:

105.5(2) Registration forms are available from the Department of Inspections and Appeals, ~~Amusement Devices, Social and Charitable Gambling Unit,~~ Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, or by telephone at (515)242-5462 (515)281-6848.

ITEM 9. Amend subrule 105.6(4) as follows:

105.6(4) An organization that meets the requirements of Iowa Code section 99B.7(1)"m" shall not permit or offer for use more than four registered amusement devices at any single premises. *Organizations that meet the Iowa Code section 99B.7(1)"m" requirements under Section 501(c) of the Internal Revenue Code shall provide a copy of the exemption approval letter from the Internal Revenue Service.* All other persons shall not permit or offer for use more than two registered amusement devices at any single premises. The single premises where the registered amusement device(s) is located shall have a Class "A," Class "B," Class "C," *special Class "C,"* or Class "D" liquor control license or a Class "B"

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or a Class "C" beer permit issued pursuant to Iowa Code chapter 123. *New registrations shall not be issued to devices to be located at premises with Class "B" or Class "C" beer permits.*

ITEM 10. Amend subrule 105.6(5) as follows:

105.6(5) Each electrical and mechanical amusement device required to be registered pursuant to Iowa Code section 99B.10 shall, ~~by January 1, 2006,~~ include on the amusement device a counting mechanism.

a. The department of inspections and appeals and the department of public safety shall ~~upon request notify the distributor, owner, or qualified organization in advance~~ to have access to the information provided by the counting mechanism.

b. The counting mechanism shall be at least six digits in length and shall cumulatively count the total amounts inserted in the device during game play. If the mechanism being used tallies in dollars and cents, at least six digits must be used for the dollar amount. The counting mechanism ~~must~~ *shall* not be able to be reset.

c. The counting mechanism shall be equipped with a battery backup, or an equivalent, and shall be capable of accurately maintaining all required information for 30 days after power is discontinued from the device.

ITEM 11. Rescind rule 481—105.9(10A,99B) and adopt the following new rule in lieu thereof:

481—105.9(10A,99B,82GA,SF510) Procedure for denial, revocation, or suspension of a registration.

105.9(1) The department may revoke, suspend, or deny a registration issued pursuant to Iowa Code section 99B.10A as amended by 2007 Iowa Acts, Senate File 510, sections 3 and 4, for cause following 30 days' written notice delivered by certified mail, return receipt requested, or by personal service and an opportunity for hearing pursuant to 481—105.8(10A,99B).

105.9(2) If the registrant has not requested a hearing within the prescribed time period, the department may affirm, modify or set aside the department's proposed action in the department's final written decision.

105.9(3) The department may suspend a registration prior to a hearing if the director determines that the public integrity of the registered activity is compromised or that there is a risk to public health, safety, or welfare.

105.9(4) The department may rescind the notice of revocation, suspension, or denial at any point prior to hearing when the department becomes satisfied that the reasons for revocation, suspension, or denial have been or will be removed.

105.9(5) The department shall send by certified mail, return receipt requested, or shall serve personally upon the applicant or registrant a copy of the department's final decision.

105.9(6) The department shall revoke a registration for ten years if a registrant awards cash prizes in violation of 2007 Iowa Acts, Senate File 510, section 2(1)"b."

105.9(7) If the department finds cause for denial of a registration, the applicant shall not reapply for registration of an amusement device for two years.

105.9(8) If the department finds cause for revocation or suspension, the department shall suspend or revoke the registration for a period not to exceed two years.

105.9(9) If the department's final action revokes a registration for paying out cash prizes, the department shall send written notification of the revocation to the alcoholic beverage

division of the department of commerce. The notification may be sent electronically.

105.9(10) In addition to the suspension or revocation, a registrant that allows an individual under the age of 21 to operate an electrical or mechanical amusement device may also be fined for a scheduled violation pursuant to Iowa Code sections 805.8C(4) and 805.8C(5).

ITEM 12. Amend rule 481—105.10(80GA,ch147) as follows:

481—105.10(80GA,ch147 99B) Reports. Each distributor, owner, or qualified organization that owns electrical and mechanical amusement devices shall ~~semiannually~~ *annually* submit a report of the volume of business activity for each device by location and a cumulative total for all locations.

105.10(1) The report forms are available from the Department of Inspections and Appeals, Amusement Devices Social and Charitable Gambling Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The report form shall contain all information required by the department of inspections and appeals to accurately determine the volume of business activity for each device. Information collected by the department as part of the reporting process shall be considered confidential pursuant to 481—paragraph 5.13(1)"c."

105.10(2) Distributors, owners, and qualified organizations may also complete the report form electronically at the following Web site: <https://www.egov.state.ia.us/gmms/> <https://dia.iowa.gov/gmms/>.

105.10(3) The reports are due ~~30 calendar days after the end of each reporting period July 31. The end of the first reporting period shall be December 31, and the end of the second reporting period shall be June 30.~~ When the due date falls on Saturday, Sunday or a legal holiday, the report is due on the next business day. *The reporting period begins July 1 and ends the following June 30.*

105.10(4) Records pertaining to the volume of business of the amusement device shall be maintained for a period of five years and shall be made available upon request to representatives of the department or the department's designee.

ITEM 13. Adopt new rule 481—105.11(99B) as follows:

481—105.11(99B) Criteria for approval or denial of a registration.

105.11(1) The department shall consider the following factors in determining whether to approve or deny an application for registration of an amusement device, a manufacturer, a distributor, an owner, or a manufacturer's representative:

a. The applicant and responsible person's history of compliance with Iowa Code sections 99B.10, 99B.10A and 99B.10B as amended by 2007 Iowa Acts, Senate File 510, and with other gambling laws and rules.

b. Other factors the department deems appropriate.

105.11(2) The department shall deny a registration application if:

a. The location of the device when placed in operation is not a premises with a Class "A," Class "B," Class "C," special Class "C," or Class "D" liquor control license.

b. The applicant owes back taxes or fees to the state of Iowa.

c. An amusement device registration availability position is not available.

d. For any other reason, the department deems denial of the registration appropriate.

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105.11(3) The period for refusal to issue a registration shall not exceed two years.

ITEM 14. Adopt **new** rule 481—105.12(10A,99B) as follows:

481—105.12(10A,99B) Suspension or revocation of a registration. If a registrant or the person responsible for the amusement device violates the law, including Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510, 481—Chapter 104, this chapter, or any other laws or administrative rules, the registrant's registration may be suspended or revoked.

Examples of violations of law or rules include: awarding cash prizes, redeeming tokens or tickets for more than \$5 of merchandise in a transaction, allowing a person less than 21 years of age to use a registered amusement device, moving an amusement device without updating its registration to the new location, allowing an amusement device in a location without the appropriate liquor control license, and failing to file an annual report.

[Filed Emergency 8/8/07, effective 9/1/07]
[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6197B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules set regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Season dates are adjusted to comply with federal law and to ensure that seasons open on a weekend.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5800B**. A public hearing was held on April 19, 2007. Two comments were received asking that waterfowl seasons run as late in the year as possible. Two comments asked that landowners be allowed to hunt in the closed goose zone in Jackson County. The following changes have been made to the Notice of Intended Action: In paragraph 91.4(2)"i," changes have been made to goose zone boundaries for safety concerns, and a change has been made to subrule 91.5(1) to allow qualifying landowners to hunt geese in the closed zone in Jackson County. Also, due to record high estimates of fall numbers of canvasbacks, the bag limit for canvasbacks was changed from one to two in subrule 91.1(4).

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on August 10, 2007, as they confer a benefit to the public by ensuring that updated rules are in place before the opening of the goose and duck hunting seasons.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments became effective August 10, 2007. The following amendments are adopted.

ITEM 1. Amend subrules 91.1(2), 91.1(3) and 91.1(4) as follows:

91.1(2) Season dates - north zone. For all ducks: September ~~23~~ 22 through September ~~27~~ 26 and October ~~14~~ 13 through December ~~7~~ 6.

91.1(3) Season dates - south zone. For all ducks: September ~~23~~ 22 through September ~~27~~ 26 and October ~~21~~ 20 through December ~~14~~ 13.

91.1(4) Bag limit. The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 2 wood ducks, 1 pintail, 2 scaup, 3 mottled ducks, ~~1 canvasback~~ 2 *canvasbacks*, and 2 redheads. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

ITEM 2. Amend subrules 91.3(2) and 91.3(3) as follows:

91.3(2) Season dates - north zone. Canada geese and brant: September ~~30~~ 29 through December ~~10~~ 9 and December ~~16~~ 15 through January ~~2, 2007~~ 1, 2008. White-fronted geese: September ~~30~~ 29 through December ~~10~~ 9. Light geese (white and blue-phase snow geese and Ross' geese): September ~~30~~ 29 through January ~~14, 2007~~ 13, 2008.

91.3(3) Season dates - south zone. Canada geese and brant: September ~~30~~ 29 through October ~~8~~ 7 and October ~~21~~ 20 through January ~~9, 2007~~ 8, 2008. White-fronted geese: September ~~30~~ 29 through December ~~10~~ 9. Light geese (white and blue-phase snow geese and Ross' geese): September ~~30~~ 29 through January ~~14, 2007~~ 13, 2008.

ITEM 3. Amend subrule 91.3(7), introductory paragraph and paragraph "e," as follows:

91.3(7) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~15, 2007~~ 14, 2008, through April 15, ~~2007~~ 2008.

e. Other regulations. ~~The Methods of take approved by the U.S. Fish and Wildlife Service may develop special regulations concerning the for hunting of light geese during the conservation order season shall be permitted.~~

ITEM 4. Amend subrule **91.3(8)**, paragraph "b," as follows:

b. Season dates. September ~~9~~ 8 and September ~~10~~ 9.

ITEM 5. Amend subrule **91.3(9)**, paragraph "b," as follows:

b. Bag limit. Daily bag limit is ~~3~~ 5 Canada geese.

ITEM 6. Amend subrule **91.3(10)**, paragraph "b," as follows:

b. Bag limit. Daily bag limit is ~~3~~ 5 Canada geese.

ITEM 7. Amend subrule **91.4(2)**, paragraphs "c," "i," "m," "n," "o," and "p," as follows:

c. Area three. A portion of Dickinson County bounded as follows: ~~Beginning at a point four and one-half miles west of the east junction of Highways 9 and 71; thence north along a county road to its junction with Dickinson County Road A15; thence generally north about three miles along A15 to its junction with Dickinson County Road M56; thence east along A15 about one and one-half miles; thence north along county roads to the Iowa-Minnesota state line; thence west along the state line seven and one-half miles; thence south along Highway 86 five miles to Highway 9; thence east along Highways 9 and 71 to the point of beginning. Beginning at the junction of State Highways 9 and 86; thence north along~~

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State Highway 86 (including the right-of-way) to the Iowa-Minnesota state line; thence east along the Iowa-Minnesota state line approximately 3.5 miles (excluding any road right-of-ways) to 240th Avenue (also known as West Lake Shore Drive in Orleans or Peoria Avenue in Spirit Lake); thence south along 240th Avenue (including the right-of-way) to State Highway 9; thence west along State Highway 9 (including the right-of-way) to the point of beginning.

i. Area nine. Portions of Monona and Woodbury Counties bounded as follows: Beginning at the Iowa-Nebraska state line along the Missouri River in Monona County in section 13, township 84 north, range 47 west; proceeding east approximately 3 miles along 185th Street to Cashew Avenue (including the right-of-way and all other road right-of-ways subsequently identified in this description); For the portion in Monona County, beginning at the junction of County Road K42 and 120th Street; thence south along County Road K42 (including the right-of-way and all other road right-of-ways identified in this description) approximately 4 miles; thence south on Berry Avenue approximately 1 mile to 170th Street; thence east along 170th Street to Cashew Avenue; thence south along Cashew Avenue to 200th Street; thence east along 200th Street to County Road K42; thence south and east along County Road K42 to Cherry Avenue; thence south along Cherry Avenue to 243rd Street; thence east along 243rd Street to Cypress Avenue; thence south along Cypress Avenue to 245th Street; thence east and northeast along 245th Street to Elm Avenue; thence south along Elm Avenue to 250th Street; thence east along 250th Street to Filbert Avenue; thence south north and northwest along Filbert Avenue to 260th Street State Highway 175; thence east along 260th Street State Highway 175 to County Road K45; thence north and northwest approximately 17 1/2 miles along Monona County Road K45 to the junction with State Highway 970 in Woodbury County 120th Street; thence west along 120th Street to the point of beginning; thence continuing northwest along State Highway 970 (otherwise known as Woodbury County Road K45) approximately 8 miles and for the portion in Woodbury County, beginning at the junction of County Road K45 and State Highway 141; thence northwest along County Road K45 approximately 6 miles to the intersection with Woodbury County Road K25; thence west approximately 3 miles along Woodbury County Road K25 to the intersection with Port Neal Road; thence continuing on along the same westerly line approximately 1 mile on the north border of section 6, township 86 north, range 47 west, to the Iowa-Nebraska state line along the Missouri River; thence southerly along the state line approximately 17 miles to the point of beginning 8 miles to a point where 340th Street meets the Iowa-Nebraska state line on the Missouri River; thence east to and along 340th Street approximately 5.5 miles to County Road K42; thence north and east along County Road K42 approximately 2.5 miles to the point of beginning.

m. Area thirteen. Portions of Van Buren and Davis Counties bounded as follows: Beginning at the junction of State Highway 16 Hawk Drive and State Highway 98 in Van Buren County; thence east and south along State Highway 16 Hawk Drive (including the right-of-way and all other road right-of-ways identified in this description) to Lark Avenue; thence north along Lark Avenue to 170th Street; thence east along 170th Street to State Highway 1 in Van Buren County; thence south along State Highway 1 (including the right-of-way) to State Highway 2; thence west along State Highway 2 (including the right-of-way) to County Road V42 in Davis County V56; thence north along County Road V42 (including the right-of-way) V56 to County Road J40 in Davis County; thence east and south along County Road J40 (in-

cluding the right-of-way) to County Road V64 in Van Buren County; thence north along County Road V64 (including the right-of-way) to State Highway 98 in Van Buren County; thence north along State Highway 98 (including the right-of-way) to the point of beginning.

n. Area fourteen. Portions of Bremer County bounded as follows: Beginning at the intersection of County Road V56 and 140th Street (also named State Highway 93); thence south along County Road V56 (including the right-of-way and all other road right-of-ways identified in this description) to State Highway 3; thence west along State Highway 3 (including the right-of-way) to County Road V43; thence north along County Road V43 (including the right-of-way) to County Road C33; thence west along County Road C33 (including the right-of-way) to Navaho Avenue; thence north along Navaho Avenue (including the right-of-way) to State Highway 93; thence west along State Highway 93 (including the right-of-way) to U.S. Highway 63; thence north 7 miles along U.S. Highway 63 (including the right-of-way) to the Bremer-Chickasaw County line; thence east 3 miles along the Bremer-Chickasaw County line road (including the right-of-way) to Oakland Avenue; thence south along Oakland Avenue (including the right-of-way) to 120th Street; thence east along 120th Street (including the right-of-way) to Piedmont Avenue; thence south along Piedmont Avenue (including the right-of-way) to 140th Street; thence east along 140th Street, which becomes State Highway 93, to the point of beginning.

o. Area fifteen. Portions of Butler County bounded as follows: Beginning at the junction of County Road T16 and 230th Street; thence south 5 miles on County Road T16 (including the right-of-way) to 280th Street; thence east 3 miles along 280th Street (including the right-of-way) to Grand Avenue; thence south on Grand Avenue (including the right-of-way) to County Road C55 (also named 290th Street); thence east 3 miles on County Road C55 (including the right-of-way) to Jay Avenue; thence north along Jay Avenue (including the right-of-way) to 280th Street; thence east 3 miles on 280th Street (including the right-of-way) to State Highway 14; thence north 6 miles on State Highway 14 (including the right-of-way) to 230th Street; thence west on 230th Street (including the right-of-way) to Jackson Avenue; thence north on Jackson Avenue (including the right-of-way) to 220th Street; thence west on 220th Street (including the right-of-way) to County Road T25 (also named Hickory Avenue); thence south 0.5 mile on County Road T25 (including the right-of-way) to 225th Street; thence west on 225th Street (including the right-of-way) to Fir Avenue; thence south 0.5 miles on Fir Avenue (including the right-of-way) to 230th Street; thence west on 230th Street (including the right-of-way) to the point of beginning. Beginning at the junction of State Highway 14 and 245th Street; thence south along State Highway 14 (including the right-of-way and all other road right-of-ways identified in this description) to 280th Street; thence west along 280th Street for 3 miles; continuing on a similar westerly line along the south borders of sections 31, 32, and 33, township 91 north, range 17 west; thence west along 280th Street for 1.5 miles to Evergreen Avenue; thence north along Evergreen Avenue to 270th Street; thence east along 270th Street to Forest Avenue; thence north along Forest Avenue to 230th Street; thence east along 230th Street to Fir Avenue; thence north along Fir Avenue to 225th Street; thence east along 225th Street to County Road T25 (also named Hickory Avenue); thence south along County Road T25 to 230th Street; thence east along 230th Street to Jackson Avenue; thence south along Jackson Avenue to 240th Street; thence east along 240th Street to Jackson Avenue;

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thence south on Jackson Avenue to 245th Street; thence east along 245th Street to the point of beginning.

p. Area sixteen. A portion of Union County bounded as follows: Beginning at the intersection of U.S. Highway 469 and Three Mile Creek Drive 34 and County Road P53 near Afton; thence west along U.S. Highway 34 (including the right-of-way *and all other road right-of-ways identified in this description*) approximately 2.5 miles to Union County Road P43 (also named Twelve Mile Lake Road); thence north along Union County Road P43 (including the right-of-way) Twelve Mile Lake Road approximately 5 miles to Union County Road H17; thence north and east along Union County Road H17 (including the right-of-way) approximately 6 miles to Quail Avenue to County Road P53; thence south along Quail Avenue (including the right-of-way) to Three Mile Creek Drive; thence south along Three Mile Creek Drive County Road P53 to the point of beginning.

ITEM 8. Amend subrule 91.5(1), catchwords, as follows:

91.5(1) Ruthven, Kettleson-Hogsback, Ingham Lake and Rice Lake Clay County, Dickinson County, Emmet County, Jackson County, and Butler County closed areas.

ITEM 9. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October 7 and 8, 2006 and 7, 2007, in the north duck hunting zone and October 7 and 8, 2006 and 7, 2007, in the south duck hunting zone. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed Emergency After Notice 8/10/07, effective 8/10/07]
[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6171B

PHARMACY BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 124.201, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment classifies the substance lisdexamfetamine, a new stimulant drug product, as a Schedule II controlled substance subject to the Iowa Controlled Substances Act. The federal Drug Enforcement Administration classified lisdexamfetamine as a Schedule II stimulant subject to the federal Controlled Substances Act effective June 4, 2007. The Board's amendment ensures conforming control of lisdexamfetamine under Iowa law.

This amendment does not include any provisions for waiver or variance because there are no discretionary provisions for which the Board may consider waiver or variance.

The amendment was approved during the July 31, 2007, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(2) that notice and public participation are unnecessary and impracticable due to the immediate need for this amendment in order to ensure compliance with and conformity with federal law.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on August 2, 2007. This amendment confers a benefit by eliminating any confusion regarding inconsistencies between Iowa and federal law regarding the control of lisdexamfetamine.

This amendment became effective August 2, 2007.

This amendment is intended to implement Iowa Code section 124.201.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Rescind rule 657—10.38(124) and adopt the following **new** rule in lieu thereof:

657—10.38(124) Temporary designation of controlled substances. Amend Iowa Code section 124.206, subsection 4, by adding the following new paragraph:

e. Lisdexamfetamine, its salts, isomers, and salts of its isomers.

[Filed Emergency 8/2/07, effective 8/2/07]
[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6181B

STATE PUBLIC DEFENDER[493]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

This amendment conforms State Public Defender administrative rules with a directive issued by the State Court Administrator, effective September 1, 2007.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. The amendment is necessary so that administrative rules are in alignment with the above-referenced directive by September 1, 2007.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that this amendment should be made effective September 1, 2007, because the amendment confers a benefit on the public by standardizing the process by which foreign language interpreter claims are paid in indigent defense cases.

This amendment is also published herein under Notice of Intended Action as **ARC 6180B** to allow for public comment.

STATE PUBLIC DEFENDER[493](cont'd)

This amendment is intended to implement Iowa Code chapters 13B and 815.

This amendment will become effective September 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule 13.2(2) as follows:

13.2(2) Claims for foreign language interpreters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters *in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation, effective September 1, 2007*, if the following conditions are met:

a. The interpreter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, *E-mail address, if any*, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in

granting the application for the appointment of the interpreter, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

~~1. Claims for mileage reimbursement will be approved at the maximum rate of 30 cents per mile.~~

~~2. Claims for travel time will be denied, unless approved in advance by the state public defender.~~

~~3. Actual parking costs are reimburseable. Receipts for parking expenses are required for actual costs of \$2 or more per day.~~

~~4-2. Claims for translating documents will be paid by the hour, not by the word or line.~~

~~5. A minimum charge of up to one hour may be charged for services. Duplications of the same minimum charge are not permitted. If services are provided in more than one case during the minimum period, the minimum charge will be apportioned among the cases involved.~~

(4) A court order setting the maximum dollar amount of the claim.

d. Claims for services completed before September 1, 2007, are timely if submitted to the state public defender for payment before October 15, 2007. Claims for services completed after August 31, 2007, are timely if submitted to the state public defender for payment within 45 days of completion of services in the case.

e. Claims which are not timely will be denied.

[Filed Emergency 8/6/07, effective 9/1/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6187B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105(11) and 455B.173, the Environmental Protection Commission hereby amends Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The adopted amendments primarily affect the Livestock Water Quality Facilities program, which, as part of the Clean Water State Revolving Fund, provides low-interest financing to eligible animal feeding operations for manure management structures, equipment, and plans.

A new facility design that appears to be environmentally beneficial is the bedded confinement building, or deep-bedded building. Existing administrative rules for the Livestock Water Quality Facilities program did not allow for financing of these structures. The Department of Natural Resources will allow for financing of these types of roofed facilities under certain conditions, as outlined in the amendments.

In addition, the amendments include the following items:

- Restating the purpose of the program to include pollution prevention;
- Updating information about the federal definition of a Concentrated Animal Feeding Operation in both the Livestock Water Quality Facilities program and the Local Water Protection Projects program;
- Clarifying the descriptions of eligible practices;
- Referencing the requirements for manure management plans found in 567—Chapter 65;
- Updating the requirements for project approval and removing the option of departmental review of plans and specifications;
- Allowing for financing of updates to manure management, nutrient management, or comprehensive nutrient management plans as part of project financing;
- Adding a requirement for recipient record keeping; and
- Adding language allowing for the establishment of loan fees in the Intended Use Plan.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 2007, as **ARC 5901B**. A public hearing was held June 14, 2007. Written comments were due by June 21, 2007. The following changes were made to the rules as a result of comments received:

- Amended the Notes in 93.5(1)“c” and 93.6(1)“c” to clarify that concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit are not eligible under federal regulations.
- Amended language in 93.5(1)“d” to clarify under what conditions the purchase of land is eligible.
- Amended language in 93.5(1)“d” to clarify project eligibility.
- Amended language in 93.5(1)“d” to include financing for roofed manure storage facilities in conjunction with confinement facilities and to use the same terminology as is used in 567—Chapter 65.
- Amended language in 93.5(3) to clarify that applicants should describe the facilities, equipment, or preparation of manure management, nutrient management, or comprehensive nutrient management plans to be financed.

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105, 455B.291, and 455B.297.

These amendments shall become effective October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule 93.3(2) as follows:

93.3(2) Livestock water quality facilities set-aside. The purpose of the set-aside is to assist owners of existing animal feeding operations to meet state and federal requirements *or to prevent, minimize or eliminate water pollution*. Projects may be selected using the rating and ranking process in 567—Chapter 91.

ITEM 2. Amend subrule 93.5(1) as follows:

93.5(1) Livestock water quality facilities assistance. Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions or in other manners as specified in an agreement with a pass-through loan recipient. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department *or to prevent, minimize or eliminate water pollution*.

c. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of August 2005 February 2007 do not allow assistance for concentrated animal feeding operations *required to have a National Pollutant Discharge Elimination System permit* or assistance for animal feeding operations that will become concentrated animal feeding operations *required to have a National Pollutant Discharge Elimination System permit* as a result of the project.

Loans will be made only to livestock producers that are operators of record and have legal control of the property containing the animal feeding operation for the duration of the loan.

d. Project eligibility. The water pollution control facilities considered eligible for assistance include: lagoons~~;~~ waste treatment *facilities* and equipment, including but not limited to land ~~used as part of the waste treatment system, on which waste facilities will be constructed;~~ waste storage or holding structures~~;~~ ~~composters,~~ *composting facilities and equipment;* pipes, pumps, and agitation equipment, *used to move and manage manure;* fencing around lagoons~~;~~ ~~and other waste storage structures;~~ water systems used to flush water in waste treatment systems~~;~~ irrigation systems, *used for applying liquid wastes to the land;* tank wagons, manure spreaders, *tractor blades used for scraping waste and other waste collection and processing equipment (including without limitation tank trucks, loaders, skid loaders, and waste irrigation equipment);* ~~recycle pumps,~~ portions of feeding floors and loafing areas used for waste collection~~;~~ ~~and storage;~~ ~~tractor blades used for scraping waste,~~ vegetative filters, filter strips, water and sediment control basins, contour buffer strips, ~~and diversions;~~ *used to reduce pollution potential from livestock facilities or land disposal areas;* fencing and

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cross fencing along with any associated watering facilities, used as part of managed grazing systems; and other similar structures, equipment or water pollution abatement activities as may be found in approved manure management plans that fit the requirements of 567—65.17(459), in nutrient management plans, or in comprehensive nutrient management plans as defined by the USDA Natural Resources Conservation Service, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog-confinement facility (such as a slated slatted floor) shall be excluded. Assistance for development of manure management plans, nutrient management plans, and comprehensive nutrient management plans, as defined by the USDA Natural Resource Conservation Service, is eligible. Assistance may be available for the above-mentioned practices when a replacement animal feeding operation which operation will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake in order to prevent a potential water quality impairment, mitigate a documented impairment, or eliminate a potential or documented pollutant source from a watershed. Assistance may be available for confinement feeding operation structures, including roofed manure storage facilities, in which manure is stored exclusively in a dry form if:

(1) An existing open feedlot operation is completely replaced by confinement feeding operation structures which store manure exclusively in dry form; or

(2) An existing animal feeding operation is expanded by the addition of confinement feeding operation structures which store manure exclusively in dry form, and manure controls meeting the requirements of 567—Chapter 65 are installed or documented for the existing animal feeding operation.

ITEM 3. Amend subrule 93.5(3) as follows:

93.5(3) State review and approval. Prior to receiving assistance, a livestock producer shall submit to the department complete plans and specifications of the facilities to be constructed and a complete list of all waste or nutrient management documents to be developed. The department will review the plans and specifications for compliance with design standards. Once the plans and specifications are determined to meet the design requirements and manure and waste control needs of the animal feeding operation, the department will issue a letter of project approval or construction permit (whichever is applicable) to the livestock producer. Other forms a description of facilities, equipment or preparation or updating of manure management, nutrient management or comprehensive nutrient management plans to be financed and documentation of project approval will be accepted as determined by the department and detailed on the project application.

ITEM 4. Amend subrule 93.5(5) as follows:

93.5(5) Manure management plan required. The livestock producer shall have a manure management plan approved by the department that fits the requirements of 567—65.17(459), a nutrient management plan, or a comprehensive nutrient management plan as defined by the USDA Natural Resources Conservation Service to be eligible for the loan or, as part of the loan, develop a manure management plan, nutrient management plan or comprehensive nutrient management plan.

ITEM 5. Amend subrule 93.5(6) as follows:

93.5(6) Eligible costs. All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a manure management plan, nutrient management plan or comprehensive nutrient management plan are eligible costs. Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.

ITEM 6. Amend subrule 93.5(7) as follows:

93.5(7) Ineligible costs. Costs for development of new animal feeding operations are not eligible costs. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake. Costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance or updating a comprehensive nutrient management plan are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost.

ITEM 7. Renumber subrules **93.5(8)** and **93.5(9)** as **93.5(9)** and **93.5(10)** and adopt **new** subrule 93.5(8) as follows:

93.5(8) Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

ITEM 8. Amend renumbered subrule 93.5(10) as follows:

93.5(10) Interest rate and fees. The loan interest rate and loan fees shall be established annually in the HUP clean water state revolving fund intended use plan. The loan interest rate is not to exceed the prevalent interest rate and. The establishment of loan fees will take into account the administration cost of the livestock water quality facilities set-aside.

ITEM 9. Amend subrule **93.6(1)**, paragraph “c,” as follows:

c. Applicant eligibility. Assistance is available to any person who owns land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record of the property where the local water protection projects are to be installed. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of August 2005 February 2007 do not allow assistance for concentrated ani-

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mal feeding operations *required to have a National Pollutant Discharge Elimination System permit* or assistance for animal feeding operations that will become concentrated animal feeding operations *required to have a National Pollutant Discharge Elimination System permit* as a result of the project.

[Filed 8/8/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6210B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)"c," the Homeland Security and Emergency Management Division hereby amends Chapter 7, "Local Emergency Management," Iowa Administrative Code.

This amendment to subrule 7.4(4) updates continuing education requirements for local emergency management coordinators. The amendment changes three course titles and eliminates one course, replacing it with another independent study course. The amendment was developed in consultation with the Iowa Emergency Management Association.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5975B**. Additionally, a public hearing was held on July 13, 2007, at Camp Dodge in Johnston, Iowa. No comments were made by the public regarding the proposed amendment. One change to the Noticed subrule has been made because FEMA no longer offers the course. In subparagraph 7.4(4)"a"(10), the Professional in Emergency Management IS-513 course has been replaced by the Emergency Management Program Development course.

This amendment is intended to implement Iowa Code chapter 29C.

This amendment will become effective on October 3, 2007.

The following amendment is adopted.

Amend subrule 7.4(4) as follows:

7.4(4) Emergency management coordinator continuing education requirements. Each local coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the local or joint commission.

a. ~~By July 1, 2002, or within~~ *Within five years of appointment as an emergency management coordinator, whichever is later, completion of the person must complete the following ten independent study courses as prescribed by the Federal Emergency Management Agency:*

(1) Citizens Guide to Disaster Assistance IS-7.

(2) ~~Emergency Operations Center Role in Community Preparedness Response and Recovery Operations~~ *The EOC's Role in Community Preparedness, Response and Recovery Activities IS-275.*

(3) ~~Emergency Program Manager: An Orientation to the Position IS-1.~~

(4) ~~Emergency Preparedness U.S.A. Are You Ready? An In-depth Guide to Citizen Preparedness IS-22.~~

(5) ~~Hazardous Materials: A Citizen's Guide An Introduction to Hazardous Materials IS-5A.~~

(6) ~~An Orientation to Community Disaster Exercise Introduction to Incident Command System IS-100.~~

(7) ~~The Professional in Emergency Management ICS for Single Resources and Initial Action Incidents IS-200.~~

(8) Radiological Emergency Management IS-3.

(9) Introduction to Hazard Mitigation IS-393A.

(10) ~~Basic Incident Command System Emergency Management Program Development.~~

b. ~~By July 1, 2002, or within~~ *Within five years of appointment as an emergency management coordinator, whichever is later, completion of the person must complete the professional development series of courses as prescribed by the Federal Emergency Management Agency.*

c. Upon completion of the requirements established in subrule 7.4(4), paragraphs "a" and "b," ~~annual completion of a person must complete annually~~ a minimum of 24 hours of state-approved emergency management training. *Since completion of the annual training will follow the federal fiscal year, October 1 to September 30, the requirement to complete 24 hours of annual training will commence on the next October 1.*

d. The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.

e. *The Iowa homeland security and emergency management division, in conjunction with the Iowa Emergency Management Association, may substitute courses when deemed appropriate.*

f. *An emergency management coordinator who has met the baseline requirements prior to October 1, 2006, will not be required to take any of the new courses listed above to re-establish the person's baseline.*

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6206B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)"c," the Homeland Security and Emergency Management Division hereby amends Chapter 7, "Local Emergency Management," Iowa Administrative Code.

This amendment to subrule 7.7(3) updates the allocation and distribution process for Emergency Management Performance Grant moneys received from the federal Department of Homeland Security. The amendment specifies that the moneys will be allocated on a formula based on 50 percent of available funds allocated on an equal share for all applicants and 50 percent of available funds allocated based on popula-

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tion. The amendment was developed in consultation with the Iowa Emergency Management Association.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5970B**. Additionally, a public hearing was held on July 13, 2007, at Camp Dodge in Johnston, Iowa. No comments were made by the public regarding the proposed amendment. The amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 29C.

This amendment will become effective on October 3, 2007.

The following amendment is adopted.

Amend subrule 7.7(3) as follows:

7.7(3) Allocation and distribution of funds.

a. The emergency management division shall allocate funds to eligible local or joint commissions within 45 days of receipt of notice from the ~~Federal Emergency Management Agency federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training~~, that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, ~~the coordinator's salary and benefits and an equal distribution of remaining funds, not to exceed an individual applicant's request~~ *the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population base. The total allocation of funds for an applicant may not exceed the lesser of \$33,000 or the amount requested by the applicant.*

b. *The formula shall be applied in the following manner: The pass-through amount is divided equally between an equal-share base and a population base.*

(1) *The amount of total equal-share base dollars is divided by the total number of EMPG counties to establish a per-county average. For counties with part-time coordinators, the per-county average is reduced by 50 percent to determine the part-time county allocation. The total baseline dollar amount, minus the cumulative total dollars already allocated to part-time counties, is then divided by the total number of counties with full-time coordinators to determine the full-time county allocation.*

(2) *The population base amount for each county is determined by adding the populations of all counties together; then each county's population is divided by that total population to determine a percentage. The total population base dollars are then multiplied by a county's percentage to determine that county's share of the population dollars.*

c. Funds will be reimbursed to local and joint commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the local or joint commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6207B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The amendment to subrule 10.9(3), paragraph "f," reflects changes made to Iowa Code chapter 34A in 2007 Iowa Acts, Senate File 575, section 21. The amendment changes the percentage of the collected quarterly wireless surcharge revenue from 24 percent to 25 percent.

Additionally, the Division amends subrule 10.14(4). This amendment provides guidance to Local E911 Service Boards as they create and maintain Master Street Address Guides for E911 service. The amendment was developed in consultation with the E911 Communications Council.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5976B**. Additionally, a public hearing was held on July 13, 2007, at Camp Dodge in Johnston, Iowa. No comments were made by the public regarding the proposed amendments. The amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 34A as amended by 2007 Iowa Acts, Senate File 575, section 21.

These amendments will become effective on October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule **10.9(3)**, paragraph "**f**," as follows:

f. The program manager shall allocate an amount up to \$159,000 per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted a written request to the program manager. The written request shall be made with the "Request for Wireless E911 Funds" form contained in the "State of Iowa Wireless E911 Implementation and Operation Plan." The request is due to the program manager on May 15, or the next business day, of each year. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board.

Upon retirement of the outstanding obligations referred to in 10.9(3)"e," the amount allocated under 10.9(3)"f" shall be 24 25 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ITEM 2. Amend subrule 10.14(4) as follows:

10.14(4) Voluntary standards. Current technical and ~~operations~~ *operational* standards applying to E911 systems and services can be found in the "American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems" and in publications issued by the National Emergency Number Association. *Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011.* Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 telephone service providers, *and* joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6191B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments implement the following changes to policy governing durable medical equipment, prosthetic devices, and medical supplies.

- The term "sickroom supplies" is replaced with the term "medical supplies," as "sickroom supplies" is an outdated term.

- Coverage is provided for automated medication dispensers with prior authorization. Automated medication dispensers help to prevent forgotten medication times and overdoses that can result in costly medical complications and hospital emergency room visits or admissions for persons in independent living situations. The prior-authorization process is a more efficient method for consideration of this device than the exception-to-policy process.

- Coverage is provided for cranial orthotic devices under certain conditions. Cranial orthotic devices are currently authorized according to the same criteria under an exception to policy.

- Coverage is provided for oral nutritional products in accordance with recognized standards of medical care. The current requirement that nutritional supplementation must provide 51 percent or more of the person's daily caloric requirement does not allow for medically necessary continuation of the nutritional product as a person's medical condition improves. Additionally, guidelines for treatment of such conditions as acquired immunodeficiency syndrome (AIDS); burns; cancer; failure-to-thrive syndrome; pro-

longed infections; problems with the kidney, liver, lungs, pancreas or stomach; surgery; trauma; and prolonged vomiting may include oral nutritional products for less than 51 percent of the person's daily caloric requirement. The exception-to-policy process is an inefficient process for consideration of coverage.

- A request from the Medicaid member or the member's caregiver is required before a refill of medical supplies can be provided. The Medicaid Fraud Control Unit in the Department of Inspections and Appeals reports numerous complaints that medical equipment providers are automatically providing monthly medical supplies, even though they are not needed or desired. The requirement would not reduce the availability of these items; it would only mandate that the order could not be refilled without documentation of the request for refill from the member or the caregiver.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5971B**. The Department received comments from 25 persons in support of coverage of automated medication dispensers. The Department also received five comments protesting the prior authorization requirement for cranial orthotic devices because there is a limited period when these devices may be applied, and the delay required for the prior authorization procedure could limit the effectiveness of the treatment.

In response to these comments, the Department has removed the prior authorization requirement for cranial orthoses and will instead suspend the payment of claims until a review has determined that the service meets the coverage requirements. Criteria for payment have been removed from the prior authorization rules at 78.10(3)"c" and 78.28(1) and have been added as new paragraph 78.10(3)"d." Technical changes have also been added to Item 2 to update two form numbers.

There should be no cost to the Medicaid program for these changes. There is a potential administrative savings by allowing for more efficient authorization of automated medication dispensers, cranial orthotic devices, and oral nutritional products and by reducing the distribution of unnecessary and unwanted medical supplies.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on August 8, 2007.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on November 1, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.10(249A) as follows:

441—77.10(249A) Medical equipment and appliances, prosthetic devices and ~~sickroom~~ medical supplies. All dealers in medical equipment and appliances, prosthetic devices and ~~sickroom~~ medical supplies in Iowa or in other states are eligible to participate in the program.

ITEM 2. Amend rule 441—78.1(249A) as follows:

Amend subrule **78.1(2)**, paragraph "**b,**" introductory paragraph, as follows:

b. Medical and ~~sickroom~~ supplies are payable when ordered by a legally qualified practitioner for a specific rather than incidental use. When a recipient *member* is receiving

HUMAN SERVICES DEPARTMENT[441](cont'd)

care in a nursing facility or residential care facility, payment will be approved only for the following supplies when prescribed by a legally qualified practitioner:

Strike the form number "XIX(PHY-3)" and insert in lieu thereof "470-0835 or 470-0835(S)" wherever the number appears in subrule **78.1(16)**.

Strike the form number "XIX(PHY-4)" and insert in lieu thereof "470-0836" wherever the number appears in subrule **78.1(17)**.

ITEM 3. Amend subrule **78.2(1)**, paragraph "**b**," introductory paragraph, as follows:

b. Medical and ~~sickroom~~ supplies when ordered by a legally qualified practitioner for a specific rather than incidental use subject to the same conditions as specified in paragraph 78.1(2)"b."

ITEM 4. Amend rule 441—78.10(249A) as follows:

Amend the catchwords as follows:

441—78.10(249A) Durable medical equipment (DME), prosthetic devices and ~~sickroom~~ medical supplies.

Amend subrule 78.10(1) as follows:

Amend the introductory paragraph and paragraph "**a**" as follows:

78.10(1) General payment requirements. Payment will be made for items of DME, prosthetic devices and ~~sickroom~~ medical supplies, subject to the following general requirements and the requirements of subrule 78.10(2), 78.10(3), or 78.10(4), as applicable:

a. DME, prosthetic devices, and ~~sickroom~~ medical supplies must be required by the ~~recipient~~ member because of the ~~recipient's member's~~ medical condition.

Amend paragraph "**b**," introductory paragraph and subparagraph (1), as follows:

b. The item shall be necessary and reasonable either for the treatment of an illness or injury, or to improve the functioning of a malformed body ~~member part~~. Determination will be made by the Iowa Medicaid enterprise medical services unit.

(1) An item is necessary when it can be expected to make a meaningful contribution to the treatment of a specific illness or injury or to the improvement in function of a malformed body ~~member part~~.

Amend paragraph "**i**" as follows:

i. No allowance will be made for delivery, freight, postage, or other provider operating expenses for DME, prosthetic devices or ~~sickroom~~ medical supplies.

Amend subrule **78.10(2)** as follows:

Amend paragraph "**b**" by adding the following **new** type of durable medical equipment in alphabetical order:

Automated medication dispenser. See 78.10(2)"d" for prior authorization requirements.

Amend paragraph "**d**" by adopting **new** subparagraph (4) as follows:

(4) Automated medication dispenser. Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

1. The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.

2. The member is on two or more medications prescribed to be administered more than one time a day.

3. The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

4. Less costly alternatives, such as medisets or telephone reminders, have failed.

Amend subrule **78.10(3)** as follows:

Amend paragraph "**b**" as follows:

b. Only the following types of prosthetic devices shall be covered through the Medicaid program:

Artificial eyes.

Artificial limbs.

Augmentative communications systems ~~which are~~ provided for ~~persons~~ members unable to communicate their basic needs through oral speech or manual sign language. Payment will be made for the most cost-effective item ~~which that~~ meets basic communication needs commensurate with the ~~person's~~ member's cognitive and language abilities. See 78.10(3)"c" for prior approval requirements.

Enteral delivery supplies and products. See 78.10(3)"c" for prior approval requirements.

Hearing aids. See rule 441—78.14(249A).

Oral nutritional ~~supplementation~~ products. See 78.10(3)"c" for prior approval requirements.

Orthotic devices. See 78.10(3)"d" for limitations on coverage of cranial orthotic devices.

Ostomy appliances.

Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a ~~recipient~~ member with severe pathology of the alimentary tract ~~which that~~ does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the ~~recipient's~~ member's general condition.

Prosthetic shoes. See rule 441—78.15(249A).

Tracheotomy tubes.

Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference 78.28(8))

Amend paragraph "**c**" as follows:

Amend subparagraph (3), introductory paragraph, as follows:

(3) Oral ~~supplementation of a regular diet~~ nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the ~~recipient~~ member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, *or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.*

Adopt **new** paragraph "**d**" as follows:

d. Cranial orthotic device. Payment shall be approved for cranial orthotic devices when the device is medically necessary for the postsurgical treatment of synostotic plagiocephaly. Payment shall also be approved when there is photographic evidence supporting moderate to severe nonsynostotic positional plagiocephaly and either:

(1) The member is between 3 and 5 months of age and has failed to respond to a two-month trial of repositioning therapy; or

(2) The member is between 6 and 18 months of age and there is documentation of either of the following conditions:

1. Cephalic index at least two standard deviations above the mean for the member's gender and age; or

2. Asymmetry of 12 millimeters or more in the cranial vault, skull base, or orbitotragial depth.

Amend subrule 78.10(4) as follows:

Amend the introductory paragraph as follows:

78.10(4) ~~Sickroom~~ Medical supplies. ~~Sickroom~~ Medical supplies are nondurable items consumed in the process of giving medical care, for example, nebulizers, gauze, bandages, sterile pads, adhesive tape, and sterile absorbent cot-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ton. ~~Sickroom~~ Medical supplies are payable for a specific medicinal purpose. This does not include food or drugs. ~~Sickroom~~ Medical supplies are not to be dispensed at any one time for quantities exceeding a three-month supply. *After the initial dispensing of medical supplies, the provider must document a refill request from the Medicaid member or the member's caregiver for each refill.*

Amend paragraph "a," introductory paragraph, as follows:

a. Only the following types of ~~sickroom~~ medical supplies, and supplies necessary for the effective use of a payable item, can be purchased through the medical assistance program:

Amend paragraph "b," introductory paragraph, as follows:

b. Only the following types of ~~sickroom~~ medical supplies will be approved for payment for ~~recipients~~ members receiving care in a nursing facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

ITEM 5. Amend subrule 78.28(1) as follows:

Adopt **new** paragraph "b" as follows:

b. Automated medication dispenser. (Cross-reference 78.10(2)"b") Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

(1) The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.

(2) The member is on two or more medications prescribed to be administered more than one time a day.

(3) The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

(4) Less costly alternatives, such as medisets or telephone reminders, have failed.

Amend paragraph "i" as follows:

i. Prior authorization is required for oral nutritional ~~supplementation of a regular diet products~~. (Cross-reference 78.10(2)"c") The department shall approve payment for oral nutritional products when the ~~recipient~~ member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology; to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, *or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.*

(1) A request for prior approval shall include a ~~physician's, physician assistant's, or advanced registered nurse practitioner's~~ written order or prescription *from a physician, physician assistant, or advanced registered nurse practitioner* and documentation to establish the medical necessity for oral ~~supplementation~~ nutritional products pursuant to these standards. (4) The documentation shall include:

1. A statement of the ~~recipient's~~ member's total medical condition that includes a description of the ~~recipient's~~ member's metabolic, digestive, or psychological disorder or pathology.

2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the ~~recipient's~~ member's nutritional status and indicate that the ~~recipient's~~ member's nutritional needs were not or could not be met by regular food in pureed form.

3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the ~~recipient~~ member, if the request includes oral supplementation of a regular diet.

(2) Examples of conditions that will not justify approval of oral ~~supplementation~~ nutritional products are: weight-loss diets, wired-shut jaws, diabetic diets, *and* milk or food allergies (unless the ~~recipient~~ member is under five years of age and coverage through the *Special Supplemental Nutrition Program for Women, Infant Infants, and Children's program Children* is not available), ~~supplementation to boost caloric or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.~~

ITEM 6. Amend subrule 79.1(13) as follows:

Strike the word "recipient" or "recipients" and insert the word "member" or "members" in lieu thereof wherever the word appears.

Amend paragraph "c," introductory paragraph, as follows:

c. The ~~recipient~~ member shall pay \$2 copayment for total covered services rendered on a given date for medical equipment and appliances, prosthetic devices and ~~sickroom~~ medical supplies as defined in 441—78.10(249A), orthopedic shoes, services of audiologists, services of hearing aid dealers except the hearing aid, *services of optometrists, opticians, rehabilitation agencies, and psychologists, and ambulance services.*

ITEM 7. Amend subrule 81.10(5), paragraph "a," subparagraph (3), as follows:

(3) Medical equipment and supplies including wheelchairs, ~~sickroom~~ medical supplies except for those listed in 441—*paragraph* 78.10(4)"b," oxygen except under circumstances specified in 441—*paragraph* 78.10(2)"a," and other items required in the facility-developed plan of care.

[Filed 8/9/07, effective 11/1/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6192B

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments revise the Medicaid reimbursement methodology for community mental health centers. Provisions of 2006 Iowa Acts, chapter 1115, section 36, direct the Department to increase reimbursement for clinic services provided by community mental health centers, effective October 1, 2006. The legislation directs the Department to increase reimbursement rates for these services to not more than 100 percent of the reasonable costs for the provision of services, subject to the funding made available by amending the contract with the Medicaid managed care provider for mental health services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Currently, Iowa Medicaid reimburses clinic services provided by community mental health centers based on a fee schedule. Amendment of the contract with the Medicaid managed care provider for mental health services will provide sufficient funds, within the confines of the current rate structure, to reimburse these clinic services at 100 percent of reasonable costs. Therefore, these amendments provide that beginning with services rendered October 1, 2006, Iowa Medicaid will reimburse clinic services provided by community mental health centers on a retrospective cost-related basis at 100 percent of reasonable costs as determined by Medicare cost reimbursement principles. The Department expects that this change in methodology will provide additional funding to help mental health centers maintain staffing levels needed to ensure that all Medicaid members have access to care.

The Iowa Medicaid program will initially make interim payments to the center based upon 105 percent of the greater of the statewide fee schedule for community mental health centers effective July 1, 2006, or the average Medicaid managed care contracted fee amounts for community mental health centers effective July 1, 2006, applied on a procedure code basis. Mental health centers will be required to submit an annual cost report within three months of their fiscal year end. If the center is hospital-based, the cost report shall be prepared according to the filing requirements for the Medicare cost report.

The clinic services provided by community mental health centers are subject to a cost settlement based on the actual cost of the services as determined from the provider's cost report. The cost settlement is calculated by comparing interim payments made by Medicaid during the period to the actual allowable cost of the services. The difference may result in an underpayment to the provider or an overpayment to the provider. Following submission of the annual Medicaid cost report, the Department will adjust the provider-specific interim payment prospectively.

These amendments do not provide for waivers in specified situations because they confer a benefit in the form of higher reimbursement rates and because all providers should be reimbursed on the same basis. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5985B**. The Department received ten comments on the Notice of Intended Action. Most comments focused on a lack of understanding of the scope of services affected by this reimbursement methodology, Medicare cost principles, the accounting procedures required for cost reports, and the effects the new methodology would have on reimbursement amounts.

All services that are currently covered by Iowa Medicaid as community mental health center services are entitled to reimbursement at 100 percent of reasonable costs. If costs are already paid for by a third party (such as other insurance), Medicaid cannot pay a provider for those costs a second time. Iowa Medicaid rules state that Medicare definitions and policies shall apply to services provided unless specific exemptions are adopted. Medicare cost principles are explained in the Medicare Provider Reimbursement Manual (PRM) Part 1, which is available at <http://www.cms.hhs.gov/Manuals/PBM/list.asp>. The cost report is available on the Iowa Medicaid Enterprise Web site.

The reconciliation process that will be used for community mental health center services is less cumbersome than the

process that was used for rehabilitation services for adults with chronic mental illness (the ARO program). The cost settlement will be in the form of a lump-sum payment with no reprocessing of previously submitted claims. The Iowa Medicaid Enterprise Provider Audit and Rate Setting Unit will conduct training on completing the cost report. Additional training is being coordinated with the Iowa Association of Community Providers. Deadlines for submission of initial cost reports will be extended upon a community mental health center's request as necessary to ensure time for compliance.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 8, 2007.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1115, section 36.

These amendments shall become effective on October 3, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [79.1(2), 79.1(25)] is being omitted. These amendments are identical to those published under Notice as **ARC 5985B**, IAB 7/4/07.

[Filed 8/9/07, effective 10/3/07]
[Published 8/29/07]

[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6205B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8, 514D.9(3) and 514G.7(1), the Insurance Division hereby amends Chapter 39, "Long-Term Care Insurance," Iowa Administrative Code.

Chapter 39, among other things, protects applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, and helps to facilitate public understanding and comparison of long-term care insurance coverage. The Iowa Insurance Commissioner has the authority to adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy pursuant to Iowa Code sections 514D.9(3) and 514G.7(1). To that end, new subrule 39.15(4) requires certain specific training for insurance producers who wish to sell long-term care insurance in Iowa. This additional training is necessary due to the complex nature of long-term care insurance products and to ensure that an insurance producer is able to adequately explain to a consumer how long-term care insurance products work. The amendment will be effective October 3, 2007, and insurance producers and companies must be able to demonstrate compliance by January 1, 2009.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5984B**. A public hearing was held on July 24, 2007, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Based on comments received at the public hearing and

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in writing, the following changes to the published Notice were made. Subparagraph 35.15(4)“b”(4) was changed to make the approval of courses as CE courses mandatory rather than permissive. In subparagraph 35.15(4)“c”(1), the word “hours” was changed to “credits,” “36 months” was changed to “CE term,” and definitions of “credit” and “CE term” were added. No other changes were made to the Notice.

This amendment is intended to implement Iowa Code sections 514D.9(3) and 514G.7(1).

This amendment will become effective October 3, 2007. The following amendment is adopted.

Amend rule 191—39.15(514D,514G) by adopting the following **new** subrule 39.15(4):

39.15(4) Producer training requirements.

a. Purpose. The purpose of this subrule is to require certain specific minimum training for insurance producers who wish to sell long-term care insurance in Iowa. This additional training is necessary due to the complex nature of long-term care insurance products and to ensure that insurance producers are able to determine whether long-term care insurance products are suitable for consumers and are able to adequately explain to consumers how the long-term care insurance products work. The ultimate goal of this subrule is to ensure that purchasers of long-term care insurance products understand basic features of the products. This subrule applies to all long-term care insurance products sold on or after January 1, 2009.

b. Requirements to sell, solicit or negotiate long-term care insurance.

(1) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer for accident and health or sickness and has completed a one-time training course. The training shall meet the requirements set forth in paragraph “c.”

(2) An individual holding a producer license on January 1, 2009, may not continue to sell, solicit or negotiate long-term care insurance on or after January 1, 2009, unless the individual has completed a one-time training course as set forth in paragraph “c.”

(3) In addition to the one-time training course required in subparagraphs (1) and (2) above, an individual who sells, solicits or negotiates long-term care insurance shall complete ongoing training as set forth in paragraph “c.”

(4) The training requirements of paragraph “c” must be approved as continuing education courses under 191—Chapter 11.

c. Training requirements.

(1) The one-time training course required by this subrule shall be no less than eight credits. The ongoing training required by this subrule shall be no less than six credits every CE term. For purposes of this subrule, “credit” and “CE term” shall be defined as they are defined in rule 191—11.2(505,522B).

(2) The training required under subparagraph (1) shall consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care asset preservation programs, pursuant to 191—Chapter 72, including, but not limited to:

1. State and federal regulations and requirements and the relationship between qualified state long-term care asset preservation programs and other public and private coverage of long-term care services, including Medicaid;

2. Available long-term care services and providers;

3. Changes or improvements in long-term care services or providers;

4. Alternatives to the purchase of private long-term care insurance;

5. The effect of inflation on benefits and the importance of inflation protection; and

6. Consumer suitability standards and guidelines.

(3) The training required by this subrule shall not include training that is specific to an insurer’s or company’s product or that includes any sales or marketing information, materials, or training, other than that required by state or federal law.

d. Requirements for insurers. Insurers subject to this subrule shall obtain verification that a producer has received training required by paragraphs “b” and “c” before a producer is permitted to sell, solicit or negotiate the insurer’s long-term care insurance products, shall maintain records in accordance with the state’s record retention requirements, and shall make the verification and records available to the commissioner upon request.

e. Training obtained in other states. The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in this state.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6195B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3(1)“b” and 2007 Iowa Acts, Senate File 431, section 19, the Iowa Finance Authority adopts amendments to Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

The purpose of these amendments is to replace the 2007 qualified allocation plan for the low-income housing tax credit program with the 2008 qualified allocation plan which is incorporated by reference in rule 12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority’s Web site at www.iowafinanceauthority.gov. These amendments incorporate the 2008 qualified allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6014B**. The Authority received written comments and oral comments on the Qualified Allocation Plan. Certain changes were made to

IOWA FINANCE AUTHORITY[265](cont'd)

the Qualified Allocation Plan based on public comment; no changes were made to the noticed amendments to Chapter 12.

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

The Iowa Finance Authority adopted these amendments on August 8, 2007.

These amendments will become effective on October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2007 2008~~ Qualified Allocation Plan effective October 4, ~~2006 3, 2007~~, shall be the qualified allocation plan for the allocation of ~~2007 2008~~ low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Locations of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of October 4, ~~2006 3, 2007~~. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site. Copies are available upon request at no charge from the authority.

[Filed 8/9/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6196B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 11, "Application for, Modification of, and Termination of Benefits," and Chapter 12, "Calculation of Monthly Retirement Benefits," Iowa Administrative Code.

The following paragraphs itemize the amendments.

Item 1 updates a rule to correspond to a legislative amendment changing the controlling statute to a new statute.

Item 2 corrects a provision of a business rule inadvertently omitted from the current administrative rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6035B**. A public hearing was held on July 24, 2007. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

There are no waiver provisions included in the amendments.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

These amendments will become effective October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule **11.5(2)**, second unnumbered paragraph, as follows:

"Public hospital" means a governmental entity of a political subdivision of the state of Iowa that is authorized by legislative authority. For purposes of this subrule, a "public hospital" must also meet the requirements of Iowa Code section ~~249I.3 249J.3~~. Under Iowa Code section ~~249I.3 249J.3~~, a "public hospital" must be licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A (merged hospitals), Iowa Code chapter 347 (county hospitals), Iowa Code chapter 347A (county hospitals payable from revenue), or Iowa Code chapter 392 (creation by city of a hospital or health care facility). For the purposes of this definition, "public hospital" does not include a hospital or medical care facility that is funded, operated, or administered by the Iowa department of human services, Iowa department of corrections, or board of regents, or the Iowa Veterans Home.

ITEM 2. Amend subrule **12.1(7)**, paragraph "c," by adopting the following **new** subparagraph (2) and renumbering existing subparagraphs (2) to (5) as (3) to (6):

(2) If there is a calendar year of covered wages outside the high three-year average wage calculation that has four quarters, but the covered wages for that year are less than the covered wages for the fourth highest calendar year of covered wages, and that fourth highest calendar year of covered wages does not have four quarters of service credit for wages, the control year will be the lowest of the high three calendar years of wages with service credits for wages in all four quarters being used in the high three-year average wage calculation.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

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ARC 6168B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 91D.1(3), the Labor Commissioner hereby amends Chapter 215, "Minimum Wage Scope and Coverage," and Chapter 216, "Records to Be Kept by Employers," Iowa Administrative Code.

Pursuant to 2007 Iowa Acts, House File 1, the minimum wage and the initial employment wage increased effective April 1, 2007, and will increase again effective January 1,

LABOR SERVICES DIVISION[875](cont'd)

2008. These amendments align the rules with the new statutory minimums and remove obsolete language.

The principal reasons for adoption of these amendments are to implement 2007 Iowa Acts, House File 1, and to remove obsolete language from the rules.

Notice of Intended Action was published in the May 23, 2007, Iowa Administrative Bulletin as **ARC 5884B**. No member of the public commented on the Notice of Intended Action. No changes have been made from the Notice of Intended Action.

These amendments are intended to implement 2007 Iowa Acts, House File 1.

These amendment will become effective October 3, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [215.1(1), 215.2, 215.3(11), 216.1(4), 216.30(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 5884B**, IAB 5/23/07.

[Filed 7/31/07, effective 10/3/07]

[Published 8/29/07]

[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6213B

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11 and 2007 Iowa Acts, Senate File 110, the Iowa Law Enforcement Academy, with approval of the Iowa Law Enforcement Academy Council, hereby amends Chapter 6, "Decertification," and Chapter 10, "Reserve Peace Officers," Iowa Administrative Code.

The Iowa State Reserve Law Officer's Association (ISRLOA) approached the Academy and the Legislature with the request to standardize training for Iowa reserve peace officers. 2007 Iowa Acts, Senate File 110, was passed in April 2007, giving the Academy authority to establish standardized training and state certification for reserve peace officers.

Iowa reserve peace officers are volunteer, nonregular, sworn members of a law enforcement agency who serve with or without compensation. The reserve peace officer has regular police powers while functioning as a law enforcement agency representative. Sworn reserve peace officers wear uniforms and are most often armed.

Twenty-two meetings were held across the state during May 2007 following the passage of 2007 Iowa Acts, Senate File 110, to gain input on the standardized training and state certification process. One hundred sixty-five sworn peace officers and current reserve officers attended these meetings, with many suggestions offered for improving the process. This input resulted in the proposed rules that were presented to the Iowa Law Enforcement Academy Council.

It was suggested by an Iowa sheriff that grounds and procedure for decertification of reserve peace officers should also be considered once state certification is provided. It was believed that the grounds should be similar to the requirements for regular peace officers. The Iowa Law Enforcement Academy Council had been considering and had ap-

proved the filing of a Notice of Intended Action to change the decertification grounds for regular peace officers. Final approval was withheld until reserve peace officers could be added to the changes.

Notice of Intended Action was published as **ARC 6025B** in the July 4, 2007, Iowa Administrative Bulletin. Interested persons could make written suggestions or comments on the proposed amendments through July 24, 2007. A public hearing was held on July 24, 2007, at 1 p.m. at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa. No written suggestions or comments were received, and no persons attended the public hearing.

The proposed amendments were presented for adoption to the Iowa Law Enforcement Academy Council on August 9, 2007. At that time, suggestions were received from the Council members and Academy staff. The following changes from the Notice were made:

The Council added to 6.2(1)"c" the requirement that a reserve peace officer's certification be revoked if the reserve peace officer pleads guilty to or is convicted of domestic abuse or other offenses stemming from domestic abuse. The Council believes this change clarifies the Council's intent that 6.2(1)"c" applies both to a law enforcement officer's certification and to a reserve peace officer's certification.

A correction was made in 501—10.205(80D) to reflect that the provision applies to a reserve peace officer, instead of a law enforcement officer. 501—10.201(80D) was clarified by changing "PowerPoint" to "presentation tools" to allow the use of other products besides PowerPoint. 501—10.210(80D) was clarified by adding a reference to agency administrator of a law enforcement agency or other agency approved by the Council to the description of those who may provide an endorsement to ensure that directors of conservation boards and Department of Corrections personnel that have reserve peace officers are authorized to provide an endorsement and by adding "Iowa" to certified sworn peace officer (active, inactive, or retired in good standing) to reflect the intent of the rules as discussed at the 22 meetings held across the state. These corrections and clarifications do not impact the proposed amendments as published in the Notice of Intended Action.

The Iowa Law Enforcement Academy Council adopted these amendments on August 9, 2007.

These amendments are intended to implement Iowa Code chapter 80D as amended by 2007 Iowa Acts, Senate File 110.

These amendments will become effective on October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 501—6.2(80B) as follows:

501—6.2(80B,80D) Grounds for revocation.

6.2(1) Mandatory revocation. The council shall revoke a law enforcement officer's certification or a reserve peace officer's certification if:

- a. ~~the~~ The law enforcement officer or reserve peace officer ~~has been~~ pleads guilty to or is convicted of a felony;
- b. The law enforcement officer or reserve peace officer manufactures, sells, or conspires to manufacture or sell an illegal drug;
- c. The law enforcement officer or reserve peace officer pleads guilty to or is convicted of domestic abuse or other offenses stemming from domestic abuse.

6.2(2) Discretionary revocation. The council, at its discretion, may revoke or suspend a law enforcement officer's or a reserve peace officer's certification under any of the following circumstances:

- a. ~~Rescinded IAB 1/10/01, effective 1/14/01.~~

LAW ENFORCEMENT ACADEMY[501](cont'd)

b a. The law enforcement officer *or reserve peace officer* has been discharged for “good cause” from employment as a law enforcement officer *or from appointment as a reserve peace officer*.

e b. The law enforcement officer *or reserve peace officer* leaves ~~or~~, voluntarily quits, *or the officer’s position is eliminated* when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged *or the reserve peace officer being removed* for “good cause.”

c. *The law enforcement officer or reserve peace officer:*

(1) *Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.*

(2) *Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.*

(3) *Testifies falsely in any court of law or administrative hearing.*

(4) *Pleads guilty to or is found guilty of a crime, or an internal affairs investigation substantiates an act by the officer involving moral turpitude as defined in 501—subrule 2.1(5), including but not limited to:*

1. *Income tax evasion;*
2. *Perjury, or its subornation;*
3. *Theft;*
4. *Indecent exposure;*
5. *Sex crimes;*
6. *Conspiracy to commit a crime;*
7. *Defrauding the government;*
8. *Assault;*
9. *Stalking; and*
10. *Any offense in which a weapon was used in the commission of a crime.*

(5) *Uses or possesses an illegal substance other than in connection with official duties.*

(6) *Fails to comply with the requirements of 501—Chapter 8 and 501—Chapter 10 relative to in-service training.*

(7) *Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.*

d. The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency in achieving certification training for the officer when, *including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer’s salary paid during the academy* if the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency contemporaneously with the date of employment, which ~~The agreement shall specifically provides provide~~ for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency, *including fees paid to ILEA, clothing vendor costs, meal costs, uniform/equipment costs, and the officer’s salary paid during the academy*. The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement, that the officer understands that the employing agency may at its option seek the officer’s decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona-fide employment of the officer and not for the purpose of achieving certification for the officer by way of “sponsorship” through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule; and

1. Have attached a copy of the agreement referred to in subparagraph (1) above;

2. *Include an order of judgment from a small claims or civil court;*

2 3. State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

3 4. List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

4 5. State that written notice of the default *or judgment* has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

5 6. Specifically recommend that the Iowa law enforcement academy council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

6 7. Set out the last-known address of the officer, the officer’s telephone number, and the officer’s last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer’s default, unless the Iowa law enforcement academy council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

(4) ~~Upon receipt by the academy of a recommendation for decertification, the Iowa law enforcement academy council may commence decertification procedures by causing a notice to be served upon the officer as provided in subrule 6.3(2), with a copy of the recommendation for decertification attached thereto.~~

e.—~~The law enforcement officer:~~

(1) ~~Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.~~

(2) ~~Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency.~~

(3) ~~Testifies falsely in any court of law or administrative hearing.~~

(4) ~~Fails to comply with the requirements of 501—Chapter 8 relative to in-service training.~~

(5) ~~Pleads guilty to, or is found guilty of, a felony or a crime involving moral turpitude as defined in 501—subrule 2.1(5).~~

LAW ENFORCEMENT ACADEMY[501](cont'd)

(6) ~~Uses or possesses an illegal controlled substance other than in connection with official duties.~~

(7) ~~Is decertified in any other state where the officer may be certified.~~

ITEM 2. Amend **501—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 80B.11 and Iowa Code chapter 80D as amended by 2007 Iowa Acts, Senate File 110.

ITEM 3. Amend 501—Chapter 10, Division II, by re-serving rules **501—10.106 to 10.199**.

ITEM 4. Amend 501—Chapter 10 by adding the following **new** division:

DIVISION III
RESERVE PEACE OFFICER
STANDARDIZED TRAINING AND CERTIFICATION

501—10.200(80D) Certification through training required for all reserve peace officers.

10.200(1) Each person appointed to serve as a reserve peace officer after July 1, 2007, shall satisfactorily complete a minimum training course established by the academy consisting of 80 hours of training and 40 hours of supervised time. Training for individuals appointed as reserve peace officers shall be provided by instructors in a community college or other facility, including a law enforcement agency, selected by the individual and approved by the law enforcement agency and the academy. Reserve peace officers must be certified within 18 months from the date of their appointment.

10.200(2) The academy council may, at the council's discretion, extend the 18-month time period in which a reserve peace officer must become certified for up to 180 days after a showing of "undue hardship" by the reserve peace officer or the reserve peace officer's appointing agency. To be considered for an extension of the 18-month certification period, the person or agency requesting the extension must initiate the request in writing not less than 10 days prior to the council meeting at which the extension request is to be discussed and must also make a presentation to the council at the next regularly scheduled meeting of the council. An extension shall not be liberally granted and shall only be granted after a showing that all other alternatives to an extension have been considered and rejected.

10.200(3) The time period within which a person must achieve certification as a reserve peace officer in the state of Iowa shall commence on the day a person is first appointed as a reserve peace officer in the state of Iowa. Any subsequent changes in a reserve peace officer's appointment status, including transfers to a different appointing agency, shall not toll or otherwise extend the certification period. Those reserve peace officers appointed after July 1, 2007, but before October 3, 2007, shall have 18 months after October 3, 2007, to complete the training and supervision requirements.

10.200(4) Should a person appointed as a reserve peace officer fail to achieve certification within the time period or under any extension allowed by this rule, that person shall not be eligible for appointment as a reserve peace officer and shall not serve as a reserve peace officer in the state of Iowa for a period of not less than one year from the date the time period in which to achieve certification expired, or from the date that the person was last appointed as a reserve peace officer in the state of Iowa, whichever comes first.

501—10.201(80D) Training modules. Six modules consisting of 12 to 16 hours of required training topics per module will be developed by the academy. The training modules will include curriculum and training materials for each topic consisting of learning objectives, a lesson plan, training aids such as presentation tools, handouts, and sample tests. Curriculum and training materials will be provided by the academy to those agencies with academy-approved instructors. Training modules will be updated no less than every three years.

501—10.202(80D) Completion of training modules. The agency providing the training shall notify the academy when a training module is completed. The reserve peace officer completing the training module will be given an academy-developed test covering the completed module. The reserve peace officer completing the training module must pass the test with a score of 70 percent or better. The reserve peace officer may take the test a second time if the first test score is below 70 percent and the appointing law enforcement agency approves the second test. The reserve peace officer must then retake the training in the area failed if the second test score is below 70 percent before taking the test a third time if the appointing law enforcement agency approves the third test. Failure of the test the third time will result in the individual's not being eligible for certification for a period of one year following the date of the third test failure.

501—10.203(80D) Supervised time. Supervised time is defined as direct supervision by a regular certified law enforcement officer of the reserve peace officer while performing activities consistent with the reserve peace officer's duties, such as ride-along time, jail time, or other assigned duties.

501—10.204(80D) Certification. Upon satisfactory completion of training and supervised time required by the academy, the individual shall be certified by the academy as an Iowa reserve peace officer and shall be issued a certificate by the academy.

501—10.205(80D) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a reserve peace officer is called to active military service.

501—10.206(80D) Minimum in-service training requirements. All certified reserve peace officers shall meet the following mandatory minimum in-service training requirements.

10.206(1) Firearms training. A certified reserve peace officer who is authorized to carry firearms must qualify with all duty handguns annually on a course of fire approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This subrule applies only to those reserve peace officers who are authorized to carry firearms by their appointing agency.

10.206(2) General training. In addition to the firearms training and CPR training requirements, a certified reserve peace officer must receive a minimum of 12 hours per year, or 36 hours every three years, of law enforcement-related in-service training. Whether training is law enforcement-related shall be determined by the employing agency administrator.

10.206(3) Agency responsibility. It is the responsibility of the law enforcement agency administrator to ensure that in-service training records are regularly kept and maintained. The law enforcement administrator shall also ensure that these records are made available for inspection upon request by the Iowa law enforcement academy or its designee.

LAW ENFORCEMENT ACADEMY[501](cont'd)

a. In-service training records shall include the following:

- (1) The subject matter of the training;
- (2) The name of the instructor of the training;
- (3) The name of the individual who took the training;
- (4) The number of credit hours received from the training;
- (5) The location where the training took place; and
- (6) The scores, if any, achieved by the reserve peace officer to show proficiency in or understanding of the subject matter.

b. It shall be the responsibility of law enforcement agency administrators to ensure that all certified reserve peace officers under their direction receive the minimum hours of in-service training required by these rules.

501—10.207(80D) Training and in-service training requirements for regular law enforcement officers who become certified reserve peace officers.

10.207(1) An active certified regular law enforcement officer who also serves as a reserve peace officer or a certified regular law enforcement officer who retires or leaves active regular law enforcement and returns within 180 days to an Iowa law enforcement agency as a reserve peace officer needs no further training.

10.207(2) Any individual who leaves an Iowa law enforcement officer position and becomes a certified reserve peace officer shall receive in-service training within one year of the individual's appointment date as follows:

<u>Period Outside of Iowa Law Enforcement</u>	<u>In-Service Training Required</u>
6 months to 12 months	12 hours
More than 12 months to 24 months	24 hours
More than 24 months to 36 months	36 hours
More than 36 months	60 hours

The subject matter of this training will be determined and approved by the law enforcement agency.

501—10.208(80D) Reserve peace officers appointed prior to July 1, 2007—obtaining state certification.

10.208(1) A reserve peace officer enrolled in an approved minimum course of training prior to July 1, 2007, shall obtain state certification by July 1, 2012. The state certification may be obtained through certification by examination. Reserve peace officers who have received training prior to July 1, 2007, may, upon application to and approval from the director, take a competency test or tests to gain Iowa reserve peace officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests and study material shall be prepared and administered by the academy. The individual must pass the test or tests with a score of 70 percent or better. Individuals will be allowed to take the test or tests a second time in the areas with scores below 70 percent within 60 days and with the approval of the appointing law enforcement agency. The individual must pass the test or tests upon retake with a score of 70 percent or better. Failure to score 70 percent or better the second time will require the individual, with approval of the appointing law enforcement agency, to take the 80-hour module training established by the academy.

10.208(2) Criteria to be eligible to certify through examination. The following is required for certification through examination: successful completion of a minimum 150-hour certifying reserve peace officer training program.

10.208(3) Current reserve peace officers choosing not to be state certified by examination or by module training established by the academy will continue to hold agency certification only and will not be recognized as reserve peace officers after July 1, 2012.

tion only and will not be recognized as reserve peace officers after July 1, 2012.

10.208(4) If a reserve peace officer appointed prior to July 1, 2007, with agency certification only transfers to another agency, the reserve peace officer will be considered a new reserve peace officer and will be subject to the 18-month training requirements for state certification.

501—10.209(80D) Instructors for approved reserve peace officer training program.

10.209(1) All reserve peace officer instructors will be designated as general, specialist, or legal instructors. General law enforcement instructors will be those instructing in subjects that are clearly law enforcement in nature and as designated by the academy. Specialist law enforcement instructors are those persons who have attended specialized schools and possess considerable experience in the subject to be taught as designated by the academy. Legal instructors are those persons with a juris doctor degree instructing in the area of criminal law.

10.209(2) Request for instructional certification. All instructors requesting certification must submit this request to the academy council on an application form that can be obtained from the Iowa law enforcement academy.

10.209(3) Granting or revocation of instructor certification.

a. Instructor certification will be issued for a period of three years. Instructor certification may be renewed for a three-year period if the instructor has instructed in a reserve peace officer training program during the three-year time period; the reserve peace officer training coordinator or administrator for the agency recommends renewal of the instructor certification; the individual remains in good standing; and required certification in the specialty areas is in force and valid at the time of application.

b. Instructor certification may be revoked in writing when, in the opinion of the academy or in the opinion of the administrator of the appointing law enforcement agency or other agency requesting certification, that certification should be revoked. In the event of denial of recertification or revocation of certification, the certificate holder may file a written notice of appeal to the academy council within 30 days of notification of the action. The appeal notice should be addressed to Director, Iowa Law Enforcement Academy, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131. A hearing on the matter will be held by the academy council as soon as possible after receipt of the notice of appeal.

501—10.210(80D) Minimum qualifications for certification of general instructor.

The minimum qualifications for certification of a general instructor include the following: a regular, nonprobationary Iowa certified sworn peace officer (active, inactive, or retired in good standing) with documented experience in the subject area to be instructed and endorsement by the chief, sheriff, or agency administrator of a law enforcement agency or other agency approved by the council as to the person's qualifications to instruct. Good standing is determined by the endorser and by the academy. A person who has been dismissed for good cause from previous employment, who left during an internal affairs investigation that would have resulted in dismissal for good cause, or who is currently involved in the decertification process shall not be considered in good standing.

501—10.211(80D) Minimum qualifications for certification of specialist instructor.

The minimum qualifications for certification of a specialist instructor include the following:

LAW ENFORCEMENT ACADEMY[501](cont'd)

10.211(1) The individual must have successfully completed a specialty course in the area to be instructed when required. The individual must have successfully met all requirements of the issuing agency granting the certification as an instructor in the specialty area requiring instructor certification. The specialty areas requiring certification include force management (ILEA), defensive tactics (ILEA), precision driving (ILEA), Hazmat awareness, blood-borne pathogens, and mandatory reporting. Certification from the issuing agency must be in force and valid at the time of application in order for the individual to be considered as a specialist instructor.

10.211(2) An instructor of the role of emergency communications must have completed the 40-hour basic telecommunication training approved by the academy or have been employed as a telecommunication specialist since July 1998.

10.211(3) An instructor of juvenile law must be a juvenile probation officer or department of human services social worker or be listed under "legal instructor."

10.211(4) An instructor of weather preparedness must have experience with the National Weather Service or be listed as a general instructor as defined above.

10.211(5) An instructor of current drug trends/investigations will be qualified by training and experience in drug investigations such as serving on a drug task force, attending DNE/DEA 40-hour training, or attending DRE training.

501—10.212(80D) Minimum qualifications for certification of legal instructor. The minimum qualifications for certification of a legal instructor include the following: The individual must have a juris doctor degree and be licensed to practice law in Iowa.

These rules are intended to implement Iowa Code sections 80D.1A, 80D.3, 80D.4 and 2007 Iowa Acts, Senate File 110.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6199B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 82, "Commercial Fishing," Iowa Administrative Code.

The adopted amendments provide for four changes in commercial fishing regulations on the Mississippi River: (1) no sturgeon less than 27 inches may be possessed in Iowa waters; (2) no sturgeon may be harvested from gear set prior to midnight on October 15; (3) the establishment of closed areas that prohibit the use of entanglement gear below locks and dams; and (4) bowfin must remain intact until they reach the final processing facility or business.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5956B**. Public hearings were held on July 16, 17, and 18, 2007. Two changes have been made to the Notice of Intended Action. The proposed language in Item 2, 82.5(5)"c," relative to dead

set nets, constant attendance, and number of nets has not been adopted; thus, Item 2 has been removed. In addition, language relative to the areas closed to entanglement gear in Item 4, 82.2(10), has been changed to reflect a reduction in the size of the closed areas.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 482.1.

These amendments will become effective October 3, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule 82.2(2) as follows:

82.2(2) Size limits. Fish less than a minimum length or longer than the maximum length shall be returned to the water unharmed. The minimum total length for all catfish is 15 inches. The minimum fork length for shovelnose sturgeon, *measured from the tip of the snout to the fork of the tail*, is 27 inches. No shovelnose sturgeon longer than 34 inches fork length may be harvested from waters of the Mississippi River bordering Wisconsin. *No shovelnose sturgeon less than 27 inches fork length may be possessed in Iowa waters.*

ITEM 2. Amend subrule 82.2(8) as follows:

82.2(8) Seasons. There is a continuous open season for commercial fishing of all species listed in 82.2(1) except there is a closed season for shovelnose sturgeon from May 16 through October 14. *No shovelnose sturgeon may be harvested from gear set prior to midnight on October 15.*

ITEM 3. Amend subrule 82.2(9) as follows:

82.2(9) Special shovelnose and bowfin regulations. A ~~shovelnose~~ *Shovelnose sturgeon and bowfin* must remain intact until the fish ~~reaches~~ *reach* the final processing facility or business. For the purposes of this subrule, final processing facility does not include vessels or vehicles.

ITEM 4. Amend rule 571—82.2(482) by adopting the following **new** subrule:

82.2(10) Closed areas. The use of entanglement gear, including gill and trammel nets, is prohibited from that area extending 600 feet downstream of the 900 foot existing closed areas (Iowa Code section 482.9, subsection 2) located below each of the locks and dams on the Mississippi River.

[Filed 8/10/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6198B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts Chapter 116, "Help Us Stop Hunger Program Administration," Iowa Administrative Code.

This adopted new chapter establishes the operational structure of the Help Us Stop Hunger (HUSH) deer donation program, which encourages deer harvest by hunters and the donation of deer into a system that provides free venison to Iowa's needy.

NATURAL RESOURCE COMMISSION[571](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5872B**. Several comments were received during the comment period and at the public hearing held May 29, 2007. Six E-mails from locker owners and hunters were received in support of the rules. Although no one was opposed to the rules, one commenter suggested the need for more lockers. Another suggested adding \$1 to every vehicle registration fee to raise money for the program. The president of the Iowa Meat Processors Association attended the hearing and requested that no changes be made to the proposed rules, but asked the HUSH coordinator to make a presentation to the Association next winter. No changes have been made to the Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 483A.

These rules will become effective October 3, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 116] is being omitted. These rules are identical to those published under Notice as **ARC 5872B**, IAB 5/9/07.

[Filed 8/10/07, effective 10/3/07]
[Published 8/29/07]

[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6176B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 1, "Purpose and Organization," Iowa Administrative Code.

The amendment provides that any money submitted for payment of any license, registration, permit, or service fee that results in an overpayment of the required fee by an amount of \$10 or less shall not be refunded to the remitter.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5964B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the July 31, 2007, meeting of the Board of Pharmacy.

This amendment will become effective on October 3, 2007.

This amendment is intended to implement Iowa Code sections 124.301, 124B.11, 147.96, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

The following amendment is adopted.

Adopt **new** rule 657—1.7(124,124B,147,155A) as follows:

657—1.7(124,124B,147,155A) Overpayment of fees. "Overpayment" refers to the payment of any license, registration, permit, or service fee in excess of the required amount of

the fee. Overpayment of \$10 or less received by the board shall not be refunded.

[Filed 8/3/07, effective 10/3/07]
[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6172B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment clarifies which prescription drugs may be returned to the pharmacy and reused.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5965B**. The Board received only one comment, which expressed support for the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the July 31, 2007, meeting of the Board of Pharmacy.

This amendment will become effective on October 3, 2007.

This amendment is intended to implement Iowa Code sections 124.301 and 155A.13.

The following amendment is adopted.

Amend subrule 6.15(3) as follows:

6.15(3) Nonecontrolled substance Unit dose returns. Prescription drugs *dispensed in unit dose packaging*, excluding controlled substances, may be returned and reused as authorized in 657—subrule 22.1(6).

[Filed 8/2/07, effective 10/3/07]
[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6175B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," and Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The amendment to subrule 8.15(1) authorizes the delivery of a patient's filled prescriptions to an outpatient medical care facility where the patient receives treatment and establishes requirements relating to such delivery. The amendments to rule 21.9(124,155A) clarify existing requirements for the facsimile transmission of a prescription drug order and identify an exception to those requirements when the or-

PHARMACY BOARD[657](cont'd)

der is transmitted by someone other than the prescriber or an agent of the prescriber from an outpatient medical care facility to the patient's pharmacy pursuant to subrule 8.15(1), paragraph "d."

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5966B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the July 31, 2007, meeting of the Board of Pharmacy.

These amendments will become effective on October 3, 2007.

These amendments are intended to implement Iowa Code sections 124.301 and 155A.13.

The following amendments are adopted.

ITEM 1. Amend subrule 8.15(1) as follows:

8.15(1) Alternative methods. A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

- a. At the office or home of the prescriber;
- b. At the residence of the patient or caregiver;
- c. At the hospital or medical care facility in which a patient is confined; or

d. *At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:*

(1) *The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the outpatient medical care facility;*

(2) *The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;*

(3) *A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided the written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and*

(4) *The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.*

and e. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

ITEM 2. Amend rule 657—21.9(124,155A) as follows:

657—21.9(124,155A) Facsimile transmission (fax) of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all

information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. *The faxed prescription drug order, if transmitted by the practitioner's agent, shall identify the transmitting agent and shall include the prescriber's signature or electronic signature.* The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A). *This rule shall not apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph "d."*

[Filed 8/3/07, effective 10/3/07]

[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6174B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment corrects the name of the Accreditation Council for Pharmacy Education due to the recent change of name of this accreditation body. The amendment also provides that acceptable training for a pharmacist to qualify as a pharmacist authorized to administer immunizations pursuant to rule 657—8.33(147,155A) include an organized course of study in a college or school of pharmacy or an approved program of pharmaceutical continuing education that meets the standards identified in subrule 8.33(1). The Board of Medicine recently adopted a similar amendment to 653—subrule 13.3(1), paragraph "a."

The Board of Medicine and the Board of Pharmacy jointly regulate the area of practice addressed by rule 657—8.33(147,155A). Neither Board feels it necessary or expedient to provide for waiver of the rule. Any deviation from the requirements of the rule would need to be negotiated and determined by both boards.

Notice of Intended Action was published in the May 9, 2007, Iowa Administrative Bulletin as **ARC 5867B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the July 31, 2007, meeting of the Board of Pharmacy.

This amendment will become effective on October 3, 2007.

This amendment is intended to implement Iowa Code sections 147.76, 155A.4, and 272C.3.

The following amendment is adopted.

Amend subrule **8.33(1)**, paragraph "a," introductory paragraph, as follows:

a. "Authorized pharmacist" means an Iowa-licensed pharmacist who has documented that the pharmacist has successfully completed an educational program meeting the ~~training standards on vaccine administration as provided by~~ *organized course of study in a college or school of pharmacy or an American Accreditation Council on Pharmaceutical for Pharmacy Education (ACPE)-approved provider of continu-*

PHARMACY BOARD[657](cont'd)

ing pharmaceutical education *program on vaccine administration* that:

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ARC 6173B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 9, "Automated Medication Distribution Systems," Iowa Administrative Code.

The amendments clarify the requirements for a pharmacist's check and verification of each dose of a prescription medication before the medication is removed from the pharmacy and stocked by a nonpharmacist into a component of an automated medication distribution system. The amendments further change the requirements related to utilization of a decentralized unit dose AMDS by eliminating the distinction between an AMDS utilized for floor-stock distribution of patient medications and an AMDS utilized for other than floor-stock distribution. The amendments require verification of the accuracy of medication stocked into AMDS components based not on the intended use of the AMDS component but on whether bar coding or other technology-based verification is used during medication stocking.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5740B** and an Amended Notice of Intended Action was published in the June 6, 2007, Iowa Administrative Bulletin as **ARC 5933B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published as Amended Notice **ARC 5933B**.

The amendments were approved during the July 31, 2007, meeting of the Board of Pharmacy.

These amendments will become effective on October 3, 2007.

These amendments are intended to implement Iowa Code sections 147.107, 155A.13, and 155A.33.

The following amendments are adopted.

ITEM 1. Amend **657—Chapter 9**, parenthetical implementation statutes, by striking "79GA, ch182" wherever it appears and inserting "147,155A" in lieu thereof.

ITEM 2. Amend rule 657—9.7(147,155A) as follows:

657—9.7(147,155A) Decentralized unit dose AMDS. ~~Decentralized unit dose AMDS may be utilized in two ways. Either subrule 9.7(1) or subrule 9.7(2) shall apply, based on the utilization of the decentralized unit dose AMDS.~~

~~**9.7(1) Floor-stock distribution.** If the *Components of a decentralized unit dose AMDS* is utilized for the storage and dispensing of ~~floor-stock medications only~~, medications may be restocked ~~into components with medication~~ by an appropriately trained pharmacy technician following pharmacist verification in the pharmacy of ~~medications~~ *each dose of medication* to be restocked. *The provisions of either subrule 9.7(1) or 9.7(2) shall also apply based on whether or not bar coding or other technology-based verification is utilized to check the accuracy of medication dose placement in the AMDS component.*~~

~~**9.7(2) Other than floor-stock distribution.** If the decentralized unit dose AMDS is utilized for medications other than floor-stock medications, including but not limited to medications intended for first-dose administration or medications otherwise dispensed in unit dose cassettes, the following shall apply:~~

~~a. **Pharmacist or nurse verification.** **9.7(1)** No technology-based verification is available or used. When bar coding or other technology-based verification is not utilized to check the accuracy of medication doses stocked in a dispensing ~~components~~ component, a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy.~~

~~a. Following restocking of medication doses into the AMDS component, a pharmacist or a nurse shall verify that 100 percent of all medication doses are accurately placed in each medication bin of each dispensing component.~~

~~b. Policies, procedures, and safeguards shall be developed and implemented that control, while ensuring availability and access to needed medications, utilization of medications added to the dispensing component prior to pharmacist or nurse verification of the addition. Policies and procedures shall also provide for documentation identifying the individual who provides verification of medications stocked in dispensing components.~~

~~b. **9.7(2)** Bar coding or technology-based verification is available and used. When bar coding or other technology-based verification is utilized to check the accuracy of medication doses stocked in a dispensing component and a pharmacist is not filling nonpharmacist fills the dispensing component, a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy. ~~the~~ The quality assurance plan shall provide for random verification by a pharmacist by one of the methods described in paragraphs "a" and "b" below. A pharmacy may petition the board pursuant to 657—Chapter 34 for a variance for an alternate pharmacist verification process.~~

~~a. ~~The plan shall provide that, one~~ One day each month, all medication doses or bins contained in 5 percent of the components utilized within the system shall be verified by a pharmacist.~~

~~b. ~~Or the plan shall provide that, one~~ One day each month, 5 percent of the medication doses or bins contained in each component utilized within the system shall be verified by a pharmacist. If, however, the system includes fewer than five components, a pharmacist shall, one day each month, verify all medication doses or bins contained in one component utilized within the system. A pharmacy may petition the board pursuant to 657—Chapter 34 for a variance for an alternate pharmacist verification process.~~

~~**9.7(3)** No change.~~

ITEM 3. Amend **657—Chapter 9**, implementation clause, as follows:

PHARMACY BOARD[657](cont'd)

These rules are intended to implement ~~2001 Iowa Acts, chapter 182, section 5(10), paragraph "i."~~ *Iowa Code sections 147.107, 155A.13, and 155A.33.*

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[Published 8/29/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/29/07.

ARC 6170B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Barbering hereby amends Chapter 20, "Administrative and Regulatory Authority for the Board of Barbering," Chapter 21, "Licensure of Barbers," Chapter 23, "Barber Schools," Chapter 24, "Continuing Education for Barbers," and Chapter 25, "Discipline for Barbers, Barber Instructors, Barbershops and Barber Schools," Iowa Administrative Code.

These amendments clarify and correct rules to make them consistent with other boards in the Professional Licensure Division. Additionally, the amendments implement changes necessitated by the passage of 2007 Iowa Acts, Senate File 74.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 2007, as **ARC 5886B**. A public hearing was held on June 12, 2007, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. The Board noted that in Item 8 the catchwords for subrule 21.12(8) were inaccurate and corrected the error by striking a reference to a lapsed barbershop license and replacing it with a reference to an inactive barbershop license.

These amendments will become effective October 3, 2007.

These amendments are intended to implement Iowa Code chapters 147, 158 and 272C and 2007 Iowa Acts, Senate File 74.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 20, 21, 23 to 25] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5886B**, IAB 5/23/07.

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[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6189B

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.6, the Real Estate Appraiser Examining Board hereby amends Chapter 5, "Certified Residential Real Property Appraiser," Chapter 6, "Certified General Real Property Appraiser," Chapter 13, "Certified Residential Appraiser Education Requirements," and Chapter 14, "Certified General Appraiser Education Requirements," Iowa Administrative Code.

The amendments to Chapters 5 and 6 further define requirements for appraisal logs to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board. The amendments to Chapters 13 and 14 further define college course requirements to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 20, 2007, as **ARC 5973B**. No public comments were received. Item 1, which proposed to amend Chapter 4, was removed. A proposed new Chapter 4 is published herein under Notice of Intended Action as **ARC 6190B**.

These amendments were adopted by the Board on August 7, 2007.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

These amendments will become effective on October 3, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.2(1), 6.2(3), 13.2(3), 14.2(3)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5973B**, IAB 6/20/07.

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[Published 8/29/07]

[For replacement pages for IAC, see IAC Supplement 8/29/07.]

ARC 6182B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 12, "Claims for Indigent Defense Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

STATE PUBLIC DEFENDER[493](cont'd)

These amendments implement 2007 Iowa Acts, Senate File 575, which revises the hourly rate paid for indigent defense cases.

Notice of Intended Action to solicit public comment on these amendments was published in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6016B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 6015B**.

A public hearing was held and no comments were received.

These amendments, adopted by the State Public Defender on August 8, 2007, are identical to the amendments published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments will become effective October 3, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815 and 2007 Iowa Acts, Senate File 575.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [12.4, 12.5(1), 12.6(3), 14.3] is being omitted. These amendments are identical to those published under Notice as **ARC 6016B** and Adopted and Filed Emergency as **ARC 6015B**, IAB 7/4/07.

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