



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXX  
October 24, 2007

NUMBER 9  
Pages 801 to 876

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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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**CITATION of Administrative Rules**

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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

## Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 27 '06*</b>	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	<b>***May 16***</b>	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	<b>***June 27***</b>	July 18	Aug. 22	Nov. 19
<b>***May 16***</b>	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
<b>***June 27***</b>	July 18	Aug. 7	Aug. 22	<b>***Aug. 22***</b>	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
<b>***Aug. 22***</b>	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	<b>***Nov. 14***</b>	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	<b>***Dec. 12***</b>	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	<b>***Dec. 26***</b>	Jan. 16 '08	Feb. 20 '08	May 19 '08
<b>***Nov. 14***</b>	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
<b>***Dec. 12***</b>	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
<b>***Dec. 26***</b>	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>
11	Friday, November 2, 2007	November 21, 2007
12	Wednesday, November 14, 2007	December 5, 2007
13	Friday, November 30, 2007	December 19, 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](http://www.legis.state.ia.us).

### Iowa Administrative Bulletin

July 2007 through December 2007 ..... \$169

### Iowa Administrative Code Supplement

\*July 2007 through December 2007 ..... \$263

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### IAC Binders

8 1/2" x 11" Iowa Administrative Code binders ..... \$20 each

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 13, 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, Filed **ARC 6336B** ..... 10/24/07  
 Procurement of goods and services—tied bids, 105.12(4), Notice **ARC 6299B** ..... 10/10/07

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

Avian influenza, 64.185, 64.187, 64.188, 64.191(2)“e”(7), 64.191(2)“g,” 64.192, Notice **ARC 6330B** ..... 10/24/07  
 Dangerous wild animals, ch 77, Filed **Emergency After Notice** **ARC 6302B** ..... 10/10/07

#### ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

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#### COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

All Iowa opportunity scholarship program, ch 8, Notice **ARC 6017B** **Terminated**, also Notice **ARC 6326B** ..... 10/10/07  
 All Iowa opportunity foster care grant program, ch 9, Notice **ARC 6018B** **Terminated**, also Notice **ARC 6327B** ..... 10/10/07  
 Registered nurse and nurse educator loan forgiveness program, ch 34, Filed **ARC 6328B** ..... 10/10/07  
 Iowa teacher shortage loan forgiveness program, ch 35, Filed **ARC 6329B** ..... 10/10/07

#### CULTURAL AFFAIRS DEPARTMENT[221]

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#### ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

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**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

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**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

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Sale of cemetery merchandise, funeral merchandise, and funeral services, rescind ch 19; adopt chs 100 to 106, <u>Notice</u> <b>ARC 6334B</b> , also <u>Filed Emergency</u> <b>ARC 6333B</b> .....	10/24/07

**IOWA FINANCE AUTHORITY[265]**

- Purchasing, ch 15, Filed **ARC 6343B** ..... 10/24/07
- Waivers and variances from administrative rules, 18.1, 18.4 to 18.8, 18.10(1) to 18.10(10),  
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- State housing trust fund, 19.1, 19.2, Filed **ARC 6342B** ..... 10/24/07
- Entrepreneurs with disabilities program, 25.2, 25.4(3), 25.5 to 25.7, Filed **ARC 6344B** ..... 10/24/07

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Numbering of elevator buttons, 72.1(6), 73.8(2), Notice **ARC 6357B** ..... 10/24/07
- Boilers and pressure vessels, 90.2 to 90.4, 91.16, 92.2(2), 92.3, 93.2, 93.2(2),  
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**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Fees, 8.4(1)"c," "d," "f" and "g," 8.4(2)"a," 8.4(7), 9.11(3)"a," 9.13(1)"a," 9.13(2)"b,"  
10.3(3)"a"(1), Notice **ARC 6297B** ..... 10/10/07
- Complaints and investigations, 24.1(2), 24.2, 24.2(1) to 24.2(9), Notice **ARC 6298B** ..... 10/10/07

**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Nursing education programs, ch 2, Filed **ARC 6304B** ..... 10/10/07

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

- Increase in fees for neutrals; sale of goods and services, 1.8, rescind ch 13, Filed **ARC 6300B** ..... 10/10/07

**PUBLIC HEALTH DEPARTMENT[641]**

- Area quarantines, 1.1, 1.13, Notice **ARC 6283B** ..... 10/10/07
- Hepatitis programs, ch 2, Notice **ARC 6284B** ..... 10/10/07
- Center for congenital and inherited disorders, 4.3(2), 4.3(4)"c"(2), 4.3(4)"d"(1),  
4.3(5)"h" and "i," 4.3(6)"b" and "c," 4.3(8), 4.3(10)"e," 4.4(3)"a" and "b,"  
4.4(6), 4.4(7), 4.5(3), 4.6(3), Filed **ARC 6285B** ..... 10/10/07
- Emergency medical services advisory council, ch 130, Filed **ARC 6286B** ..... 10/10/07
- Trauma registry—data dictionary for reportable patient data,  
136.2(1)"a" and "c," Filed **ARC 6287B** ..... 10/10/07

**PUBLIC SAFETY DEPARTMENT[661]**

- Closed circuit surveillance systems, 141.1, 141.4(1), 141.4(3), 141.5(9)"d,"  
141.10, 141.10(1), 141.10(8), Notice **ARC 6282B** ..... 10/10/07

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Examination; work product review, 3.2(5), 3.5(1), 3.5(2), 3.5(4), 3.5(5), Filed **ARC 6337B** ..... 10/24/07
- Certification; registration; continuing education, 5.1(1)"c," 6.1(1)"c," 11.2(4), 11.2(9), 11.3(1),  
11.4(3)"a" to "g," Notice **ARC 6339B** ..... 10/24/07
- Disciplinary actions against certified and associate appraisers, ch 7, Notice **ARC 6338B** ..... 10/24/07

**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," Filed **ARC 6359B** ..... 10/24/07
- 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, Filed **ARC 6360B** ..... 10/24/07
- 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), Filed **ARC 6358B** ..... 10/24/07

**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Attorney fee contracts, 11.2(2), 11.4, 11.5(8), 11.6 to 11.11, Notice **ARC 6303B** ..... 10/10/07
- Claims for foreign language interpreters, 13.2(2), Filed **ARC 6335B** ..... 10/24/07

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

- Advisory committees; agency organization and duties; address change, 1.3“3,” 1.5(2),  
1.6(1), Filed **ARC 6318B** ..... 10/10/07
- Address change, 2.3(1), Filed **ARC 6319B** ..... 10/10/07
- Address change, 3.1, 3.3(3), 3.5, 3.6(2), Filed **ARC 6321B** ..... 10/10/07
- Address change, 4.12(3) to 4.12(5), Filed **ARC 6322B** ..... 10/10/07
- Address change; authorized spending limit, 5.2(4)“a,” 5.17, 5.19(3), Filed **ARC 6323B** ..... 10/10/07
- Name change of central switching hub, 7.1, Filed **ARC 6324B** ..... 10/10/07
- Request for waiver of network use, 9.1, Filed **ARC 6325B** ..... 10/10/07
- Address change, 16.6, Filed **ARC 6307B** ..... 10/10/07
- Address change, 18.5(1), 18.5(5), 18.6(2), 18.11(1), Filed **ARC 6306B** ..... 10/10/07

**UTILITIES DIVISION[199]**

- COMMERCE DEPARTMENT[181]“umbrella”
- Supplemental energy conservation plan, rescind ch 28, Notice **ARC 6317B** ..... 10/10/07

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

- Iowa veterans home, 10.1, 10.40(1)“c” to “i,” Filed **ARC 6345B** ..... 10/24/07
- Veterans trust fund, ch 14, Filed **ARC 6347B** ..... 10/24/07
- Veterans commemorative property, ch 15, Notice **ARC 6348B** ..... 10/24/07

**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  
**Legal Counsel**  
Capitol  
Des Moines, Iowa 50319  
Telephone (515)281-3084  
Fax (515)281-8451

Representative Marcella R. Frevert  
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
<b>CULTURAL AFFAIRS DEPARTMENT[221]</b>		
Iowa community cultural grants program, 6.1 to 6.12 IAB 10/10/07 <b>ARC 6315B</b>	Tone Board Room, 3rd Floor West Historical Bldg. Des Moines, Iowa	October 30, 2007 10 a.m.
Cultural leadership partners program, 8.1 to 8.10 IAB 10/10/07 <b>ARC 6316B</b>	Tone Board Room, 3rd Floor West Historical Bldg. Des Moines, Iowa	October 30, 2007 10 a.m.
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Community college equipment and training fund; targeted industries networking, student competition, and career awareness funds, chs 106 to 109 IAB 10/10/07 <b>ARC 6310B</b> (See also <b>ARC 6309B</b> )	Main Conference Room, 2nd Floor 200 East Grand Ave. Des Moines, Iowa	October 30, 2007 1 to 2:30 p.m.
Generation Iowa commission, ch 400 IAB 10/24/07 <b>ARC 6364B</b> (See also <b>ARC 6365B</b> herein)	Main Conference Room, 2nd Floor 200 East Grand Ave. Des Moines, Iowa	November 13, 2007 2:30 to 4:30 p.m.
<b>EDUCATION DEPARTMENT[281]</b>		
Accreditation requirements for school nurse/guidance counselor; K-12 school counseling program, 12.2, 12.3(11), 12.4(12) IAB 10/10/07 <b>ARC 6293B</b>	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	November 2, 2007 2 to 3 p.m.
High school graduation requirements, 12.3, 12.4(11), 12.5, 12.8 IAB 10/10/07 <b>ARC 6291B</b>	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 30, 2007 1 to 2 p.m.
Supplementary weighting, 97.1, 97.2, 97.4 to 97.7 IAB 10/10/07 <b>ARC 6290B</b>	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 30, 2007 2 to 3 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Surface water classification, 61.3(5) IAB 10/24/07 <b>ARC 6351B</b>	Municipal Utilities Conference Rm. 15 W. 3rd St. Atlantic, Iowa	November 15, 2007 9 a.m.
	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	November 15, 2007 6 p.m.
	Clear Lake Community Meeting Rm. 15 N. 6th St. Clear Lake, Iowa	November 20, 2007 11 a.m.
	Wallace Bldg. Auditorium 502 E. 9th St. Des Moines, Iowa	November 27, 2007 9 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)**

	Iowa City Public Library 123 Linn St. Iowa City, Iowa	November 29, 2007 4 p.m.
	Elkader Opera House 207 N. Main St. Elkader, Iowa	November 30, 2007 11 a.m.
Heavy metals—packaging and distributor liability, 213.3, 213.4(3), 213.5, 213.7(2) IAB 10/24/07 <b>ARC 6355B</b>	Conference Room 4 West Wallace State Office Bldg. Des Moines, Iowa	November 14, 2007 10:30 to 11:30 a.m.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

Iowa hazard mitigation plan, 9.3 IAB 10/10/07 <b>ARC 6296B</b> (See also <b>ARC 6295B</b> )	Conference Room 7105 NW 70th Ave. Camp Dodge, Bldg. W-4 Johnston, Iowa	October 30, 2007 9 a.m.
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**HUMAN SERVICES DEPARTMENT[441]**

Medicaid reimbursement methodology, 78.9, 79.1 IAB 10/24/07 <b>ARC 6346B</b>	Conference Rooms 1 and 2 First Floor SE Hoover State Office Bldg. Des Moines, Iowa	November 19, 2007 1 p.m.
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**INSURANCE DIVISION[191]**

Cemetery merchandise, funeral merchandise and funeral services, chs 19, 100 to 106 IAB 10/24/07 <b>ARC 6334B</b> (See also <b>ARC 6333B</b> herein)	330 Maple St. Des Moines, Iowa	November 15, 2007 2 p.m.
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**LABOR SERVICES DIVISION[875]**

Numbering of elevator buttons, 72.1(6), 73.8(2) IAB 10/24/07 <b>ARC 6357B</b>	Capitol View Rm. 1000 E. Grand Ave. Des Moines, Iowa	November 15, 2007 9 a.m. (If requested)
Boilers and pressure vessels, amendments to chs 90 to 94, 96 IAB 10/24/07 <b>ARC 6340B</b>	Capitol View Rm. 1000 E. Grand Ave. Des Moines, Iowa	November 15, 2007 9 a.m. (If requested)

**MEDICINE BOARD[653]**

Fees, 8.4, 9.11(3), 9.13, 10.3(3) IAB 10/10/07 <b>ARC 6297B</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	October 30, 2007 3 p.m.
Complaints and investigations—processing and confidentiality, 24.1(2), 24.2, 24.4(5) IAB 10/10/07 <b>ARC 6298B</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	October 30, 2007 2:30 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Video surveillance and recording  
at gaming facilities, 141.1,  
141.4, 141.5(9), 141.10  
IAB 10/10/07 **ARC 6282B**

First Floor Conference Room 125  
State Public Safety Headquarters Bldg.  
215 E. 7th St.  
Des Moines, Iowa

November 7, 2007  
8:30 a.m.

**STATE PUBLIC DEFENDER[493]**

Attorney fee contracts,  
11.2(2), 11.4, 11.5(8), 11.6 to 11.11  
IAB 10/10/07 **ARC 6303B**

Conference Room 422  
Lucas State Office Bldg.  
Des Moines, Iowa

October 30, 2007  
9 a.m.

**UTILITIES DIVISION[199]**

Incident and outage reporting,  
amendments to chs 19 to 22, 25  
IAB 9/26/07 **ARC 6267B**

350 Maple St.  
Des Moines, Iowa

October 30, 2007  
9 a.m.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

Veterans commemorative property,  
ch 15  
IAB 10/24/07 **ARC 6348B**

Building A6A, Camp Dodge  
7105 NW 70th Ave.  
Johnston, Iowa

November 13, 2007  
3 to 4 p.m.

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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
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 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
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 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Bureau[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
     Interior Design Examining Board[193G]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
 IOWA FINANCE AUTHORITY[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]  
 HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
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    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
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    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medicine Board[653]  
    Nursing Board[655]  
    Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    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]

# NOTICE OF FUNDS AVAILABILITY

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
<p>Iowa Homeland Security and Emergency Management Division (HSEMD)</p>	<p>Hazard Mitigation Grant Program (HMGP) Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)</p>	<ul style="list-style-type: none"> <li>• State Agencies and Local Governments</li> <li>• Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations.</li> <li>• Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221 (e)</li> <li>• All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP.</li> <li>• All Applicants for a project grant MUST have a FEMA approved local hazard mitigation plan.</li> </ul> <p>Application Process:</p> <ul style="list-style-type: none"> <li>- Potential project &amp; planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: <a href="http://www.iowahomelandsecurity.org/asp/CoEM_FR/grant/index.asp">http://www.iowahomelandsecurity.org/asp/CoEM_FR/grant/index.asp</a></li> <li>- NOI Form must be emailed to <a href="mailto:hsemd.mitigation@iowa.gov">hsemd.mitigation@iowa.gov</a></li> <li>- NOIs will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review.</li> <li>- Entities selected for full project application development will be provided a minimum of two months to complete the application.</li> </ul> <p style="text-align: center;">For additional information please contact:</p> <p style="text-align: center;">John Wageman 515-725-3225                  Jim Russell 515-725-3217                  Jessica Alaniz 515-725-3247                  Sherry McCloskey 515-725-3283</p> <p style="text-align: center;">Iowa Homeland Security and Emergency Management Division                  Camp Dodge, Bldg W4                  Johnston, Iowa 50131</p>	<p>Eligible Project Types</p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity</li> <li>• Construction of safe rooms (tornado and severe wind shelters)</li> <li>• Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, floodproofing, storm shutters, hurricane clips)</li> <li>• Minor structural hazard control or protection projects that may include vegetation management, stormwater management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization</li> <li>• Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system</li> <li>• Development or improvement of warning systems</li> </ul> <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p>

## ARC 6330B

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### 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 163.1, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The proposed amendments update current provisions and conform the rules to existing practices related to low pathogenic avian influenza. The amendments add a provision for the movement of liquid egg products, remove the reference to quail from the provisions, and provide approval for an additional test for low pathogenic avian influenza.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on November 14, 2007. The comments should be directed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-6236 or E-mailed to [Margaret.Thomson@idals.state.ia.us](mailto:Margaret.Thomson@idals.state.ia.us).

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 21—64.185(163), definition of "poultry," as follows:

"Poultry" means commercial egg-laying and meat-producing chickens and commercial turkeys. "Poultry" also means breeder flocks and quail.

ITEM 2. Amend rule 21—64.187(163) as follows:

**21—64.187(163) Surveillance procedures.** *Surveillance procedures shall only apply to commercial poultry flocks of 10,000 or more layers, commercial chicken broiler operations with 10,000 or more broilers, and commercial turkey operations with 1,000 or more turkeys.* Breeders that participate in, and qualify under, the USDA, APHIS, NPIP U.S. Avian Influenza Clean Program meet or exceed the surveillance provisions of this plan and are exempt from further certification under this rule. For poultry flocks, surveillance procedures shall include the following:

**64.187(1) Turkeys and turkey poult.**

a. *Preslaughter/movement testing.* A minimum of 15 blood samples may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation or movement; or

a. *Slaughter/disposal testing.* Twenty blood samples shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

b c. *Sick flock testing.* Twenty blood samples shall be collected two weeks between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved labora-

tory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

e d. *Routine serologic testing.* A test for LPAI should be included.

**64.187(2) Laying chickens and quail pre-lay pullets.**

a. *Preslaughter/disposal/movement testing.* Twenty Fifteen blood samples shall be collected and forwarded to an approved laboratory for LPAI testing within 30 days prior to depopulation or disposal of spent hens or movement of pre-lay pullets to another farm.

b. *Sick flock testing.* Twenty blood samples shall be collected two weeks between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. *Routine serologic testing.* A test for LPAI should be included.

**64.187(3) Broiler chickens.**

a. *Preslaughter testing.* Twenty blood samples may be collected and forwarded to an approved laboratory for LPAI testing within 21 days prior to depopulation; or

a b. *Slaughter/disposal testing.* Twenty blood samples shall be collected at slaughter/disposal and forwarded to an approved laboratory for LPAI testing.

b c. *Sick flock testing.* Twenty blood samples shall be collected two weeks between 10 days and 21 days after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing, and 20 pharyngeal swabs shall be collected at onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

e d. *Routine serologic testing.* A test for LPAI should be included.

ITEM 3. Amend rule 21—64.188(163) as follows:

**21—64.188(163) Official LPAI tests.** Official tests for LPAI are:

1. Agar Gel Precipitin (AGP);
2. Enzyme Linked Immunosorbent Assay (ELISA);
3. Any other tests performed by an approved laboratory to confirm a diagnosis of LPAI.

Tests positive to screening for avian influenza through AGP, ELISA, and any other tests performed by an approved laboratory to confirm a diagnosis of LPAI must be forwarded to National Veterinary Services Laboratory, Ames, Iowa, for subtype testing.

4. *Influenza type A antigen detection tests approved by the state veterinarian.* All influenza type A antigen detection tests performed shall be prior-approved by the state veterinarian, and all positive test results shall be reported immediately to the state veterinarian. A monthly report of all test results shall be reported to the state veterinarian.

ITEM 4. Amend rule 21—64.191(163) as follows:

Amend subrule 64.191(2), paragraph "e," by adding the following new subparagraph (7):

(7) Liquid eggs from layer flocks may continue to move from breaking operations directly to pasteurization plants provided that the transport vehicles are cleaned and disinfected before entering and leaving the premises.

Amend paragraph "g" as follows:

g. *Housing facilities and manure.* Before a new flock is placed in an infected house, manure must be removed and the housing facilities must be cleaned and disinfected. Manure shall not be removed from the premises for a minimum of 30 days after the last active detection of avian influenza virus in

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

a house. Manure from infected housing facilities must be carried in covered conveyances, and transportation routes must avoid other poultry operations. Manure handling and disposal will be at the direction of the state veterinarian.

ITEM 5. Amend rule 21—64.192(163) as follows:

**21—64.192(163) Cleaning and disinfecting.** The housing facilities must be cleaned and disinfected under state supervision within 15 days after affected poultry *and manure* have been removed.

## ARC 6364B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3(1), the Generation Iowa Commission hereby gives Notice of Intended Action to adopt new Chapter 400, “Commission Organization and Procedures,” Iowa Administrative Code.

The Generation Iowa Commission was established within the Iowa Department of Economic Development by 2007 Iowa Acts, House File 617, for purposes of advising and assisting the Department of Economic Development in the retention and attraction of the young adult population in the state in both urban and rural areas. The proposed rules describe the Commission’s composition, meeting procedures and duties, as well as how the public may obtain information or make submissions or requests to the Commission.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on November 13, 2007. Interested persons may submit written or oral comments by contacting Shawn Rolland, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4805.

The Commission will hold a public hearing on November 13, 2007, from 2:30 to 4:30 p.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules are intended to implement 2007 Iowa Acts, House File 617.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6365B**. 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.

## ARC 6362B

### ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

#### 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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 3, “Application and Renewal Process,” Chapter 6, “Seal and Certificate of Responsibility,” and Chapter 9, “Complaints, Investigations, and Disciplinary Action,” Iowa Administrative Code.

Item 1 enumerates Board-approved foreign credential evaluators. Item 2 clarifies that it is the Board’s intention to mail renewal notifications instead of renewal applications prior to the license expiration date. Item 3 allows an out-of-state resident who is applying for reinstatement to provide a statement from the resident state’s licensing board as documented evidence of compliance with mandatory continuing education requirements during a period when the out-of-state resident’s Iowa license was lapsed. Item 4 corrects an inconsistency in the language by changing “information block” to “certification block” wherever it appears. Item 5 proposes a new rule pertaining to confidentiality of complaint and investigative information which allows the Board, under narrow circumstances, to disclose to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) and defines those narrow circumstances.

Waiver of these rules may be sought pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before November 13, 2007. Comments should be directed to Glean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7360.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code sections 542B.2, 542B.6, 542B.13 to 542B.15, 542B.20, 542B.22, 542B.30, 272C.2, 272C.3, and 272C.6.

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 3.1(3) as follows:

**3.1(3) Academic transcripts.** Completion of post-high school education shall be evidenced by receipt of an applicant’s transcripts directly from the office of the registrar of each institution attended. Transcripts from institutions located outside the boundaries of the United States of America shall be evaluated for authenticity and substantial equivalency with Accreditation Board for Engineering and Technology, Inc. (ABET)/Engineering Accreditation Commission (EAC) accredited engineering programs. ~~Such authentic-~~

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

~~tion~~ *To be readily acceptable, such evaluations shall be from a recognized foreign credential evaluator satisfactory to the board and the Center for Professional Engineering Education Services (CPEES). However, the board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. The evaluation is at the expense of the applicant.*

ITEM 2. Amend subrule 3.4(2) as follows:

**3.4(2)** Renewal notification. The board typically mails a renewal ~~application~~ notification to a licensee's last-known address at least one month prior to the license expiration date. Neither the board's failure to mail a renewal ~~application~~ notification nor the licensee's failure to receive a renewal ~~application~~ notification shall affect in any way the licensee's duty to timely renew if the licensee intends to continue practicing in Iowa. Licensees need to contact the board office if they do not receive a renewal ~~application~~ notification prior to the expiration date.

ITEM 3. Amend rule 193C—3.5(542B) as follows:

**193C—3.5(542B) Reinstatement of licensure.**

**3.5(1)** To reinstate a license that has lapsed for one year or more, the applicant for reinstatement must pay the fee required by 193C IAC 2.1(542B) and must satisfy one of the following requirements:

a. Provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession); or

b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement.; or

c. *For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C IAC 7.8(2).*

**3.5(2)** To reinstate a license that has lapsed for less than one year, the applicant for reinstatement must pay the fee required by 193C IAC 2.1(542B) and must satisfy one of the following requirements:

a. Provide documentation of 30 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 20 professional development hours for each profession); or

b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement.; or

c. *For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C IAC 7.8(2).*

ITEM 4. Amend subrule 6.1(4) as follows:

**6.1(4)** Each engineering or land surveying document submitted to a client or any public agency, hereinafter referred to as the official copy (or official copies), shall contain ~~an information~~ a certification block on the first page or attached cover sheet for application of a seal by the licensee in responsible charge and ~~an information~~ a certification block for application of a seal by each professional consultant contributing to the submission. In lieu of each contributing professional consultant providing ~~an information~~ a certification block on the front page or attached cover sheet for application of a seal, a table shall be provided that identifies the contributing professionals and where their respective ~~information~~ certification blocks can be found within the document. The seal and original signature shall be applied only to a final submission. Each official copy (or official copies) of a submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the submission. Each certification block shall display the seal of the licensee and shall designate the portion of the submission for which that licensee is responsible, so that responsibility for the entire submission is clearly established by the combination of the stated seal responsibilities. Any nonfinal submission of an engineering or land surveying document to a client or public agency shall be clearly labeled "preliminary" or "draft."

ITEM 5. Amend 193C—Chapter 9 by adding the following **new** rule:

**193C—9.8(272C,542) Confidentiality of complaint and investigative information.**

**9.8(1)** General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

**9.8(2)** Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9)(Supp. 2007)[2007 Iowa Acts, Senate File 360, section 7], the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report, or expert opinions as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including those initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

(3) The board may release information from a peer review or consultant's report when soliciting the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

**ARC 6351B****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 sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The amendment being proposed will:

1. Revise and list approximately 113 river and stream segments as Class A2 Secondary Contact Recreational Use designated waters in the rule-referenced document "Surface Water Classification."

2. Revise and list approximately 138 river and stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."

3. Revise and list 4 stream segments as Class A2 Secondary Contact Recreational Use and Class B(WW-3) Warm Water-Type 3 designated waters in the rule-referenced document "Surface Water Classification."

4. Revise and list 9 river and stream segments as Class A3 Children's Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."

5. Revise and list 13 river and stream segments as Class A3 Children's Recreational Use designated waters in the rule-referenced document "Surface Water Classification."

6. Revise and list 5 river and stream segments as Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document "Surface Water Classification."

7. Revise and list 9 stream segments as Class B(WW-2) Warm Water-Type 2 and no recreational use designated waters in the rule-referenced document "Surface Water Classification."

8. Revise and list 1 stream segment as Class B(WW-3) Warm Water-Type 3 and no recreational use designated waters in the rule-referenced document "Surface Water Classification."

Recent rule making and 2006 legislative action have brought the Department's water quality rules closer to compliance with federal Clean Water Act requirements and U.S. Environmental Protection Agency (EPA) regulations, establishing new levels of protection for water quality. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams are initially protected at the highest levels for recreation and warm water aquatic life uses. These actions provide initial protection for many miles

of perennial streams that were previously not designated for aquatic life and/or recreational uses.

Under the rules adopted in 2006, it is presumed that all perennial streams and rivers are attaining the highest level of recreation and aquatic life uses and should be protected for activities such as fishing and swimming. This concept of assigning all perennial streams the highest use designation, unless assessments show that the stream does not deserve that level of protection, is referred to as the "rebuttable presumption." Included in the federal regulations are the provisions that allow for scientific analysis of these "presumed" recreational and aquatic life uses. An integral part of implementing the rules adopted in 2006 is verifying that a stream is capable of supporting the presumed uses.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the Department as a step-by-step process to gather site-specific field data on stream features and uses. The Department then assesses available information to determine if the "presumed" recreational and aquatic life uses are appropriate.

The Department elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing an NPDES permit for an affected facility, the Department will complete a UA/UAA for the receiving stream or stream network. Below is a list of the overall 292 proposed stream segments as a result of field assessments conducted in 2006. (Duplicate listings represent separate segments along the overall reach of the stream.)

The proposed stream segment revisions are:

**Class A2 Stream Segments**

1. Badger Creek (Warren)
2. Bear Creek (Linn/Benton)
3. Bear Creek (Linn/Benton)
4. Beaver Creek (Blackhawk/Butler)
5. Beaver Creek (Polk/Boone)
6. Big Creek (Henry)
7. Bloody Run (Clayton)
8. Boone River
9. Boyer River
10. Brush Creek (Henry)
11. Brushy Creek (Webster)
12. Buffalo Creek (Jones/Buchanan)
13. Buffalo Creek (Jones/Buchanan)
14. Buttrick Creek (Greene)
15. Catfish Creek (Dubuque)
16. Cedar Creek (Greene/Calhoun)
17. Cedar Creek (Jefferson) UA/UAA
18. Cloie Branch (Dubuque)
19. Coal Creek (Warren/Marion)
20. Competine Creek (Jefferson)
21. Cooper Creek (Appanoose)
22. Crow Creek (Jefferson)
23. Deep Creek (Jackson/Clinton)
24. Deer Creek (Tama)
25. Dry Run (Winneshiek)
26. Duck Creek (Scott)
27. Durion Creek (Dubuque/Delaware)
28. Eagle Creek (Wright/Hamilton)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

29. East Boyer River
  30. East Branch Iowa River
  31. East Cedar Creek (Calhoun)
  32. East Fork Des Moines River
  33. East Fork Medicine Creek (Wayne)
  34. East Nishnabotna River
  35. Elk River
  36. English River
  37. Fish Creek (Henry)
  38. Floyd River
  39. Fourmile Creek (Polk/Story)
  40. Fox River
  41. Honey Creek (Boone)
  42. Hoosier Creek (Johnson/Linn)
  43. Iowa River
  44. Jackson Creek (Wayne)
  45. Lake Creek (Calhoun)
  46. Linn Creek (Marshall)
  47. Little Beaver Creek (Blackhawk/Butler)
  48. Little Beaver Creek (Boone/Dallas)
  49. Little Beaver Creek (Polk)
  50. Little Rock River
  51. Little Turkey River
  52. Little Turkey River
  53. Lizard Creek (Pocahontas)
  54. Long Creek (Des Moines)
  55. Lotts Creek (Humboldt)
  56. Maple River
  57. Maquoketa River
  58. Middle Nodaway River
  59. Middle Raccoon River
  60. Middle River
  61. Milford Creek (Dickinson)
  62. Mill Creek (Cherokee/O'Brien)
  63. Miners Creek (Jefferson)
  64. Muchakinock Creek (Monroe/Mahaska)
  65. Mud Creek (Benton)
  66. Mud Creek (Scott)
  67. Nodaway River
  68. North English River
  69. North Fork Maquoketa River
  70. North River
  71. North Skunk River
  72. Ocheyedan River
  73. Old Mans Creek (Johnson/Iowa)
  74. Otter Creek (Crawford)
  75. Otter Creek (Lyon/Osceola)
  76. Otter Creek (Warren)
  77. Peas Creek (Boone)
  78. Pine Creek (Muscatine)
  79. Prairie Creek (Benton/Linn)
  80. Quarter Section Run (Bremer)
  81. Silver Creek (Clinton)
  82. Silver Creek (Pottawattamie/Mills)
  83. Silver Creek (Winneshiek)
  84. Silver Creek (Winneshiek/Howard)
  85. Soap Creek (Wapello/Davis)
  86. Soldier Creek (Webster)
  87. Soldier River
  88. South Fork Catfish Creek (Dubuque)
  89. South Fork Chariton River
  90. South Raccoon River
  91. South Raccoon River
  92. South Skunk River
  93. Spring Creek (Des Moines)
  94. Sugar Creek (Cedar)
  95. Sugar Creek (Poweshiek/Jasper)
  96. Ten Mile Creek (Winneshiek)
  97. Tetes Des Morts Creek (Jackson)
  98. Trout Creek (Winneshiek)
  99. Unnamed Creek (2) (Lyon Co. near City of Inwood)
  100. Unnamed Creek (Decatur Co. near City of Lamoni)
  101. Unnamed Creek (Winneshiek Co. near City of Spillville)
  102. Unnamed Creek (Winneshiek Co. near DNR Decorah State Hatchery)
  103. Wapsinonoc Creek (Muscatine)
  104. Wapsipinicon River
  105. West Branch 102 River
  106. West Branch Wapsinonoc Creek (Muscatine/Cedar)
  107. West Fork 102 River
  108. West Fork Little Sioux River
  109. West Jackson Creek (Wayne)
  110. West Nishnabotna River
  111. White Breast Creek (Marion/Clarke)
  112. Whitewater Creek (Dubuque/Jones)
  113. Yankee Run (Clinton/Cedar)
- Class A2, B(WW-2) Stream Segments**
1. Beaver Creek (Worth/Winnebago)
  2. Bluegrass Creek (Audubon)
  3. Brockamp Creek (Winneshiek)
  4. Bruce Creek (Fayette/Clayton)
  5. Brush Creek (Henry/Johnson)
  6. Buckeye Creek (Wapello)
  7. Burr Oak Creek (Sioux)
  8. Cathedral Creek (Appanoose)
  9. Cedar Creek (Sac/Pocahontas)
  10. Chariton River
  11. Clear Creek (Johnson/Iowa)
  12. Competine Creek (Marion)
  13. Copper Creek (Jackson)
  14. Crow Creek (Scott)
  15. Davis Creek (Johnson/Washington)
  16. Drainage Ditch 64 (Winnebago)
  17. Drainage Ditch 171 (Greene)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

18. Drainage Ditch 2 (Wright)
19. Drainage Ditch 3 (Humboldt/Wright)
20. Drainage Ditch 65 (Calhoun)
21. Drainage Ditch 9 and 13 (Calhoun)
22. Drainage Ditch 94 (Wright)
23. Dugout Creek (Poweshiek)
24. Dutch Creek (Washington/Keokuk)
25. East Beaver Creek (Boone)
26. East Fork Big Creek (Decatur)
27. East Otter Creek (Crawford)
28. East Soldier River
29. Gere Creek (Cherokee)
30. Gypsum Creek (Webster)
31. Hardin Creek (Greene/Calhoun)
32. Hickory Creek (Scott)
33. Hogans Branch (Dubuque)
34. Lateral 2 (Buena Vista)
35. Lateral 4 (Buena Vista)
36. Little Bear Creek (Benton)
37. Little Floyd River
38. Little Maple River
39. Little Wapsipinicon River
40. Long Branch (Guthrie)
41. Lux Creek (Dubuque/Jackson)
42. Manson Creek (Appanoose)
43. McDonald Creek (Scott)
44. Mead Creek (Howard)
45. Middle Branch 102 River
46. Middle Creek (Mahaska)
47. Middle Fork Grand River
48. Middle Silver Creek (Pottawattamie)
49. Middle Soldier River
50. Moon Creek (Mahaska/Poweshiek)
51. Mud Creek (Muscatine)
52. North Fork Long Creek (Washington)
53. North Raccoon River
54. Odebolt Creek (Sac/Ida)
55. Otter Creek (Louisa)
56. Outlet Creek (Buena Vista)
57. Pike Run (Winnebago)
58. Prairie Creek (Johnson)
59. Preston Creek (Boone)
60. Ramsey Creek (Johnson/Washington)
61. Rock Creek (Cedar)
62. Roff Creek (Louisa)
63. Sents Creek (Marion)
64. Sevenmile Creek (Decatur)
65. Sewer Creek (O'Brien/Clay)
66. Silver Creek (Clinton)
67. Snyder Creek (Johnson)
68. South Beaver Creek (Butler/Hardin)
69. South Cedar Creek (Clayton)
70. South River
71. South Soap Creek (Davis/Appanoose)
72. Spring Branch (Chickasaw)
73. Sugar Creek (Dallas)
74. Sugar Creek (Henry)
75. Sugar Creek (Lee)
76. Sugar Creek (Mitchell)
77. Sycamore Creek (Scott)
78. Tank Pond Creek (Webster)
79. Trulner Creek (Humboldt)
80. Turkey Creek (Cass)
81. Unnamed Creek (Winnesheik Co. near City of Calmar)
82. Unnamed Creek (Sioux Co. near City of Hull)
83. Unnamed Creek (City of Inwood)
84. Unnamed Creek (Cedar Co. near City of Tipton (East))
85. Unnamed Creek (Winnesheik Co. near City of Calmar)
86. Unnamed Creek (Sioux Co. near City of Hull)
87. Unnamed Creek (Henry Co. near New London)
88. Unnamed Creek (Cedar Co. near City of Tipton (East))
89. Unnamed Creek (Gateway LTD)
90. Unnamed Creek (Linn Co. near ADM Corn Sweeteners)
91. Unnamed Creek (Wapello Co. near City of Agency)
92. Unnamed Creek (Dubuque Co. near City of Asbury)
93. Unnamed Creek (Davis Co. near City of Bloomfield)
94. Unnamed Creek (Center Point — South)
95. Unnamed Creek (Wayne Co. near City of Allerton)
96. Unnamed Creek (Scott Co. near City of Blue Grass)
97. Unnamed Creek (Wayne Co. near City of Corydon)
98. Unnamed Creek (Howard Co. near City of Cresco)
99. Unnamed Creek (Clinton Co. near City of DeWitt)
100. Unnamed Creek (Scott Co. near City of Donahue)
101. Unnamed Creek (Lee Co. near City of Donnellson)
102. Unnamed Creek (Palo Alto Co. near City of Emmetsburg)
103. Unnamed Creek (City of Farnhamville)
104. Unnamed Creek (Wayne Co. near City of Humeston)
105. Unnamed Creek (Benton Co. near City of Keystone)
106. Unnamed Creek (Fayette Co. near City of Lenox)
107. Unnamed Creek (Calhoun Co. near City of Lohrville)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

108. Unnamed Creek (Poweshiek Co. near City of Montezuma)
109. Unnamed Creek (Mahaska Co. near City of New Sharon)
110. Unnamed Creek (Sac Co. near City of Odebolt)
111. Unnamed Creek (Fayette Co. near City of Randalia)
112. Unnamed Creek (Winneshiek Co. near City of Stuart)
113. Unnamed Creek (Bremer Co. near City of Tripoli)
114. Unnamed Creek (Muscatine Co. near City of Walcott)
115. Unnamed Creek (Henry Co. near City of Wayland)
116. Unnamed Creek (Crawford Co. near City of Westside)
117. Unnamed Creek (Dallas Co. near City of Woodward)
118. Unnamed Creek (Muscatine Co. near Clearview MHP)
119. Unnamed Creek (Lee Co. near Climax Molybdenum)
120. Unnamed Creek (Shelby Co. near Country Care Center)
121. Unnamed Creek (Wapello Co. near City of Eddyville)
122. Unnamed Creek (Dubuque Co. near City of Epworth)
123. Unnamed Creek (Winneshiek Co. near City of Festina)
124. Unnamed Creek (Webster Co. near Frontier Ethanol, LLC)
125. Unnamed Creek (Winnebago Co. near Golden Oval Eggs)
126. Unnamed Creek (Jasper Co. near City of Grinnell)
127. Unnamed Creek (Washington Co. near Highland Community School)
128. Unnamed Creek (Winnebago Co. near City of Lake Mills)
129. Unnamed Creek (Cherokee Co. near City of Meriden)
130. Unnamed Creek (Webster Co. near Savage Sanitary District)
131. Unnamed Creek (Southpark Mobile Home Park)
132. Unnamed Creek (Johnson Co. near Sunrise Mobile Home Village)
133. Unnamed Creek (Benton Co. near City of Van Horne)
134. Unnamed Creek (Dallas Co. near City of Waukee)
135. Walnut Creek (Winneshiek)
136. West Branch Little Sioux River
137. West Buttrick Creek (Greene/Webster)
138. Willow Creek (Carroll/Guthrie)

**Class A2, B(WW-3) Stream Segments**

1. Broadhorn Creek (Madison/Warren)
2. Coal Creek (Mahaska/Monroe)
3. Coon Creek (Jefferson)
4. Rock Creek (Wapello and Jefferson)

**Class A3, B(WW-2) Stream Segments**

1. Fourmile Creek (Polk/Story)
2. Mad Creek (Muscatine)
3. Milford Creek (Dickinson)
4. Mill Creek (Johnson)
5. Peas Creek (Boone)
6. Silver Creek (Scott)
7. Springbrook Creek (Guthrie)
8. Unnamed Creek (Henry Co. near City of New London)
9. Wildwood Creek (Floyd)

**Class A3 Stream Segments**

1. Bear Creek (Linn/Benton)
2. Beaver Creek (Polk/Boone)
3. Catfish Creek (Dubuque)
4. Dry Run (Winneshiek)
5. Duck Creek (Scott)
6. Fenchel Creek (Delaware/Clayton)
7. Muchakinock Creek (Monroe/Mahaska)
8. North Fork Maquoketa River
9. Prairie Creek (Benton/Linn)
10. Silver Creek (Clinton)
11. Soldier Creek (Webster)
12. South Raccoon River
13. Wildwood Creek (Floyd)

**Class B(WW-2) Stream Segments**

1. Brushy Creek (Webster)
2. Elk River
3. Lizard Creek (Pocahontas)
4. West Branch Wapsinonoc Creek (Muscatine/Cedar)
5. White Breast Creek (Marion/Clarke)

**Class B(WW-2) streams with no recreational uses**

1. Unnamed Creek (Dubuque Co. near City of Cascade)
2. Unnamed Creek (Dubuque Co. near City of Dyersville)
3. Unnamed Creek (Decatur Co. near City of Lamoni)
4. Unnamed Creek (Marion Co. near City of Pleasantville)
5. Unnamed Creek (O'Brien Co. near City of Sanborn)
6. Unnamed Creek (Buchanan Co. near Cono Christian School)
7. Unnamed Creek (Hancock Co. near City of Klemme)
8. Unnamed Creek (Muscatine Co. near M and W Mobile Home Park)
9. Unnamed Creek (PLCP, LP)

**Class B(WW-3) streams with no recreational uses**

1. Roff Creek (Louisa)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

As required by recent legislation, a Fiscal Impact Statement (FIS) has been prepared for this Notice and is available upon request.

Additional information on Iowa's Water Quality Standards, including the FIS and detailed maps of the stream assessments, can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendment through December 11, 2007. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail [adam.schnieders@dnr.iowa.gov](mailto:adam.schnieders@dnr.iowa.gov). Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at a series of public hearings, which will be held throughout the state as follows:

- |   |         |
|---|---------|
| November 15, 2007<br>Municipal Utilities Conference Room<br>15 W. Third St.<br>Atlantic, Iowa                             | 9 a.m.  |
| November 15, 2007<br>Cherokee Community Center<br>530 W. Bluff St.<br>Cherokee, Iowa                                      | 6 p.m.  |
| November 20, 2007<br>Clear Lake Community Meeting Room<br>15 N. Sixth St.<br>Clear Lake, Iowa                             | 11 a.m. |
| November 27, 2007<br>Wallace State Office Building<br>Wallace Building Auditorium<br>502 East 9th St.<br>Des Moines, Iowa | 9 a.m.  |
| November 29, 2007<br>Iowa City Public Library<br>123 Linn St.<br>Iowa City, Iowa  | 4 p.m.  |
| November 30, 2007<br>Elkader Opera House<br>207 N. Main St.<br>Elkader, Iowa  | 11 a.m. |

Any persons who plan 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.

This amendment may have an impact upon small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 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 61.3(5) as follows:

**61.3(5)** Surface water classification. The department hereby incorporates by reference "Surface Water Classification," effective ~~March 22, 2006~~ [effective date of rule to be inserted]. This document may be obtained on the

department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

**ARC 6355B****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 sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 213, "Packaging—Heavy Metal Content," Iowa Administrative Code.

The proposed amendments include the removal of an out-of-date schedule for reducing concentration levels of heavy metals in packaging.

The proposed amendments incorporate changes enacted as a result of 2007 Iowa Acts, Senate File 344. The amendments propose to restrict the liability of distributors for the distribution of toxic packages without knowledge and substitute civil enforcement proceedings for the former criminal enforcement provisions.

Any interested person may make written suggestions or comments on the proposed amendments on or before 4:30 p.m. on Wednesday, November 14, 2007. Such written comments should be directed to Kathleen L. Hennings, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Kathleen L. Hennings at (515) 281-5859.

When submitting comments, stakeholders are encouraged by the Energy and Waste Management Bureau to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or for a business or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing from 10:30 to 11:30 a.m. on Wednesday, November 14, 2007, in Conference Room 4 West of the Wallace State Office Building, 502 E. 9th St., Des Moines, 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 plan to attend the public hearing and have special requirements, such as those related to hearing or

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 455D.19 as amended by 2007 Iowa Acts, Senate File 344.

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—213.3(455D)**, definition of "distributor," as follows:

"Distributor" means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering or storing packages or packaging components on behalf of third parties is not a distributor.

ITEM 2. Amend subrule 213.4(3) as follows:

**213.4(3) Concentration levels.** The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

a. ~~Effective July 1, 1992, 600 parts per million by weight, or 0.06 percent.~~

b. ~~Effective July 1, 1993, 250 parts per million by weight, or 0.025 percent.~~

c. ~~Effective July 1, 1994, 100 parts per million by weight, or 0.01 percent.~~ Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

ITEM 3. Amend rule **567—213.5(455D)**, introductory paragraph, as follows:

**567—213.5(455D) Certification of compliance.** ~~By July 1, 1992, a~~ A manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance conforming to the requirements of this rule. Certificates provided shall substantially conform with either or both, as applicable, of the following forms:

ITEM 4. Amend subrule 213.7(2) as follows:

**213.7(2) Violation.** ~~A manufacturer or distributor who does not comply with the requirements of Iowa Code section 455D.19 is guilty of a simple misdemeanor.~~

a. *Violations of this chapter are subject to the provisions of 2007 Iowa Acts, Senate File 344, sections 7 to 11.*

b. Each package or packaging component in violation constitutes the basis of a separate offense for purposes of the calculation of penalties pursuant to 2007 Iowa Acts, Senate File 344, section 11(2).

ITEM 5. Amend **567—Chapter 213**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 455D.19 as amended by 2007 Iowa Acts, Senate File 344.

**ARC 6332B****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 426B.4 and 2007 Iowa Acts, House File 909, section 89, the Department of Human Services proposes to amend Chapter 25, "Disability Services Management," Iowa Administrative Code.

These amendments conform the rules on risk pool assistance for counties (Division V of Chapter 25) to statutory changes made in 2007 Iowa Acts, House File 909. The risk pool is one of three pools created in the property tax relief fund. The purpose of risk pool assistance is to enable counties that are having financial problems avoid denying or withholding mental health, mental retardation, and developmental disability services from consumers who need them.

For the past several years, no funds have been available for risk pool assistance. For state fiscal year 2008, the appropriation is \$560,000. Counties must submit their applications for assistance to the Department by January 25 every year. By February 25, the Risk Pool Board will determine county eligibility for assistance and will award the available funding to eligible counties. If the eligible requests exceed the funds available, funds will be awarded in proportion to each county's financial need as a percentage of the total requests. The amendments require the Risk Pool Board to report the unmet needs to the Department, the General Assembly, and the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission.

2007 Iowa Acts, House File 909, has changed the eligibility criteria for assistance. To be eligible, a county must:

- Comply with Iowa Code requirements for county management plans for services.
- Have levied the maximum amount allowed under Iowa law for the county mental health, mental retardation, and developmental disabilities services fund for the current fiscal year.
- Have a services fund ending balance for the preceding fiscal year equal to or less than 20 percent of the county's actual gross expenditures for that fiscal year.
- Demonstrate a need for funding to continue support for mandated services or to avoid the reduction or elimination of services needed for specified reasons.

These amendments remove the previous criteria for assistance, which included unanticipated net expenditures and calculations using the net expenditure amount, a 105-percent test, a less-than-10-percent fund balance test, and a 101-percent test for the current fiscal year's budget. Provisions for a refund if the county levy was not at the maximum are removed, since a county in this situation will no longer be eligible for assistance. The category of "individual application" is removed, and a "preapproval" application is added. When a county applies for assistance more than 45 days before the funding decisions are made, the Department will issue a separate decision on whether the county meets the eligibility requirements for funding.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The proposed amendments also rescind Division I of Chapter 25, "Determination of State Payment Amount." The net expenditure report required under Division I has been replaced by the 634 reports that county auditors send to the Department of Management.

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). However, the Department does not have the authority to waive statutory requirements.

The amendments to Division V were also Adopted and Filed Emergency and are published herein as **ARC 6331B**. This Notice solicits comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before November 14, 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](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 331.439 and section 426B.5(2) as amended by 2007 Iowa Acts, House File 909, section 89.

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.

Amend **441—Chapter 25** as follows:

Rescind and reserve **Division I**.

Amend **Division V** as referenced in **ARC 6331B**.

## ARC 6346B

### HUMAN SERVICES DEPARTMENT[441]

#### Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 249A.4, Notice is hereby given that a public hearing will be held on Monday, November 19, 2007, at 1 p.m. in the First Floor Southeast Conference Rooms 1 and 2, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa. The purpose of the hearing is to receive oral or written comments on the proposed Medicaid home health agency fee schedule that was published under Notice of Intended Action in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6305B**. Anyone who intends to attend the hearing and has special requirements, such as hearing or vision impairments, should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 and advise of specific needs.

## INSURANCE DIVISION

### Notice of Approval of Workers' Compensation Rate Filing

Pursuant to the provisions of Iowa Code chapter 515A, the National Council on Compensation Insurance, Inc. (NCCI) submitted a rate filing on August 8, 2007. Notice of the filing was published in the Iowa Administrative Bulletin on August 29, 2007. No request for a hearing on the rate filing was received.

The rate filing proposes an overall decrease in rates of 0.3%. Based on an independent review of the NCCI proposal, the Commissioner finds the proposed manual rates not to be excessive, inadequate, or unfairly discriminatory.

Susan E. Voss, Commissioner of Insurance, ordered that the August 8, 2007, rate filing is approved to be effective January 1, 2008.

## ARC 6334B

### 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 chapter 523A and 2007 Iowa Acts, Senate File 559, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 19, "Prearranged Funeral Contracts," and to adopt new Chapter 100, "General Provisions," Chapter 101, "Trust Deposits and Trust Funds," Chapter 102, "Warehoused Merchandise," Chapter 103, "Licensing of Preneed Sellers and Sales Agents," Chapter 104, "Continuing Education for Sales Agents," Chapter 105, "Standards of Conduct and Prohibited Practices," and Chapter 106, "Disciplinary Procedures," Iowa Administrative Code.

New Chapters 100 to 106 are promulgated to implement and administer the provisions of Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. Chapter 19 is rescinded.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 15, 2007. Such written materials should be directed to Dennis Britson, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on November 15, 2007, at 2 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319, 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.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6333B**. The content of that submission is incorporated by reference.

## INSURANCE DIVISION[191](cont'd)

Any persons who intend to attend the public hearing and 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 523A and 2007 Iowa Acts, Senate File 559.

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.

**ARC 6341B****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 sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 18, "Waivers and Variances from Administrative Rules," Iowa Administrative Code.

The purpose of these amendments is to clarify and streamline the process of requesting waivers and variances from the rules adopted by the Iowa Finance Authority in order to create a process that is easier and more expedient for petitioners and the Authority. The proposed amendments do the following:

The definition of the terms "authority," "executive director," and "person" are added to rule 265—18.1(17A,16), and the definitions of the terms "waiver" and "variance" are revised. In addition, a clarification is made to the criteria for a waiver or variance to provide that the Authority will consider the public interest, policies and legislative intent of the statute(s) underlying the rule. Subrule 18.5(2) is amended to state the address to which a petition should be delivered. Rule 265—18.6(17A,16) is amended to include a reference to the sample petition in Exhibit A (proposed in Item 10) illustrating the format and content of the petition recommended by the Authority and to revise the language of paragraphs "1" and "8" to reflect the proposed definition of "person." Rule 265—18.13(17A,16) is amended to provide that a waiver or variance may not only be canceled but also is void under certain circumstances. Finally, rule 265—18.16(17A,16) is amended to explain that granting or denying a waiver is final agency action.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on November 13, 2007. Comments may be addressed to Mark Thompson, General Counsel, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4937 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the noticed amendments based on comments received from the public.

These amendments are intended to implement Iowa Code sections 17A.9A and 16.5(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 265—18.1(17A,16) as follows:

**265—18.1(17A,16) Definition Definitions.** For purposes of *The following words and phrases, when used in this chapter, a "waiver" or "variance" shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:*

"Authority" means the Iowa Finance Authority whose powers are exercised by a board of nine members appointed by the governor pursuant to Iowa Code section 16.2.

"Executive director" means the executive director of the authority appointed by the governor pursuant to Iowa Code section 16.6, or the executive director's designee.

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

"Waiver" or "variance" means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to an identified individual, business, organization or a person on the basis of the particular circumstances of that individual, business, organization or person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

ITEM 2. Amend rule 265—18.4(17A,16) as follows:

**265—18.4(17A,16) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

*In determining whether a waiver or variance should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.*

ITEM 3. Amend rule 265—18.5(17A,16) as follows:

**265—18.5(17A,16) Filing of petition.** A petition for a waiver must be submitted in writing to the authority as follows:

**18.5(1)** No change.

**18.5(2)** Other. If the petition does not relate to a pending contested case, the petition may be submitted to the attention of the executive director of the authority Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

ITEM 4. Amend rule 265—18.6(17A,16) as follows:

**265—18.6(17A,16) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester (*for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter*):

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

2. to 7. No change.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

IOWA FINANCE AUTHORITY[265](cont'd)

9. and 10. No change.

ITEM 5. Amend rule 265—18.7(17A,16) as follows:

**265—18.7(17A,16) Additional information.** Prior to issuing an order granting or denying a waiver, the authority executive director may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the authority executive director may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the authority's executive secretary director, a committee of the authority, or a quorum of the authority or authority staff.

ITEM 6. Amend rule 265—18.8(17A,16) as follows:

**265—18.8(17A,16) Notice.** The authority executive director shall acknowledge a petition upon receipt. The authority executive director shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the authority executive director may give notice to other persons. To accomplish this notice provision, the authority executive director may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the authority executive director attesting that notice has been provided.

ITEM 7. Renumber subrules **18.10(1)** to **18.10(9)** as **18.10(2)** **18.10(10)** and adopt new subrule 18.10(1) as follows:

**18.10(1) Executive director review.** The executive director may take up to 60 days to fully investigate and review the petition, and at the next board meeting, thereafter, may present to the authority a suggested order based upon the executive director's investigation and review. The authority shall adopt, amend, or reject the suggested order. If the suggested order is rejected, the authority shall instruct the executive director to prepare an order to be approved at a subsequent board meeting.

ITEM 8. Amend rule 265—18.13(17A,16), introductory paragraph, as follows:

**265—18.13(17A,16) Cancellation of a waiver Voiding or cancellation.** A waiver or variance is void if the material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority issues an order finding any of the following:

ITEM 9. Amend rule 265—18.16(17A,16) as follows:

**265—18.16(17A,16) Judicial review.** ~~Judicial review of the authority's decision to grant or deny~~ *Granting or denying a waiver petition may be taken in accordance with its final agency action under Iowa Code chapter 17A. Any petition for judicial review by the district court shall be filed within 30 days of the issuance of the order in response to the petition unless a contrary time is provided by rule or statute.*

ITEM 10. Amend **265—Chapter 18** by adding the following new Exhibit A at the end thereof:

Exhibit A  
Sample Petition for Waiver/Variance  
BEFORE THE IOWA FINANCE AUTHORITY

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Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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A petition for waiver or variance from a rule adopted by the authority shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver or variance is requested.
- c. Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.
- d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
- e. Provide a history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the treatment by the authority of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
- h. Provide the name, address, and telephone number of any person that would be adversely affected or disadvantaged by the granting of the waiver or variance.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver or variance. I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature	Date
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Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the authority, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the

IOWA FINANCE AUTHORITY[265](cont'd)

specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The executive director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the attention of the executive director of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

## ARC 6357B

### LABOR SERVICES DIVISION[875]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 72, "New Installations," and Chapter 73, "Existing Conveyances," Iowa Administrative Code.

The Board proposes to rescind its earlier adoption of the American Society of Mechanical Engineers A117.1 (2003), rule 407.4.6.2.2, relating to the numbering of elevator buttons.

The purposes of these amendments are to protect the safety of the public and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on November 14, 2007, a public hearing will be held on November 15, 2007, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and to file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 15, 2007, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

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

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 72.1(6) as follows:

**72.1(6)** Installations—*on and after* April 5, 2006, ~~to present~~. As used in this chapter, ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005. As used in this chapter, ASME A18.1 shall mean ASME A18.1 (2003), except chapters 4, 5, 6, and 7. As used in this chapter, ANSI A117.1 shall mean ANSI A117.1 (2003), *except for rule 407.4.6.2.2*. As used in this chapter, ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

ITEM 2. Amend subrule 73.8(2) as follows:

**73.8(2)** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), *except for rule 407.4.6.2.2*.

## ARC 6340B

### LABOR SERVICES DIVISION[875]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Chapter 91, "General Requirements for All Objects," Chapter 92, "Power Boilers," Chapter 93, "Miniature Boilers Installed Prior to September 20, 2006," Chapter 94, "Steam Heating Boilers, Hot Water Heating Boilers and Hot Water Supply Boilers," and Chapter 96, "Pressure Vessels," Iowa Administrative Code.

The proposed amendments update the language relating to identification numbers on jurisdictional objects. The proposed amendments exempt cast iron and cast aluminum boilers from the requirement that boilers be registered with the National Board of Boiler and Pressure Vessel Inspectors. Throughout the boiler and pressure vessel chapters, the proposed amendments change references to Canadian standards from "Canadian National Standards" to "Canadian Standards Association." The proposed amendments also expand the usage of defined abbreviations.

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

If a request for an oral presentation is received by the close of business on November 14, 2007, from 25 interested persons, a governmental subdivision, or an agency or association of 25 or more persons, a public hearing will be held on November 15, 2007, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 15, 2007, to the Division of Labor Services,

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

1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

These amendments are intended to implement Iowa Code chapter 89.

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 875—90.2(89,216,252J) as follows:

Amend the introductory paragraph as follows:

**875—90.2(89,216,252J) Definitions.** ~~The definitions in this chapter, to~~ To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, ~~the definitions in this rule~~ shall be applicable to the rules contained in 875—Chapters 90 to 96.

Amend the following definitions:

“Construction or installation code” means the applicable recognized national or international standard for construction or installation in effect at the time of installation such as ~~American Society of Mechanical Engineers (ASME), German Institute of Standards (DIN), British Standards Institute (BSI), Japanese Industrial Standards (JIS) or Canadian National Standards (CNS) CSA.~~

“Nonstandard object” means an object or related equipment that has not been designed and manufactured to a recognized national or international standard, such as ASME, DIN, BSI, JIS or ~~CNS CSA~~, and has not been inspected by an inspector commissioned by the National Board and registered with the National Board.

Rescind the definition of “CNS” and insert the following **new** definition in lieu thereof:

“CSA” means the Canadian Standards Association, CSA B51, Boiler Pressure Vessel, and Pressure Piping Code.

ITEM 2. Rescind rule 875—90.3(89) and adopt the following **new** rule in lieu thereof:

**875—90.3(89) Iowa identification numbers.** All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

ITEM 3. Amend rule 875—90.4(89) as follows:

**875—90.4(89) National Board registration.** Except for *cast iron boilers, cast aluminum boilers, and* objects governed by 875—Chapter 95, all objects must be registered with the National Board.

ITEM 4. Amend rules **875—91.16(89)**, **875—92.3(89)**, **875—93.2(89)**, **875—94.2(89)** and **875—96.1(89)** by striking “CNS” and inserting “CSA” in lieu thereof.

ITEM 5. Amend subrule 92.2(2) as follows:

**92.2(2)** Installations from July 1, 1996, to September 20, 2006. No power boiler shall be installed from July 1, 1996, to

September 20, 2006, unless it has been designed, manufactured, stamped, installed, and inspected to a recognized national or international standard such as ASME, ~~German Institute of Standards (DIN), British Standards Institute (BSI), Japanese Industrial Standards (JIS), or Canadian National Standards CSA.~~ Only national and international standards acceptable to the division of labor services may be utilized.

ITEM 6. Amend subrule 93.2(2) as follows:

**93.2(2)** Installations from July 1, 1996, to December 31, 1997. Installations and reinstallations from July 1, 1996, to December 31, 1997, shall be constructed and installed in accordance with national and international standards such as DIN, BSI, ASME, JIS, or ~~Canadian National Standards CSA.~~ Only national and international standards acceptable to the division of labor services may be utilized. Miniature boilers installed and reinstalled after January 1, 1996, must be inspected by a National Board commissioned inspector and be registered with the National Board. The boilers must comply with the requirements of ANSI/ASME CSD-1 1995.

## ARC 6339B

### 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 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” and Chapter 11, “Continuing Education,” Iowa Administrative Code.

The proposed amendments are required to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board.

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 November 13, 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](mailto:sylvia.king@iowa.gov).

These amendments are intended to implement Iowa Code chapters 543D and 272C.

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 **5.1(1)**, paragraph “c,” as follows:

c. Effective January 1, 2004, 15 of the 120 hours must include the successful completion of the National USPAP Course or its equivalent. Equivalency shall be determined

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education shall be awarded only when the class is instructed by ~~an at least one AQB-certified instructor(s) and when the class is instructed by at least one residential or general state-certified appraiser~~ *USPAP instructor holding a state-issued certified residential or certified general appraiser credential in an active status and in good standing.*

ITEM 2. Amend subrule **6.1(1)**, paragraph “c,” as follows:

c. Credit shall be awarded only when the USPAP class is instructed by ~~an at least one AQB-certified instructor(s) and the class is instructed by at least one residential or general state-certified appraiser~~ *USPAP instructor holding a state-issued certified residential or certified general appraiser credential in an active status and in good standing.*

ITEM 3. Amend subrule 11.2(4) as follows:

**11.2(4)** An applicant seeking to renew an initial certificate or registration issued less than ~~two years but more than one year prior to renewal must demonstrate completion of at least 14 credit hours, including at least 7 credit hours of USPAP. 185 days prior to renewal is not required to report any continuing education. An applicant seeking to renew an initial certificate or registration issued 185 days to 365 days prior to renewal must demonstrate completion of at least 14 credit hours, including at least 7 credit hours of report writing and 7 credit hours of the most recent National USPAP Update. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more must demonstrate completion of at least 28 credit hours, including at least 7 credit hours of report writing and 7 credit hours of the most recent National USPAP Update. If the initial certificate or registration was issued less than one year prior to the first renewal, no continuing education is required to renew the certificate or registration.~~

ITEM 4. Amend subrule 11.2(9) as follows:

**11.2(9)** A person certified or registered to practice real estate appraising in Iowa shall be deemed to have complied with Iowa’s continuing education requirements for periods in which the person is a resident of another state or district having continuing education requirements for real estate appraising and meets all requirements of that state or district. Deferrals may not be granted to credential holders, except in the case of persons returning from active military duty. Those persons may be placed in active status for a period of up to ~~180~~ *90* days pending completion of all continuing education requirements.

ITEM 5. Rescind and reserve subrule **11.3(1)**.

ITEM 6. Rescind subrule **11.4(3)**, paragraph “a,” and renumber paragraphs “b” to “g” as “a” to “f.”

## ARC 6338B

### 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 and 2007 Iowa Acts, Senate File 137, section 6, the Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to rescind Chapter 7, “Disciplinary Actions Against Certified and Associate Appraisers,” Iowa Administrative Code, and to adopt a new Chapter 7 with the same title.

New Chapter 7 is the result of a complete rewrite of the existing rules; redundant information was removed, and the chapter was rewritten to make it easier to read and to conform the rules to legislation.

These rules are subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before November 13, 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](mailto:sylvia.king@iowa.gov).

This amendment is intended to implement Iowa Code chapters 17A, 543D and 272C and 2007 Iowa Acts, Senate File 137.

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.

Rescind **193F—Chapter 7** and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 7 DISCIPLINARY ACTIONS AGAINST CERTIFIED AND ASSOCIATE APPRAISERS

**193F—7.1(17A,272C,543D) Disciplinary authority.** The board is empowered to administer Iowa Code chapters 17A, 272C, and 543D and related administrative rules for the protection and well-being of those persons who may rely upon registered associate appraisers or certified real property appraisers for the performance of real property appraisal services within this state and for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of registered associate appraisers and certified real property appraisers to determine whether disciplinary proceedings are warranted, to initiate and prosecute disciplinary proceedings, to establish standards of professional conduct, and to impose discipline pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6 and 272C.10, and Iowa Code chapter 543D.

**193F—7.2(543D) Standards of practice.** The standards of practice governing all real property appraisal activities shall be the Uniform Standards of Professional Appraisal Practice,

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

including Provisions, Rules, Comments, and Statements, as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All registered associate appraisers and certified real property appraisers shall comply with the USPAP edition applicable to each appraisal assignment.

**193F—7.3(17A,272C,543D) Grounds for discipline.** The board may initiate disciplinary action against a registered associate appraiser or a certified real property appraiser based on any one or more of the following grounds:

**7.3(1) Fraud in procuring a registration or certificate.** Fraud in procuring or attempting to procure a registration or certificate includes an intentional perversion of the truth when making application for an initial, renewal, reciprocal, or temporary registration or certificate to practice in this state, including:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed;
- b. Attempting to file or filing with the board any false or forged diploma, course certificate, identification, credential, license, registration, certification, examination report, affidavit, or other record;
- c. Failing or refusing to provide complete information in response to a question on an application for initial or renewal registration or certification; or
- d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

**7.3(2) Professional incompetence.** Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimal standards of acceptable and prevailing practice of registered associate appraisers or certified real estate appraisers in this state.
- e. A willful, repeated, or material deviation from USPAP standards, or other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including any violation of USPAP's COMPETENCY RULE.

**7.3(3) Deceptive practices.** Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of real property appraising.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a registrant or certificate holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Acceptance of any fee by fraud or misrepresentation, or in violation of Iowa Code section 543D.18(2).
- d. Falsification of business records or appraisal logs through false or deceptive representations or omissions.
- e. Submission of false or misleading reports or information to the board including information supplied in an audit

of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.

f. Making any false or misleading statement in support of an application for registration or certification submitted by another.

g. Knowingly presenting as one's own a certificate or registration, certificate or registration number, or signature of another or of a fictitious registrant or certificate holder, or otherwise falsely impersonating a certified appraiser or registered associate appraiser.

h. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed.

i. Permitting another person to use the registrant's or certificate holder's registration or certificate for any purposes.

j. Fraud in representations as to skill or ability.

k. Misrepresenting a specialized service as an appraisal assignment in violation of Iowa Code section 543D.18(3) or (5).

**7.3(4) Unethical, harmful or detrimental conduct.** Registrants and certificate holders engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

- a. A violation of 2007 Iowa Acts, Senate File 137, section 5 (improper influence of an appraisal assignment).
- b. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of real property appraising or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of real estate appraising would place the public at risk.
- c. Engaging in a professional conflict of interest, or otherwise violating the public trust, as provided in Iowa Code section 543D.18(1) as amended by 2007 Iowa Acts, Senate File 137, section 3, and in USPAP's ETHICS RULE.
- d. Aiding or abetting any unlawful activity for which a civil penalty can be imposed under 193F—16.2(543D).

**7.3(5) Lack of proper qualifications.**

a. Continuing to practice as a registered associate appraiser or certified real property appraiser without satisfying the continuing education required for registration or certificate renewal.

b. Acting as a supervisor without proper qualification, as provided in 193F—15.3(543D).

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the registrant's or certificate holder's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2)"b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

e. Failure to meet the minimum qualifications for registration as an associate appraiser or certification as a certified real property appraiser.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

f. Practicing outside the scope of a residential certification, or outside the scope of a supervisor's residential certification.

**7.3(6)** Negligence by the registrant or certificate holder in the practice of the profession. Negligence by the registrant or certificate holder in the practice of the profession includes:

a. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

b. A failure to exercise due care including negligent delegation of duties to or supervision of associate appraisers, or other employees, agents, or persons, in developing an appraisal, preparing an appraisal report, or communicating an appraisal, whether or not injury results.

c. Neglect of contractual or other duties to a client.

**7.3(7)** Professional misconduct.

a. A violation of any of the standards applicable to the development or communication of real estate appraisals as provided in 193F—7.2(543D).

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of real estate appraising.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a disciplinary investigation against the registrant or certificate holder or with a disciplinary investigation against persons who are not registrants or certificate holders, including failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the registrant's or certificate holder's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state or another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

e. A violation of Iowa Code section 543D.18 as amended by 2007 Iowa Acts, Senate File 137, section 4 (disclosure of significant real property appraisal assistance), or Iowa Code section 543D.18(6).

f. A violation of 2007 Iowa Acts, Senate File 137, section 6 (restrictions on persons assisting in the development or reporting of a certified appraisal).

g. Failure to retain records as provided in Iowa Code section 543D.19.

h. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**7.3(8)** Willful or repeated violations. The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 543D, or any administrative rule adopted by the board in the administration or enforcement of such chapters.

**7.3(9)** Failure to report.

a. Failure by a registrant or certificate holder or an applicant for a registration or certificate to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority, in Iowa or any other jurisdiction, within 30 calendar days of the final action.

b. Failure of a registrant or certificate holder or an applicant for a registration or certificate to report, within 30 calendar days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action, in Iowa or any other jurisdiction.

c. Failure to notify the board of a criminal conviction within 30 calendar days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 calendar days after occurrence of any adverse judgment in a professional or occupational malpractice action, or settlement of any claim involving malpractice, regardless of the jurisdiction where it occurred.

e. Failure to report another registrant or certificate holder to the board for any violation listed in these rules, pursuant to Iowa Code section 272C.9(2), promptly after the registrant or certificate holder becomes aware that a reportable violation has occurred.

f. Failure to report to the board the appraiser's principal place of business and any change in the appraiser's principal place of business within 10 calendar days of such change; or failure to report to the board all other addresses at which the appraiser engages in the business of preparing real estate appraisal reports, or any change in such information, within 30 calendar days of such occurrence or change.

g. Failure of an associate appraiser or supervisor to timely respond to board requests for information, as provided in 193F—Chapter 4.

**7.3(10)** Failure to comply with board order. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

**7.3(11)** Conviction of a crime. Conviction, in this state or any other jurisdiction, of any felony related to the profession, or of any crime which is substantially related to the qualifications, functions, duties or practice of a person developing or communicating real estate appraisals to others. Any crime involving deception, dishonesty or disregard for the safety of others shall be deemed substantially related to the practice of real property appraising. A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated.

These rules are intended to implement Iowa Code chapters 17A, 272C and 543D and 2007 Iowa Acts, Senate File 137.

**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 October is 6.75%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

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

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

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 October 9, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days . . . . .	Minimum 2.05%
32-89 days . . . . .	Minimum 2.95%
90-179 days . . . . .	Minimum 3.20%
180-364 days . . . . .	Minimum 3.55%
One year to 397 days . . . . .	Minimum 3.70%
More than 397 days . . . . .	Minimum 3.70%

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:

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%
October 1, 2007 — October 31, 2007	6.75%

ARC 6348B

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

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 17A.3(1)"b" and 2006 Iowa Acts, chapter 1107, the Iowa Department of Veterans Affairs proposes to adopt new Chapter 15, "Veterans Commemorative Property," Iowa Administrative Code.

These proposed rules implement Iowa Code section 37A.1, which establishes the Iowa Department of Veterans Affairs as the entity with jurisdiction over the transfer, sale, or trade of veterans commemorative property.

Any interested party or persons may present their views either orally or in writing at a public hearing to be held on November 13, 2007, from 3 to 4 p.m. at the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. Persons who wish to make oral presentations at the public hearing may contact Kent Hartwig, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50313-1824, or at (515)242-0031, prior to the date of the hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact Kent Hartwig at (515)242-0031.

Any interested person may make written comments or suggestions on the proposed rules until 4:30 p.m. on November 13, 2007. Written comments and suggestions should be addressed to Kent Hartwig, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50313-1824; sent by E-mail to [kent.hartwig@iowa.gov](mailto:kent.hartwig@iowa.gov); or sent by fax to (515)242-5659.

These rules are intended to implement Iowa Code section 37A.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 new chapter is proposed.

CHAPTER 15

VETERANS COMMEMORATIVE PROPERTY

801—15.1(37A) Purpose. Pursuant to Iowa Code section 37A.1, these rules establish the process for the sale, trade or transfer of veterans commemorative property.

801—15.2(37A) Definitions. For the purposes of this chapter, the following terms are defined as follows:

"Cemetery" means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains, including a

## VETERANS AFFAIRS, IOWA DEPARTMENT OF [801](cont'd)

pioneer cemetery as defined in Iowa Code section 523I.102. "Cemetery" does not include the following:

1. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration;

2. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration; or

3. A religious cemetery as defined in Iowa Code section 523I.102 that commenced business prior to July 1, 2005.

"Department" means the Iowa department of veterans affairs.

"Veteran" means a deceased person who served in the armed forces of the United States during a war in which the United States was engaged or served full-time in active duty in a force of an organized state militia, excluding service in the National Guard when in an inactive status.

"Veterans commemorative property" means any memorial as defined in Iowa Code section 523I.102, including a headstone, plaque, statue, urn, decoration, flag holder, badge, shield, item of memorabilia, or other embellishment, that meets all of the following criteria:

1. Is over 75 years old;

2. Identifies or commemorates any veteran or group of veterans, including any veterans organization or any military unit, company, battalion, or division; and

3. Has been placed in a cemetery.

"Veterans organization" means the Grand Army of the Republic, Sons of Union Veterans of the Civil War, Sons of Confederate Veterans, Veterans of Foreign Wars, Disabled American Veterans, United Spanish War Veterans, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., American Legion, American Veterans of World War II, Italian American War Veterans of the United States, Inc., or other corporation or association of veterans.

#### 801—15.3(37A) Notification procedure.

**15.3(1) Notification.** Prior to the sale, trade or transfer of veterans commemorative property, a person who owns or controls a cemetery where veterans commemorative property has been placed shall provide notice to the department and obtain written authorization. Notification to the department shall be submitted for review on forms provided by the department 60 days prior to the proposed transaction date of the veterans commemorative property.

**15.3(2) Notification forms.** Notification forms may be obtained from the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824 or from the department's Web site at [www.iowava.org](http://www.iowava.org).

**801—15.4(37A) Transaction approval.** Upon receipt of transaction notification and supporting documentation, the department shall take action on the request within a reasonable time frame not to exceed 60 days. The following criteria will be considered in evaluating a request:

**15.4(1) Risk of deterioration.** The department may authorize the sale, trade, or transfer of veterans commemorative property, if the veterans commemorative property is determined to be at risk of deterioration to a point where the veteran, group of veterans, or veterans organization that the property commemorates will be unrecognizable.

**15.4(2) Relocation of veterans commemorative property** to a suitable location. The department may authorize the sale, trade, or transfer of veterans commemorative property if the transaction will be made with an individual or organization that will preserve the current condition of the property and will display the property in a manner that will commemorate the veteran, group of veterans, or veterans organization for which the property was intended.

**15.4(3) To provide for the maintenance of cemetery property.** The department may authorize the sale, trade, or transfer of veterans commemorative property if the transaction is necessary to ensure that sufficient funds are available to maintain the cemetery where the veterans commemorative property is placed and the specific lot, plot, grave, burial place, niche, crypt, or other place of interment of a veteran or group of veterans.

**15.4(4) Veterans commemorative property will be suitably replaced.** The department may authorize the sale, trade, or transfer of veterans commemorative property if the property will be replaced at the same site, with a memorial that will continue to commemorate the veteran, group of veterans, or veterans organization that the original memorial was intended to honor.

**15.4(5) Donating veterans organization approval.** The department may authorize the sale, trade, or transfer of veterans commemorative property if the veterans organization that is believed to have donated the property consents to the transaction.

**15.4(6) Lending owner approval.** The department may authorize the sale, trade, or transfer of veterans commemorative property if the owner of the property authorizes the transaction and is aware the cemetery will retain the proceeds of the transaction.

#### 801—15.5(37A) Appeals.

**15.5(1) Final department action.** Action taken on the application shall be the final decision of the department.

**15.5(2) Review.** Review of the department's final decision may be sought in accordance with Iowa Code section 17A.19. Written notice of appeal should be directed to the Executive Director, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824, within 30 days of receipt of final department action.

**801—15.6(37A) Penalty.** Engaging in the sale, trade, or transfer of veterans commemorative property without department authorization is punishable as a simple misdemeanor pursuant to Iowa Code section 37A.1(3).

These rules are intended to implement Iowa Code section 37A.1.

**ARC 6365B****ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF [261]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 17A.3(1), the Generation Iowa Commission hereby adopts new Chapter 400, "Commission Organization and Procedures," Iowa Administrative Code.

The Generation Iowa Commission was established within the Iowa Department of Economic Development by 2007 Iowa Acts, House File 617, for purposes of advising and assisting the Department of Economic Development in the retention and attraction of the young adult population in the state in both urban and rural areas. The rules describe the Commission's composition, meeting procedures and duties, as well as how the public may obtain information or make submissions or requests to the Commission.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest, because the rules are primarily administrative and organizational. The rules do not impose any restrictions or limitations on members of the public.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and these rules should be made effective upon filing with the Administrative Rules Coordinator on October 5, 2007. Having administrative rules in effect on this date will allow the Commission to have organizational rules in place to govern its meetings and operations. The rules describe how members of the public can contact the Commission to provide public input on the annual report that is being prepared.

These rules are also published herein under Notice of Intended Action as **ARC 6364B** to allow for public comment.

The Commission adopted these rules on September 25, 2007.

These rules became effective on October 5, 2007.

These rules are intended to implement 2007 Iowa Acts, House File 617.

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.

Adopt the following **new** Part XII:

## PART XII

## GENERATION IOWA COMMISSION

## CHAPTER 400

## COMMISSION ORGANIZATION AND PROCEDURES

**261—400.1(17A) Definitions.**

"Commission" means the generation Iowa commission established by 2007 Iowa Acts, House File 617.

"Department" or "IDED" means the Iowa department of economic development authorized by Iowa Code chapter 15.

**261—400.2(17A) Generation Iowa commission.****400.2(1) Composition.**

a. Commission structure. The commission shall consist of 15 voting members appointed by the governor and 4 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members, 2 state senators and 2 state representatives and not more than 1 member from each chamber being from the same political party. Eight voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the commission to take substantive action.

b. Terms. Commission members shall be appointed for three-year terms that begin and end as provided by Iowa Code section 69.19. However, the initial members shall be appointed to terms of less than three years to ensure that members serve staggered terms.

c. Voting members. At the time of appointment or reappointment, a voting member shall be at least 18 years of age, but less than 35 years of age.

**400.2(2) Meetings.**

a. The commission generally meets monthly. By notice of the regularly published meeting agendas, the commission may hold regular or special meetings at various locations within the state.

b. The commission shall annually elect a chairperson and vice chairperson.

c. Any interested party may attend and observe commission meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if it causes interference and may exclude any person who fails to comply with that order.

e. Minutes of open meetings will be available for viewing at the commission's offices.

**400.2(3) Duties.** The duties of the commission are as follows:

a. Advise and assist the department in activities designed to retain and attract the young adult population.

b. Develop and make available best practices guidelines for employers to attract and retain young adult employees.

c. In the years that the written report required by rule 261—400.3(17A) is not updated, submit a written status report which shall include an analysis of progress made during the previous calendar year.

**400.2(4) Commission offices.** The commission is established within the department. Information about the commission is available through the department's Web site at [www.iowalifechanging.com](http://www.iowalifechanging.com) or at Attn: Generation Iowa Commission, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Written requests may be submitted to the commission at this address.

**261—400.3(17A) Written report.**

**400.3(1)** The commission shall submit a written report to the governor and general assembly of findings and recommendations regarding the status of efforts to attract and retain the young adult population in the state, career opportunities and educational needs of young adults, and the movement of the young adult population between rural areas and urban areas and between Iowa and other states.

**400.3(2)** The commission shall submit this report by January 15, 2008, January 15, 2009, and every odd-numbered year thereafter.

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

**400.3(3)** The commission shall vote on material to be included in the written report. An affirmative vote of two-thirds of the voting members shall be required for approval of the final report.

These rules are intended to implement 2007 Iowa Acts, House File 617.

[Filed Emergency 10/5/07, effective 10/5/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6354B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The purpose of the amendments is to adopt into the state air quality rules significant changes to the federal air quality regulations for ethanol production facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6091B**. A public hearing was held on September 5, 2007. Twelve individuals attended the hearing and four presented oral comments. Six sets of written comments were received prior to the close of the public comment period. The public comment period closed on September 6, 2007.

The submitted comments and the Department's response to those comments are summarized in a responsiveness summary available from the Department.

On April 12, 2007, the Environmental Protection Agency (EPA) modified the definition of "chemical process plants" as it applies to three Clean Air Act permitting programs. These three programs are:

- Prevention of Significant Deterioration (PSD) permitting program, a preconstruction permitting program for major stationary sources located in areas that meet national ambient air quality standards (NAAQS);
- Nonattainment New Source Review (NSR) permitting program, a preconstruction permitting program for major stationary sources in areas not meeting the NAAQS; and
- Operating Permits (Title V) program, an operating program for major stationary sources.

These federal amendments became effective on July 1, 2007.

The Department's air permitting programs rely upon emissions thresholds to determine when program requirements will apply. If a facility has the potential to emit air pollutants in amounts equal to or greater than the threshold, requirements to obtain permits that specify emissions controls will apply.

The adopted amendments increase the air pollutant limit for ethanol production for the PSD program from 100 tons per year to 250 tons per year. However, ethanol facilities that also operate fossil-fuel boilers with a cumulative total of more than 250 million Btu's per hour heat input will continue to be subject to the 100 tons per year threshold for PSD appli-

cability for that equipment. The thresholds for the Title V programs in the adopted amendments remain at the previous level of 100 tons per year.

The Department is not adopting amendments to the nonattainment NSR program at this time because Iowa currently does not have any areas that are not meeting the NAAQS. The Department will pursue these and other amendments to the NSR program at such time when it establishes any nonattainment areas. EPA has approved the Department's approach to nonattainment NSR.

The adopted amendments also will no longer require facilities that use carbohydrate feedstocks in producing ethanol to count fugitive emissions of criteria pollutants when determining if the facilities meet or exceed the emissions threshold for the Title V program or PSD program. Fugitive emissions are emissions that do not come from process stacks or vents.

The Department received comments stating opposition to the proposed increase in the amount of emissions permitted from ethanol and other chemical process plants before the plants are subject to the Department's air quality regulations.

Proposed ethanol plants and modifications to existing ethanol plants will continue to be subject to all applicable state and federal regulations regardless of the level of emissions. Ethanol plants will not be permitted to increase emissions until all permit application review and air quality requirements have been satisfied. The permit provisions may require emissions control, emissions testing, operating limits or record keeping to demonstrate that the ethanol production facility can meet emissions limits specified in state air quality rules, and to demonstrate that the emissions at the facility are not contributing to violations of the national ambient air quality standards (NAAQS).

Regulations that will continue to apply for new and existing ethanol plants include new source performance standards (NSPS) for boilers and steam generation, grain handling, equipment leaks and storage vessels, as well as national emissions standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemicals. As a result of the emissions limits contained in these standards, many ethanol plants will continue to need state-of-the-art emissions control equipment. This equipment typically includes thermal oxidizers, flares, wet scrubbers, and baghouse controls on all significant emission units.

Under the previous rules, ethanol plants could request to be permitted and could operate at levels of 250 tons or more per year for each regulated air pollutant, provided that a modeling demonstration predicted that the applicable ambient air quality standards and increment limits would not be exceeded and that best available control technologies were applied. Additionally, since the Title V applicability thresholds did not change with these amendments, ethanol plants will either need to continue to control emissions to stay below the applicability thresholds for Title V, or will need to comply with the enhanced emissions testing, operation and maintenance and record-keeping requirements for Title V facilities.

The Department also received comments in favor of the amendments. These commenters expressed their support for the Department's plan that the adopted amendments become effective immediately upon filing with the Administrative Rules Coordinator.

The Department did not make any changes to the adopted amendments from what was proposed in the published Notice of Intended Action.

Item 1 amends rule 567—22.100(455B), which contains the definitions for the Title V Operating Permit program, by revising the explanation of "chemical process plants" that is

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

contained in the definition of “stationary source categories.” The amendment states that chemical processing plants shall not include ethanol production facilities that produce ethanol by natural fermentation included in the North American Industry Classification System (NAICS) code 325193 or 312140.

The NAICS is a relatively new classification system that the federal government uses to identify industry sources affected by federal regulations. Traditionally, EPA has used the Standard Industrial Classification (SIC) system, which is a similar system. In fact, EPA explains that when EPA originally interpreted the “chemical process plants” term, EPA did so in reference to SIC 28. Since the time EPA defined the chemical process plant based solely on reference to SIC 28, some federal agencies have replaced the SIC code manual with the NAICS.

Because the NAICS gives special attention to emerging industries (such as ethanol production) and NAICS groups similar production processes together, EPA has decided to use NAICS codes for purposes of EPA’s final regulations for ethanol production plants. The NAICS codes and more information about the relationship between SIC and NAICS are available on EPA’s Web site at <http://www.epa.gov/ttn/chief/codes/index.html#naics>.

Item 2 amends subrule 33.3(1) by revising the explanation of “chemical process plants” contained under the definition of “major stationary source” in the same manner as described above for Item 1.

Item 3 amends subrule 33.3(9) to update the reference to the federal regulations that list the exemptions from certain requirements for PSD-subject sources. In the federal regulations, adopted by reference in subrule 33.3(9), the description of “chemical process plants” was amended in the same manner as described above for Item 1.

The adopted amendments will confer a benefit on ethanol production facilities in the state. Therefore, pursuant to the provisions of Iowa Code section 17A.5(2)“b”(2), the adopted amendments became effective immediately upon filing with the Administrative Rules Coordinator on October 4, 2007.

These amendments are intended to implement Iowa Code sections 455B.133(2) and 455B.133(4). Iowa Code section 455B.133(4) states, in part, that the standards or limitations adopted by the Commission pursuant to subsection 455B.133(4) shall not exceed the standards or limitations promulgated by EPA.

These amendments became effective October 4, 2007.

The following amendments are adopted.

ITEM 1. Amend rule **567—22.100(455B)**, definition of “stationary source categories,” numbered paragraph “**20**,” as follows:

20. Chemical process plants — *The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;*

ITEM 2. Amend subrule **33.3(1)**, definition of “major stationary source,” paragraph “1”(a), listing for “• Chemical process plants,” as follows:

• Chemical process plants (*which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140*);

ITEM 3. Amend subrule 33.3(9) as follows:

**33.3(9)** Exemptions. The provisions for allowing exemptions from certain requirements for PSD-subject sources

as specified in 40 CFR 52.21(i) as amended through ~~November 29, 2005~~, *May 1, 2007*, are adopted by reference.

[Filed Emergency After Notice 10/4/07, effective 10/4/07]

[Published 10/24/07]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

**ARC 6331B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 426B.4 and 2007 Iowa Acts, House File 909, sections 89 and 90, the Department of Human Services amends Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments conform the rules on risk pool assistance for counties (Division V of Chapter 25) to statutory changes made in 2007 Iowa Acts, House File 909. The risk pool is one of three pools created in the property tax relief fund. The purpose of risk pool assistance is to enable counties that are having financial problems avoid denying or withholding mental health, mental retardation, and developmental disabilities services from consumers who need them.

For the past several years, no funds have been available for risk pool assistance. For state fiscal year 2008, the appropriation is \$560,000. Counties must submit their applications for assistance to the Department by January 25 every year. By February 25, the Risk Pool Board will determine county eligibility for assistance and will award the available funding to eligible counties. If the eligible requests exceed the funds available, funds will be awarded in proportion to each county’s financial need as a percentage of the total requests. The amendments require the Risk Pool Board to report the unmet needs to the Department, the General Assembly, and the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission.

2007 Iowa Acts, House File 909, has changed the eligibility criteria for assistance. To be eligible, a county must:

- Comply with Iowa Code requirements for county management plans for services.
- Have levied the maximum amount allowed under Iowa law for the county mental health, mental retardation, and developmental disabilities services fund for the current fiscal year.
- Have a services fund ending balance for the preceding fiscal year equal to or less than 20 percent of the county’s actual gross expenditures for that fiscal year.
- Demonstrate a need for funding to continue support for mandated services or to avoid the reduction or elimination of services needed for specified reasons.

These amendments remove the previous criteria for assistance, which included unanticipated net expenditures and calculations using the net expenditure amount, a 105-percent test, a less-than-10-percent fund balance test, and a 101-percent test for the current fiscal year’s budget. Provisions for a refund if the county levy was not at the maximum are removed, since a county in this situation will no longer be eligible for assistance. The category of “individual application” is removed, and a “preapproval” application is added. When a county applies for assistance more than 45 days before the funding decisions are made, the Department will is-

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

sue a separate decision on whether the county meets the eligibility requirements for funding.

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). However, the Department does not have the authority to waive statutory requirements.

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on September 25, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2007 Iowa Acts, House File 909, division IV, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2007 Iowa Acts, House File 909, section 91.

These amendments are also published herein under Notice of Intended Action as **ARC 6332B** to allow for public comment.

These amendments are intended to implement Iowa Code section 426B.5(2) as amended by 2007 Iowa Acts, House File 909, section 89.

These amendments became effective October 10, 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 amendments are adopted.

ITEM 1. Amend rule **441—25.61(426B)** as follows:

Rescind the definitions of “aggregate application,” “individual application,” “loan,” and “net expenditure amount.” Amend the following definitions:

“Commission” means the mental health ~~and~~, *mental retardation*, developmental disabilities, and *brain injury* commission.

“Division” means the ~~behavioral, developmental, mental health and protective disability~~ services division of the department of human services.

Adopt the following **new** definitions in alphabetical order:

“Mandated services” means those services for which a county is required to pay. Mandated services include, but may not be limited to, the following:

1. The costs for commitments for persons with mental illness, chronic mental illness, mental retardation, or developmental disabilities.

2. Inpatient services at the state mental health institutes for persons with mental illness or chronic mental illness.

3. Inpatient services at the state resource centers for persons with mental retardation or developmental disabilities.

4. Medicaid-funded care in an intermediate care facility for persons with mental retardation.

5. Medicaid-funded partial hospitalization and day treatment services for persons with chronic mental illness.

6. Medicaid-funded case management services for persons with mental retardation or developmental disabilities and for anyone not covered under the Iowa Plan.

7. Services provided under the Medicaid home- and community-based services mental retardation waiver.

8. Services provided under the Medicaid home- and community-based services brain injury waiver for which the county is responsible according to rule 441—83.90(249A).

9. Medicaid habilitation services for persons with chronic mental illness.

“Preapproval application” means an application received more than 45 days before February 25. The board's initial action on a preapproval application is limited to determining if the application qualifies for risk pool funds.

“Regular application” means any application that is not a preapproval application.

ITEM 2. Amend rule 441—25.62(426B) as follows:

Amend the introductory paragraph as follows:

**441—25.62(426B) Risk pool board.** This ten-member board consists of two county supervisors, two county auditors, a member of the ~~mental health and developmental disabilities~~ commission who is not a member of a county board of supervisors, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa Association of Community Providers, and two central point of coordination administrators, all appointed by the governor, subject to confirmation by two-thirds of the members of the senate, and one member appointed by the director of the department of human services.

Amend subrule 25.62(2) as follows:

Amend the introductory paragraph as follows:

**25.62(2) Duties and powers of the board.** The board's powers and duties are to make policy and to provide direction for the administration of the risk pool established by Iowa Code section 426B.5, subsection 3 2. In carrying out these duties, the board shall do all of the following:

Reletter paragraph “f” as “g” and adopt **new** paragraph “f” as follows:

f. Compile a list of requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year and the supporting information for those requests and submit the list and supporting information to the commission, the department of human services, and the general assembly.

Amend subrule **25.62(5)**, paragraph “b,” as follows:

b. Any county making application for risk pool funds must be represented at the board meeting *for awarding funds* when that request is considered. The division shall notify the county of the date, time and location of the meeting. Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of ~~Behavioral, Developmental, Mental Health and Protective Disability~~ Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50309-0114, telephone (515)242-5994.

ITEM 3. Amend rule 441—25.63(426B) as follows:

Rescind subrule 25.63(1) and adopt the following **new** subrule in lieu thereof:

**25.63(1) Applicants.** A county may be eligible for risk pool assistance when the county demonstrates that it meets the conditions in this subrule.

a. Basic eligibility.

(1) The county complies with the requirements of Iowa Code section 331.439.

(2) The county levied the maximum amount allowed for the county's services fund under Iowa Code section 331.424A for the fiscal year of application.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) At the close of the fiscal year that immediately preceded the fiscal year of application, the county's services fund ending balance under generally accepted accounting principles was equal to or less than 20 percent of the county's actual gross expenditures for that fiscal year.

b. Circumstances indicating need for assistance. Risk pool assistance is needed for one or more of the following purposes:

- (1) To continue support for mandated services.
- (2) To avoid the need for reduction or elimination of:
  1. Critical services, creating risk to a consumer's health or safety;
  2. Critical emergency services, creating risk to the public's health or safety;
  3. Services or other support provided to an entire disability category; or
  4. Services or other support provided to maintain consumers in a community setting, creating risk of placement in a more restrictive, higher-cost setting.

Amend subrule 25.63(2) as follows:

**25.63(2)** Application procedures.

a. *Format for submission.* The county shall submit the application package electronically or send ~~Form 470-3723, Risk Pool Application~~, an original plus 15 copies, to the division. *Facsimiles are not acceptable.*

b. *Deadline.* The division must receive the application no later than 4:30 p.m. on January 25 of each year; or, if January 25 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter. ~~Facsimiles and electronic mail are not acceptable.~~ *An application received before January 11 shall be considered a preapproval application and shall receive an initial decision on eligibility before the funding decision is made.*

c. *Signature.* The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator.

d. *Notice of receipt.* Staff of the division shall notify each county of receipt of the county's application.

e. *Content.* The county application package shall attach include the following forms to the application:

a. (1) Form 634A, ~~Revenues Detail 470-3723, Risk Pool Application.~~

b. ~~Form 634B, Service Area Detail (pages 1 to 10).~~

c. (2) Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).

d. (3) Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (pages 1 and 2).

e. (4) If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), for both the current fiscal year budget, as last amended, and the prior fiscal year gross services fund expenditures.

ITEM 4. Amend rule 441—25.64(426B), introductory paragraph, as follows:

**441—25.64(426B) Methodology for awarding risk pool funding.** The risk pool board shall make ~~a~~ *an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than February 25.*

ITEM 5. Rescind subrule 25.65(1) and adopt the following **new** subrule in lieu thereof:

**25.65(1)** Required repayment. Counties shall be required to repay risk pool funds if the county's actual need for risk pool assistance was less than the amount of risk pool assis-

tance granted to the county. The county shall refund the lesser of:

- a. The amount of assistance awarded; or
- b. An amount such that the fund balance after refund will not exceed 5 percent of the year-end balance. Fund balances shall be determined on a modified accrual basis.

[Filed Emergency 9/27/07, effective 10/10/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6333B

### INSURANCE DIVISION[191]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 523A.809 and 2007 Iowa Acts, Senate File 559, the Insurance Division hereby rescinds Chapter 19, "Prearranged Funeral Contracts," and adopts new Chapter 100, "General Provisions," Chapter 101, "Trust Deposits and Trust Funds," Chapter 102, "Warehoused Merchandise," Chapter 103, "Licensing of Preneed Sellers and Sales Agents," Chapter 104, "Continuing Education for Sales Agents," Chapter 105, "Standards of Conduct and Prohibited Practices," and Chapter 106, "Disciplinary Procedures," Iowa Administrative Code.

New Chapters 100 to 106 implement the provisions of Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. Chapter 19 is rescinded.

These chapters became effective September 28, 2007, and preneed sellers and sales agents must comply with these rules on or after December 1, 2007.

In compliance with Iowa Code section 17A.4(2), the Insurance Division finds that notice and public participation are impracticable because of the immediate need for rule making to implement new provisions of this law.

The Insurance Division also 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 September 28, 2007, as they confer a benefit on preneed sellers and sales agents in clarifying their responsibilities under the new legislation.

The Insurance Division adopted these amendments on September 28, 2007.

These amendments are also published herein under Notice of Intended Action as **ARC 6334B** to allow for public comment. This emergency filing permits the Insurance Division to implement the provisions of the new legislation.

These amendments are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

These amendments became effective September 28, 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 amendments are adopted.

INSURANCE DIVISION[191](cont'd)

ITEM 1. Rescind and reserve **191—Chapter 19**.

ITEM 2. Insert the following heading and subheading before **191—Chapter 100**:

REGULATED INDUSTRIES

SALES OF CEMETERY MERCHANDISE, FUNERAL  
MERCHANDISE AND FUNERAL SERVICES

ITEM 3. Adopt **191—Chapters 100 to 106** as follows:

CHAPTER 100  
GENERAL PROVISIONS

**191—100.1(523A,82GA,SF559) Purpose.** This chapter and 191—Chapters 101 through 106 are promulgated to implement and administer the provisions of Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. The provisions of this chapter apply to 191—Chapters 100 through 106.

**191—100.2(523A,82GA,SF559) Definitions.** For purposes of 191—Chapters 100 through 106, the definitions in Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, are incorporated by reference. In addition, the following definitions shall apply:

“Active license” means a license that is in effect and in good standing.

“Commissioner” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“Commissioner’s Web site” means the Web site of the Iowa insurance division, [www.iid.state.ia.us](http://www.iid.state.ia.us).

“Continuing education” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills to maintain and improve compliance with 191—Chapters 100 through 106 and Iowa Code chapter 523A, and to maintain and improve the safety and welfare of the public.

“Credit” means at least 50 minutes spent by a licensee in actual attendance at and in completion of an approved continuing education activity. A credit may also be given for independent study.

“Discipline” means any civil penalty or sanction that the commissioner imposes upon a licensee.

“Expired license” means a license that has not been renewed by the renewal date.

“Inactive license” means a license that has been placed on inactive status by the commissioner at the request of the licensee.

“Independent study” means a subject, program or activity that a person pursues autonomously that meets the standards for approval criteria in these rules and includes a test at the conclusion of the study. Independent study includes programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

“License” means a preneed seller license or a sales agent license issued pursuant to 191—Chapter 103 or 191—Chapter 104 and Iowa Code chapter 523A.

“License certificate” means any document issued by the commissioner as evidence that a person is licensed with the commissioner.

“Licensed person” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an inactive license.

“Licensee” means any person to whom the commissioner has issued a preneed seller license or sales agent license.

“License renewal date” means the date assigned by the commissioner for renewal of a license.

“Licensure” means the granting of a license by the commissioner pursuant to Iowa Code chapter 523A.

“Review” means the commissioner’s verification of satisfactory completion of continuing education requirements during a specified time period for certain licensees and persons, as selected by the commissioner, presenting or sponsoring continuing education activities.

“Unlicensed person” means any person who does not have a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who surrendered a license to the commissioner and any person whose license was revoked by the commissioner.

**191—100.3(523A,82GA,SF559) Contact and correspondence.**

**100.3(1) Contact information.** All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 340 Maple Street, Des Moines, Iowa 50319-0066. Telephone inquiries may be made at (877)955-1212. E-mail correspondence may be made through the commissioner’s Web site: [www.iid.state.ia.us](http://www.iid.state.ia.us).

**100.3(2) Complaints, inquiries and correspondence.** The commissioner may receive and process any complaint made regarding cemetery merchandise, funeral merchandise, funeral services or any combination of those items, or regarding a sales agent or a preneed seller that alleges certain acts or practices which may constitute one or more violations of the provisions of 191—Chapters 100 to 106 or of Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa. If required by the commissioner, complaints shall be made on forms prescribed and provided by the commissioner.

**100.3(3) Forms and instructions.** Copies of all required forms and instructions are available on the commissioner’s Web site and may be obtained by mail.

**191—100.4(523A,82GA,SF559) Fees.**

**100.4(1) Manner of payment.** Fees required by 191—Chapters 100 through 106 may be paid by check, credit card, or electronically, if available, or as directed by the commissioner.

**100.4(2) Nonrefundable.** Fees are not refundable.

**100.4(3) Fee for paper filing.** The commissioner shall assess a \$25 processing fee, to reimburse the commissioner for its expenses in processing the filing, for any filing submitted in a nonelectronic format, if electronic filing is available through the commissioner’s Web site.

**100.4(4) Specific fees.**

a. The license fee for a preneed seller pursuant to 191—paragraph 103.2(1)“g” is \$100 plus \$15 for each criminal history background check request that the commissioner needs to make.

INSURANCE DIVISION[191](cont'd)

b. The license fee for a sales agent pursuant to 191—paragraph 103.2(2)“g” is \$20 plus \$15 for each criminal history background check request that the commissioner needs to make.

c. The fee for a multijurisdictional license for a preneed seller pursuant to 191—subrule 103.2(3) is \$50.

d. The fee for a multijurisdictional license for a sales agent pursuant to 191—subrule 103.2(3) is \$20.

e. The fee for license renewal for a preneed seller or sales agent pursuant to 191—subrule 103.4(3) is \$20.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

CHAPTER 101

TRUST DEPOSITS AND TRUST FUNDS

**191—101.1(523A,82GA,SF559) Trust income withdrawals.** Trust income may be withdrawn by preneed sellers on purchase agreements executed between July 1, 1987, and July 1, 2007, as set forth in this chapter. In addition, trust income may be withdrawn on purchase agreements executed on or after July 1, 2007, as set forth in this chapter, by any preneed seller that is a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy, if the corporation is comprised of six establishments all located within the same county.

**191—101.2(523A,82GA,SF559) Amount of trust income withdrawn.** The amount of income withdrawn pursuant to rule 101.1(523A,82GA,SF559) may not exceed the difference between the amount needed to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index in rule 101.7(523A,82GA,SF559), and the interest or income earned during the preceding year but, in any event, may not exceed 50 percent of the total interest or income on a calendar-year basis. A portion of trust income must remain in trust and cannot be withdrawn by the preneed seller. This amount is the greater of the following: one-half of the aggregate income and interest credited to the trust during the preceding calendar year; or an amount equal to the consumer price index adjustment for the preceding year.

**191—101.3(523A,82GA,SF559) Allocation of trust income to purchasers’ accounts.** Income distributions withdrawn from the trust shall be allocated to purchasers’ accounts remaining in the trust at the end of the month in which the distribution was made and on the basis that each such account’s income balance for that month bears to the aggregate income balances of all such accounts. By September 1 after each calendar year, any income not withdrawn pursuant to this chapter shall be allocated to purchasers’ accounts remaining in trust at the end of the month in which the allocations were made.

**191—101.4(523A,82GA,SF559) Credit for trust income withdrawn.** The early withdrawal of interest or income under this chapter does not affect the purchaser’s right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

**191—101.5(523A,82GA,SF559) Time period during which trust income may be withdrawn.** Income withdrawals permitted by this chapter shall be made no later than 180 days after the calendar year in which the income was earned.

**191—101.6(523A,82GA,SF559) Application of contract law.** In any situation in which this chapter and the terms and

conditions of a purchase agreement do not conflict, the terms and conditions of the purchase agreement shall govern the withdrawal of trust income and interest. The ability to withdraw income and interest may be limited or prohibited by the terms of a purchase agreement. However, in the event of a conflict with the limitations set forth in this chapter, the preneed seller must comply with the requirements of this chapter.

**191—101.7(523A,82GA,SF559) Consumer price index adjustment.**

**101.7(1)** Pursuant to Iowa Code sections 523A.201(8) and 523A.602(2)“b”(1), the commissioner sets the following inflation adjustment factors for the years listed for the purposes of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation or to adjust the purchase price of merchandise and services in order to calculate the amount of a cancellation refund.

2006	2.5%
2005	3.4%
2004	3.3%
2003	1.9%
2002	2.4%
2001	1.6%
2000	3.4%
1999	2.7%
1998	1.6%
1997	1.7%
1996	3.3%
1995	2.5%
1994	2.7%
1993	2.7%
1992	2.9%
1991	3.1%
1990	6.1%
1989	4.6%
1988	4.4%
1987	4.4%

**101.7(2)** The inflation adjustment factors for years 2007 and later will be set by the commissioner and posted on the commissioner’s Web site.

**191—101.8(523A,82GA,SF559) Cancellation refunds.** The requirement set forth in Iowa Code section 523A.602(2)“b”(1) applies to any purchase agreement executed on or after July 1, 2001.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

CHAPTER 102

WAREHOUSED MERCHANDISE

**191—102.1(523A,82GA,SF559) Funeral and cemetery merchandise delivered to the purchaser or warehoused.** If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply, either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

**191—102.2(523A,82GA,SF559) Storage facilities.** The commissioner shall approve a storage facility’s application to be designated as an approved storage facility for purposes of

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rule 102.1(523A,82GA,SF559) upon satisfaction of the following conditions:

**102.2(1)** Insurance coverage and financial condition. The applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant's financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

a. A balance sheet prepared as of a date within 120 days prior to the application; and

b. For each of the three fiscal years preceding the date of the balance sheet or, if the applicant has been in existence less than three years, for the period of the applicant's existence, a profit and loss statement and any changes in financial position.

**102.2(2)** Record-keeping system. The applicant must demonstrate that the applicant has an adequate record-keeping system that records for each item in storage: an identification and a description; the ownership, name, and address of the preneed seller; an order number; the order date; and the storage date. The record-keeping system also must be able to provide an aggregate listing and numerical totals for the entire storage facility and for each state or province.

**102.2(3)** Title. The storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the preneed seller, with at least one copy marked as the preneed seller's copy and at least one copy marked as the purchaser's copy. Each preneed seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the preneed seller's records. Certificates of ownership should not be issued until the merchandise is stored in substantially complete condition.

**102.2(4)** Delivery requirements.

a. The applicant must undertake to require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery merchandise.

b. The storage facility must undertake not to accept prepayment of delivery expenses or charges. Appropriate written disclosure that delivery costs will be billed at the time of delivery shall be provided to the preneed seller.

**102.2(5)** Storage requirements. The storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

**102.2(6)** Consent to audits and inspections. The applicant must file a written consent authorizing audits, reviews and inspections by the commissioner.

**102.2(7)** Statutory compliance with other state or provincial laws. The applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery merchandise.

**102.2(8)** Identification or personalization of merchandise. All cemetery merchandise must be appropriately marked, identified, and described in a manner such that it may be distinguished from other similar items of merchandise, unless the commissioner has given prior written waiver of this requirement upon a showing of good cause. In all instances, the storage facility's storage system shall allow for visual inspection and counting, have storage by type or style, identify the location of the item by a shelf and bin- or slot-

type system or reasonable alternative, and keep totals for each type of merchandise item in storage.

**102.2(9)** Payment of accounts receivable. The applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

**102.2(10)** Audits and examinations. The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this chapter. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

**102.2(11)** Reports. The commissioner may request reports containing information about the storage program, including but not limited to the following:

a. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities;

b. A description of the storage program; and

c. A detailed description of all merchandise currently in storage, which shall include all of the following:

(1) The date the merchandise was first placed in storage;

(2) The full name of the purchaser or the person on whose behalf the merchandise was purchased;

(3) The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

(4) The name and address of the preneed seller;

(5) The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

(6) The total number of items, by category, in storage at the facility.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

CHAPTER 103  
LICENSING OF PRENEED SELLERS  
AND SALES AGENTS

**191—103.1(523A,82GA,SF559) Requirement for a preneed seller license or a sales agent license.**

**103.1(1)** No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, unless the person holds an active license.

**103.1(2)** No person may agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, unless the person holds an active license.

**103.1(3)** No person may accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, unless the person holds an active license.

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**191—103.2(523A,82GA,SF559) Application and licensing of preneed seller or sales agent.**

**103.2(1)** Preneed seller application. A person that desires to be licensed as a preneed seller must satisfy the following requirements:

- a. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(4);
- b. Appoint at least one sales agent;
- c. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501(3) as amended by 2007 Iowa Acts, Senate File 559, section 16, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;
- d. Provide a financial history, if requested by the commissioner, pursuant to Iowa Code section 523A.501(4) as amended by 2007 Iowa Acts, Senate File 559, section 16, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;
- e. Provide evidence of a fidelity bond or insurance required by Iowa Code section 523A.201(5) as amended by 2007 Iowa Acts, Senate File 559, section 7;
- f. Have not committed any act that is grounds for denial under subrule 103.2(5); and
- g. Pay the appropriate license fee as set forth in rule 191—100.4(523A,82GA,SF559).

**103.2(2)** Sales agent application. An individual that desires to be licensed as a sales agent pursuant to Iowa Code section 523A.502 as amended by 2007 Iowa Acts, Senate File 559, section 17, must satisfy the following requirements:

- a. Be at least 18 years of age;
- b. Be appointed by at least one preneed seller and submit evidence of that appointment;
- c. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(4);
- d. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501(3) as amended by 2007 Iowa Acts, Senate File 559, section 16;
- e. Have not committed any act that is grounds for denial under subrule 103.2(5); and
- f. Pay the appropriate license fee as set forth in rule 191—100.4(523A,82GA,SF559).

**103.2(3)** Multijurisdictional license. The commissioner may issue a preneed seller license or a sales agent license based on a multijurisdictional preneed seller license or a multijurisdictional sales agent license, pursuant to Iowa Code sections 523A.501(8) as amended by 2007 Iowa Acts, Senate File 559, section 16, and Iowa Code section 523A.501(10), if the preneed seller or sales agent files an application as directed by the commissioner and pays the applicable filing fee as set forth in rule 191—100.4(523A,82GA,SF559). Instructions for application may be found on the commissioner's Web site.

**103.2(4)** Application form. A person applying for a preneed seller license or sales agent license shall complete an application form designated by the commissioner in accordance with the instructions supplied with the form. The appropriate application form and instructions may be obtained from the commissioner's Web site.

**103.2(5)** Approval or denial of applications.

a. If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action. The commissioner shall suspend review of the application until the applicant successfully provides the necessary information. If an applicant does not satisfy the terms of the deficiency letter within six months, the application will expire and a new application form must be submitted.

b. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code section 523A.501(3) as amended by 2007 Iowa Acts, Senate File 559, section 16.

c. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code section 523A.502(4) as amended by 2007 Iowa Acts, Senate File 559, section 17.

d. In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation pursuant to Iowa Code sections 523A.501(3) and 523A.502(4) as amended by 2007 Iowa Acts, Senate File 559, sections 16 and 17, respectively, and obtained through the financial history review pursuant to Iowa Code sections 523A.501(3) and 523A.502(4) as amended by 2007 Iowa Acts, Senate File 559, sections 16 and 17, respectively.

e. If the commissioner approves the application and accompanying information, the commissioner shall issue a license, the term of which shall be four years.

f. The commissioner may deny a license application based on information received during the application process or on any ground provided to discipline a license in 191—Chapter 105 or Iowa Code chapter 523A.

**191—103.3(523A,82GA,SF559) Change of ownership or sale of business of preneed seller.**

**103.3(1)** If there is a material change in the ownership of a preneed seller, including any change of controlling interest in any corporation or other business entity, the preneed seller shall notify the commissioner of the change within 30 days of the sale and shall provide information as requested by the commissioner to obtain a new preneed seller license.

**103.3(2)** If all or part of a business entity that has a preneed seller license is sold in whole or in part, and the business entity has not canceled the license nor has the purchaser of that entity applied for a new license in the purchaser's name within 30 days of the sale, the license shall automatically terminate. For purposes of this rule, sale of a business entity includes any change of controlling interest in any corporation or other business entity.

**103.3(3)** Failure to notify the commissioner of a change of ownership or sale of all or part of a business as set forth in this rule may be a ground for penalty under subrule 105.6(10).

**191—103.4(523A,82GA,SF559) License renewal.**

**103.4(1)** License expiration.

a. Preneed seller licenses expire on the last day of the month of the four-year anniversary of the issue date of the license.

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b. Sales agent licenses expire on the last day of the birth month of the licensee four years after the issue date of the license.

**103.4(2)** Application for renewal. A licensee must submit an application for renewal to the commissioner at least 60 days in advance of the expiration date of the license. The licensee is responsible for renewing the license.

**103.4(3)** Renewal application form. An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the Web site. In addition:

a. The renewal application shall be accompanied by a fee as set out in rule 191—100.4(523A,82GA,SF559). Failure to include the proper amount shall be cause for suspension of the application pursuant to subrule 103.4(4).

b. A sales agent must have completed the continuing education required by 191—Chapter 104 and submit with the application documentation verifying completion, as directed on the commissioner's Web site.

**103.4(4)** Deficiencies in the application. If the application form is not completed according to the instructions, the commissioner will send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action, and the commissioner will suspend review of the application until the applicant successfully completes the application form in accordance with the instructions. If an applicant does not satisfy the terms of the deficiency letter within six months, the application shall expire, and a new application form must be submitted. If a licensee fails to submit a timely and sufficient renewal application, the license shall expire.

**103.4(5)** Failure to file annual statement. A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph 106.2(3)“a” and 2007 Iowa Acts, Senate File 559, section 18.

**103.4(6)** Inactive license, voluntary surrender and license reinstatement.

a. If a licensed preneed seller does not have at least one appointed sales agent, or if a sales agent is not appointed with at least one preneed seller, the licensee shall request that the commissioner place the licensee's license on inactive status, the licensee shall voluntarily surrender the license, or the commissioner shall suspend the license.

b. A preneed seller licensee or a sales agent licensee that has stated an intent to exit the preneed business may voluntarily surrender the license or request that the commissioner place the licensee's license on inactive status.

c. A preneed seller or sales agent must request an inactive status from the commissioner or must surrender the license to the commissioner before the renewal due date or the license shall expire.

d. In no event may a license be inactive for more than 12 months.

e. A preneed seller or sales agent may apply for reinstatement of an inactive license up to 12 months after the license expiration date by submitting the following:

(1) An application for reinstatement, which may be obtained from the commissioner's Web site;

(2) A consent and waiver form required for a background check;

(3) A financial history for the interim time period after the license became inactive and before the application for reinstatement;

(4) For a preneed seller, the name of at least one appointed sales agent or, for a sales agent, the name of at least one preneed seller;

(5) For a sales agent, proof of completion of continuing education requirements found in 191—Chapter 104; and

(6) A license fee as set forth in rule 191—100.4(523A,82GA,SF559).

f. A preneed seller or sales agent who surrendered a license for a nondisciplinary reason more than 90 days before the expiration date of the license and stated an intent to exit the preneed business may file a request to reinstate the license. The request must be received by the commissioner within 90 days of the date the license was terminated by the commissioner, and should include the information set forth in paragraph 103.4(6)“e.” The request will be granted if the preneed seller or sales agent is otherwise eligible to receive the license. If the request is not received within 90 days, the preneed seller or sales agent must apply for a new license.

**191—103.5(523A,82GA,SF559) Denial of license applications or of applications for renewal.**

**103.5(1)** Notice of denial. When the commissioner denies an application for an initial preneed seller license or for the renewal of a preneed seller license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

**103.5(2)** Appeal. An applicant that desires to contest the denial of an application may request a hearing before the commissioner pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. If a request for hearing is timely made, the commissioner shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant. A failure to timely request a hearing constitutes failure to exhaust administrative remedies.

**103.5(3)** Hearings. License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

**191—103.6(523A,82GA,SF559) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.**

**103.6(1)** The term “reinstatement” as used in this rule means the reinstatement of a suspended license. 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. This rule does not apply to the reinstatement of an expired or inactive license.

**103.6(2)** Any preneed seller whose license has been revoked or suspended by order, or that 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 that shall file with the commissioner an application for reinstatement or reissuance of a li-

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cense. Instructions regarding how to complete and file an application can be found on the commissioner's Web site.

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 preneed seller or sales agent 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 103.6(2)"c"), revocation, or acceptance of the forfeiture of a license.

**103.6(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.

**103.6(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 deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 106, Iowa Code chapter 523A, or 2007 Iowa Acts, Senate File 559. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

**103.6(5)** 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 becomes 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.

**103.6(6)** A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner with the written consent of the commissioner. The forfeiture becomes 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 191—Chapter 106, Iowa Code chapter 523A, or 2007 Iowa Acts, Senate File 559.

**103.6(7)** When a preneed seller's license has been suspended for a period of time which extends beyond the preneed seller's license expiration date, the license will terminate on the license expiration date, and the preneed seller must apply for a new license. If suspension for a period of time ends prior to the preneed seller's license expiration date, the commissioner shall reinstate the license at the end of the suspension period. The commissioner is not prohibited from bringing an additional immediate action if the preneed seller has engaged in misconduct during the period of suspension.

**191—103.7(252J) Suspension for failure to pay child support.**

**103.7(1)** Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by regular mail.

**103.7(2)** The notice shall contain the following items:

a. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current insurance license in 30 days;

b. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;

d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

**103.7(3)** The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

**103.7(4)** If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

**103.7(5)** Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this subrule.

**191—103.8(261) Suspension for failure to pay student loan.**

**103.8(1)** The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

**103.8(2)** Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed

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sales agent may accept service personally or through authorized counsel.

**103.8(3)** The notice shall contain the following items:

a. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;

b. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;

c. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;

d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

**103.8(4)** The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

**103.8(5)** In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

**103.8(6)** If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

**103.8(7)** Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

**103.8(8)** The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

**103.8(9)** Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

## CHAPTER 104

### CONTINUING EDUCATION FOR SALES AGENTS

#### **191—104.1(523A,82GA,SF559) Continuing education requirements.**

**104.1(1)** Credits. For each license term, each licensed sales agent shall be required to complete a minimum of eight credits of continuing education approved by the commissioner. At least two credits, to be known as the ethics and legal requirements continuing education requirement, must cover subjects relating to business ethics, the legal requirements of Iowa Code chapter 523A, 191—Chapters 100 through 106, and other relevant federal and state laws and rules, such as the Federal Trade Commission Funeral Rule (16 CFR Part 453).

a. Automatic exemption. A sales agent shall be exempt from the continuing education requirements during any biennium in which the sales agent can demonstrate that any of the following apply:

(1) The sales agent served honorably on active duty in military service;

(2) The sales agent resided in another state having comparable continuing education requirements and the sales agent met all the requirements of that state;

(3) The sales agent was a government employee working in the sales agent's area of specialty and was assigned to duty outside the United States; or

(4) The sales agent was absent from this state while engaged in an approved, active practice under circumstances approved by the commissioner.

b. Continuing education exemption for disability or illness. A sales agent who has had a physical or mental disability or illness during the biennium may apply for an exemption.

(1) An exemption will provide for an extension of time or an exemption from some or all of the continuing education requirements.

(2) A sales agent applying for an exemption shall submit a completed application on a form approved by the commissioner. An exemption for disability or illness will not be granted without the signature of a licensed health care professional who can attest to the existence of a disability or illness during the biennium. If the application is from a person who is the primary caregiver to a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the applicant's status as the primary caregiver.

(3) The commissioner will grant or deny exemption applications in writing. The terms of the exemption, including any conditions that must be met and the length of any extension of time, shall be set forth in the commissioner's exemption confirmation letter.

(4) If the exemption is approved, the sales agent shall retain a copy of the exemption confirmation letter for no less than four years.

(5) The sales agent must apply for a new exemption if the physical or mental disability or illness continues into the next biennium or beyond the time period approved by the commissioner.

**104.1(2)** Effective date. Continuing education is a prerequisite for the renewal of any sales agent license for which a renewal application is filed on or after July 1, 2008.

**104.1(3)** Compliance period. A sales agent's continuing education compliance period shall coincide with the sales agent's license term.

## INSURANCE DIVISION[191](cont'd)

**104.1(4)** Carryover and expiration of credits. Additional credits that exceed the minimum requirements of this rule may be carried over into the next biennium. However, each sales agent must earn at least one new credit of ethics and legal requirements continuing education during each biennium. A sales agent with an inactive license seeking renewal may use credits not previously reported to the commissioner, regardless of the date earned, for purposes of reinstatement of the license.

**104.1(5)** Denial of sales agent license renewal application. The commissioner may deny a sales agent license renewal application that does not demonstrate compliance with the rules of this chapter.

**104.1(6)** Disqualification and replacement of credits. If, as a result of a review, the commissioner determines that certain continuing education coursework does not qualify for credit, a sales agent may be given an opportunity to submit new credits to replace any credits that are not allowed.

**104.1(7)** Current mailing address. A sales agent's failure to provide a current mailing address to the commissioner and the resulting failure to receive notices or letters from the commissioner regarding continuing education requirements and reporting shall not absolve the sales agent from the requirements of this chapter and shall not provide good cause for any waiver or exemption.

**191—104.2(523A,82GA,SF559) Proof of completion of continuing education requirements.** A sales agent is required to maintain a record of all continuing education courses completed by keeping the original certificates of completion and a description and outline of the course attended for four years.

**191—104.3 (523A,82GA,SF559) Standards for continuing education activities.** A continuing education activity that meets all of the following criteria is appropriate for continuing education credit.

**104.3(1)** The activity constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

**104.3(2)** The activity pertains to subject matters which integrally relate to the sale of funeral merchandise, funeral services, cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A;

**104.3(3)** The activity is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program;

**104.3(4)** The activity fulfills stated program goals and objectives; and

**104.3(5)** The person conducting or sponsoring the activity provides proof of attendance to attendees.

**191—104.4(523A,82GA,SF559) Qualifications of presenters and proof of attendance.** Proof of attendance at a continuing education activity shall, at a minimum, include the following:

1. The date of the activity, the location of the activity, the course title, and the identity and qualifications of the presenter(s).

2. The number of program contact credits; and

3. A certificate of completion or evidence of successful completion of the course provided by the person conducting or sponsoring the activity.

**191—104.5(523A,82GA,SF559) Acceptable areas of continuing education.** The categories of acceptable continuing education include the following:

1. Ethical behavior related to the death care industry.
2. Good business practices and procedures related to funeral directors, funeral establishments, cremation establishments and cemeteries.
3. Legal compliance practices and procedures related to the death care industry, including the sale of funeral merchandise, funeral services, and cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A.
4. Funeral merchandise, funeral services and cemetery merchandise and their regulation.
5. Life insurance and annuity products and their regulation.
6. The Federal Trade Commission's Funeral Rule (16 CFR Part 453).
7. Regulations from the Occupational Safety and Health Administration, the Americans with Disabilities Act and the Environmental Protection Agency.
8. The estate recovery program and regulations.
9. Mortuary science law and public health and technical standards, requirements and issues regarding the handling and interment of deceased human remains.
10. Business management, accounting and record-keeping practices.
11. Computer equipment, systems and software.
12. Other subject areas as approved by the commissioner.

**191—104.6(523A,82GA,SF559) Academic coursework.**

**104.6(1)** Academic coursework that meets the criteria set forth in this chapter is acceptable.

**104.6(2)** Each credit hour of academic coursework successfully completed by a licensee shall be credited as 1.5 hours of continuing education. This multiplier shall be used only once per biennium for identical or substantially similar presentations.

**104.6(3)** Continuing education credit equivalents are as follows:

1 academic semester hour = 10 continuing education credits

1 academic trimester hour = 8 continuing education credits

1 academic quarter hour = 7 continuing education credits

**191—104.7(523A,82GA,SF559) Reviews.**

**104.7(1)** The commissioner may review licensees and persons conducting or sponsoring continuing education activities to ensure compliance with this chapter.

**104.7(2)** At the time of a review, the information requested from persons conducting or sponsoring continuing education activities shall include, but not be limited to, the following:

a. The qualifications of presenters.

b. Records documenting licensees' attendance at the activity.

c. A course description.

d. Official school transcripts indicating licensees' successful completion of an academic course.

**104.7(3)** Upon notice of a continuing education review, a sales agent shall provide the following information to the commissioner:

a. The date and location of the course, course title, course description, course outline, course schedule, names and qualifications of the presenter(s), and the method of presentation or a program brochure or booklet which includes all the information required in this paragraph;

b. The number of contact credit hours attended; and

c. The individual certificate of completion issued or evidence of successful completion of the course from the person conducting or sponsoring the continuing education activity.

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These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

CHAPTER 105  
STANDARDS OF CONDUCT  
AND PROHIBITED PRACTICES

**191—105.1(523A,82GA,SF559) Purpose.** This chapter is intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions and prohibited acts or practices.

**191—105.2(523A,82GA,SF559) Numbering purchase agreements.** Preneed sellers shall assign numbers, in sequential order, to each purchase agreement sold during a calendar year.

**105.2(1)** Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed.

**105.2(2)** The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

**105.2(3)** If a correction to the contract number is required, the correction shall be recorded in the sales logs required by subrule 105.3(3), and documentation that retains evidence of the initial number used shall be maintained.

**191—105.3(523A,82GA,SF559) Records maintenance.**

**105.3(1)** Transaction records to be kept by preneed sellers. A preneed seller shall document all customer transactions and maintain accurate copies and records of all purchase agreements. If no other legal provision governs record retention, a preneed seller shall keep all customer records for a minimum of three years after the date of the death of the beneficiary. The preneed seller shall keep records and the identity of individuals in the records confidential.

**105.3(2)** Deposit records to be kept by preneed sellers. If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

**105.3(3)** Sales log to be kept by preneed sellers. Preneed sellers shall maintain a sales log for purposes of assigning numbers to purchase agreements. The sales log shall be maintained for a minimum of four years after the date of sale.

**105.3(4)** Sales log to be kept by sales agents. A sales agent shall maintain a sales log for a minimum of four years. The sales log shall include all of the information required for the sales agent's annual report set forth in subrule 105.4(2).

**191—105.4(523A,82GA,SF559) Annual reports.**

**105.4(1)** Annual reports by preneed sellers. A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with the report, the preneed seller shall submit a filing fee of \$10 per purchase agreement, as set forth in 2007 Iowa Acts, Senate File 559, section 11.

**105.4(2)** Annual reports by sales agents. A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to 2007 Iowa Acts, Senate File 559, section 18. The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

a. Names of applicable licensed preneed sellers and their license numbers; and

b. A list of contracts sold during the year covered by the report, including the date of the contract, the total purchase price, the name of the purchaser and the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to each contract. If the sales agent was appointed by more than one preneed seller, the list of contracts required by this paragraph should be divided according to each preneed seller.

**105.4(3)** Failure to file timely. If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of 191—subrule 106.2(3) shall apply. Additional sanctions pursuant to rule 105.6(523A,82GA,SF559) and 191—Chapter 106 also may be imposed.

**191—105.5(523A,82GA,SF559) Fidelity bond or insurance.** A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code section 523A.201(5) as amended by 2007 Iowa Acts, Senate File 559, section 7, unless the preneed seller only uses the trusting alternatives set forth in Iowa Code sections 523A.401 to 523A.405 or deposits 100 percent of each payment into a trust fund.

**191—105.6(523A,82GA,SF559) Grounds for discipline.** The commissioner may impose sanctions as set forth in 191—Chapter 106 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or any associated rules or implementing orders, including but not limited to the following acts or practices:

**105.6(1)** Fraudulent or deceptive applications. Engaging in fraudulent or deceptive acts in procuring a license, including but not limited to:

a. False representations of a material fact, whether by conduct or by false or misleading statements;

b. Concealing or omitting anything that should have been disclosed or included with the application;

c. Filing a false identification;

d. Filing an untrue certification or affidavit; or

e. Falsifying documents.

**105.6(2)** Conviction of a criminal offense. Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. "Conviction" shall include a plea of guilty or a finding of guilt, and shall include a deferred judgment.

**105.6(3)** Fraudulent or deceptive practices. Engaging in any act or practice that violates Iowa Code section 523A.701 or 523A.702, or Iowa Code section 523A.703 as amended by 2007 Iowa Acts, Senate File 559, section 25, whether or not actual harm or injury occurs, including but not limited to:

a. Making untrue or improbable statements in advertisements;

b. Falsifying business records; or

c. Misappropriating funds.

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**105.6(4)** Insolvency or financial condition. Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- a. The licensee's or license applicant's net worth;
- b. Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- c. The issuance by the licensee or license applicant of insufficient funds checks or otherwise overdrawing a business or trust account;
- d. Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- e. Untimely placement by the licensee of consumer funds into trust;
- f. Failure of the licensee or license applicant to pay sales, unemployment or other tax owed in the course of business; or
- g. Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and related regulations.

**105.6(5)** Unethical, harmful or detrimental conduct. Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, or materially related to such activity, including but not limited to:

- a. Encouraging cancellation of a purchase agreement if not in the best interests of the beneficiary;
- b. Failure to leave a residence when requested to do so;
- c. Intimidation or physical abuse, including improper sexual contact or conduct; or
- d. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a client or prospective client based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

**105.6(6)** Failure to maintain records. Failure to maintain records as required by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or any associated rules or orders.

**105.6(7)** Failure to cooperate with an examination or investigation. Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or any associated rules or orders.

**105.6(8)** Late filings or the failure to submit a report. Filing reports after the filing deadline or failing to file a report as required by Iowa Code chapter 523A or any associated rules or orders.

**105.6(9)** Inability to perform. A preneed seller's failing to be able to provide the cemetery merchandise, funeral merchandise, funeral services, or combination thereof which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156.

**105.6(10)** Sale of business without notice. Selling all or part of a licensee's business without proper notice to the commissioner, pursuant to rule 191—103.3(523A,82GA,SF559).

**105.6(11)** Improper sale or transfer of purchase agreements. Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding

related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by 2007 Iowa Acts, Senate File 559, section 13.

**105.6(12)** Sales prohibited by order. The applicant or licensee has been named in an order issued pursuant to 2007 Iowa Acts, Senate File 559, section 29.

**105.6(13)** Failure to complete continuing education. Failure of a licensee to timely complete the continuing education required for license renewal.

**105.6(14)** Law violations. Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

- a. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
- b. Regulations promulgated by the Federal Trade Commission relating to funeral services, or funeral or cemetery merchandise, or funeral or cremation establishments;
- c. Applicable tax or public health laws, ordinances or regulations; or
- d. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

**105.6(15)** Unsafe practice. Having any impairment, drug or alcohol addiction, or other act, conduct or condition which adversely impacts the licensee's ability to perform in a safe, competent manner.

**105.6(16)** Failure to maintain fidelity bond or similar insurance. A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 105.5(523A,82GA,SF559) and Iowa Code section 523A.201(5) as amended by 2007 Iowa Acts, Senate File 559, section 7.

**105.6(17)** Responsibility for sales activities of others. A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 106, Iowa Code chapter 523A or 2007 Iowa Acts, Senate File 559, by any person acting in the preneed seller's behalf.

**191—105.7(523A,82GA,SF559) Prohibition on sales activities and practices without a license or without an appointment.**

**105.7(1)** License required. No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than 100 days following the initial payment of the account unless the person either:

- a. Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code section 523A.501 as amended by 2007 Iowa Acts, Senate File 559, section 16; or
- b. Holds an active sales agent license issued by the commissioner pursuant to Iowa Code section 523A.502 as amended by 2007 Iowa Acts, Senate File 559, section 17, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code section 523A.501 as amended by 2007 Iowa Acts, Senate File 559, section 16.

**105.7(2)** Prohibited activities. A person to whom a license has not been issued by the commissioner, a licensee whose license has expired, is inactive, or is suspended, or a sales agent who is not appointed with a preneed seller, may not:

## INSURANCE DIVISION[191](cont'd)

a. Conduct any of the activities for which a license is required pursuant to Iowa Code chapter 523A or rule 191—103.1(523A,82GA,SF559);

b. Post or display the licensee's license;

c. Use a license certificate or a license number;

d. Agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license;

e. Execute an agreement or agree to perform any term of an agreement, or accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, whether or not pursuant to a written purchase agreement, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

#### CHAPTER 106 DISCIPLINARY PROCEDURES

**191—106.1(523A,82GA,SF559) Investigations.** The commissioner is authorized by Iowa Code section 17A.13(1) and Iowa Code section 523A.803 as amended by 2007 Iowa Acts, Senate File 559, section 71, to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A as amended by 2007 Iowa Acts, Senate File 559. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803 as amended by 2007 Iowa Acts, Senate File 559, section 71. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

**191—106.2(17A,523A,82GA,SF559) Penalties.** Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

**106.2(1) Criminal penalties.** A person who willfully violates Iowa Code section 523A.501(1) as amended by 2007 Iowa Acts, Senate File 559, section 16, concerning the requirement for a preneed seller license, or Iowa Code section 523A.502(1) as amended by 2007 Iowa Acts, Senate File 559, section 17, concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant to Iowa Code chapter 523A including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code section 523A.201 as amended by 2007 Iowa Acts, Senate File 559, sections 6, 7 and 8, Iowa Code section 523A.202 as amended by 2007 Iowa Acts, Senate File 559, section 9, Iowa Code section 523A.404 as amended by 2007 Iowa Acts, Senate File 559, sections 14, 15 and 62, and Iowa Code section 523A.405 as amended by 2007 Iowa Acts, Senate File 559, sections 63 and 64, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 106 do not limit the power of the

state to punish any person for any conduct which constitutes a crime under any other statute.

**106.2(2) Consumer fraud Act.** A violation by a licensed or unlicensed person of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 191—Chapters 100 through 106, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

**106.2(3) Administrative sanctions.**

a. Pursuant to Iowa Code section 523A.204(4) as amended by 2007 Iowa Acts, Senate File 559, section 11, and 2007 Iowa Acts, Senate File 559, section 18, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, 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 commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand;
- (2) Require additional education or training;
- (3) Order mediation pursuant to Iowa Code section 523A.804 as amended by 2007 Iowa Acts, Senate File 559, section 72;
- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or Iowa Code section 523A.807 as amended by 2007 Iowa Acts, Senate File 559, section 29;
- (5) Require certain specified procedures or methods of operation;
- (6) Order the payment of consumer restitution;
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports;
- (8) Refuse to issue or renew a license;
- (9) Suspend a license for an indefinite or specific period of time;
- (10) Revoke a license;
- (11) Accept the voluntary surrender of a license;
- (12) Impose costs associated with the commissioner's investigation and enforcement activities;
- (13) Impose civil penalties pursuant 2007 Iowa Acts, Senate File 559, section 29, for violation of Iowa Code section 523A.201, 523A.202, 523A.401 to 523A.405, 523A.501 or 523A.502; or

## INSURANCE DIVISION[191](cont'd)

(14) Any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or any rules or orders adopted thereto.

f. In addition, or as an alternative to the administrative process described in these rules, the commissioner may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent agreement, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

(1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the infraction, and the clarity of the issues, laws and rules involved;

(2) Evidence that the infraction is not an isolated event and is part of a widespread practice;

(3) Evidence that the acts or practices were willful and intentional;

(4) The economic benefits gained by the licensee or applicant as a result of the infraction;

(5) Evidence that the infraction occurred while the licensee was on probation or had an inactive or suspended license;

(6) The number of prior warning letters or reprimand letters;

(7) The number of complaints;

(8) The number of prior violations, especially evidence of repetitive violations of a like kind;

(9) The seriousness of prior complaints or violations;

(10) The length of time since the unlawful practice occurred;

(11) Whether the violation involved an element of deception;

(12) Whether the unlawful practice violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;

(13) Whether the person acted in bad faith;

(14) The extent to which the licensee or applicant cooperated with the commissioner;

(15) Evidence of reform or remedial action and whether reform or remedial action occurred prior to the commissioner's involvement with the fact situation;

(16) The amount of restitution paid or to be paid;

(17) The risk of harm created by the acts or practices involved in the infraction;

(18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;

(19) The public interest in protecting consumers and preventing the acts or practices involved in the infraction;

(20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and

(21) Any other extenuating facts or other countervailing considerations.

**191—106.3(17A,523A,82GA,SF559) Administrative procedures.**

**106.3(1)** Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 106.3(2), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1)“a” and “b.” The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the order would be issued;

b. Reference to the particular sections of the statutes and rules involved;

c. A short, plain statement of the alleged unlawful practices;

d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;

e. Notice of the unlicensed person's right to a hearing and the time frame in which hearing must be requested; and

f. The address to which written request for hearing must be made.

**106.3(2)** Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 106.3(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner's office.

**106.3(3)** If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

**106.3(4)** If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

**106.3(5)** A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, at any stage of the proceeding upon mutual consent of the commissioner.

**106.3(6)** The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

**106.3(7)** A person aggrieved by the commissioner's issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 22, and 523A and 2007 Iowa Acts, Senate File 559.

[Filed Emergency 9/28/07, effective 9/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6336B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.322, the Department of Administrative Services hereby amends Chapter 100, "Capitol Complex Operations," Iowa Administrative Code.

This amendment implements the current policy regarding the use of tobacco products on the capitol complex.

Notice of Intended Action was published in the August 29, 2007, Iowa Administrative Bulletin as **ARC 6188B**. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment will become effective on November 28, 2007.

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

The following amendment is adopted.

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.32 and chapter 142B and Executive Order Number 68 signed November 23, 1998, by Governor Terry Branstad.*

[Filed 10/3/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6350B

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 455A.6, the Environmental Protection Commission of the Department of Natural Resources hereby rescinds Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code, and adopts a new Chapter 7 with the same title.

Chapter 7 contains the procedural rules for contested cases. A Notice of Intended Action to rescind and replace 567—Chapter 7 was published in the Iowa Administrative Bulletin on May 23, 2007, as **ARC 5897B**. No public comments were received regarding the proposed rule making, and no changes have been made since the Notice of Intended Action was published.

This rule making adopts by reference the new version of 561—Chapter 7 that became effective March 7, 2007. On September 27, 2006, a Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 5385B** to rescind 561—Chapter 7 and to adopt a new version of Chapter 7. No comments were received, and the Adopted and Filed rule making was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5693B**.

The new version of 561—Chapter 7 addresses procedural issues that have arisen in the past on a recurring basis. It also clarifies the procedural practices of the Department. The new version of Chapter 7 was reviewed by an administrative law judge from the Department of Inspections and Appeals and by a group of volunteer attorneys who are members of the Iowa State Bar Association.

This amendment is intended to implement Iowa Code section 455A.4.

This amendment shall become effective November 28, 2007.

The following amendment is adopted.

Rescind 567—Chapter 7 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 7

## RULES OF PRACTICE IN CONTESTED CASES

**567—7.1(17A) Adoption by reference.** The commission adopts by reference 561—Chapter 7, Iowa Administrative Code.

This rule is intended to implement Iowa Code sections 17A.3 and 17A.12 to 17A.18.

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

**ARC 6353B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the rule changes is to make administrative amendments to the state's rules for the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6092B**. A public hearing was held on September 4, 2007. No comments were received at the public hearing and no comments were received prior to the close of the public comment period. The public comment period closed on September 5, 2007.

The Department did not make any changes to the adopted amendments from what was proposed in the published Notice.

The final rules for CAIR and CAMR were originally published in Chapter 34 of the Iowa Administrative Code on June 7, 2006. After the Department adopted the final rules and submitted the rules to the Environmental Protection Agency (EPA), Region VII, for approval into Iowa's State Implementation Plan (SIP), EPA identified an issue that required administrative amendments to Iowa's rules and to other states' rules.

The previously adopted definitions in Chapter 34 identified the Department as the permitting authority. The CAIR and CAMR programs are unique in that they allow for trading and holding of emissions allowances that may have been originally allocated by another "permitting authority," such as EPA or another state agency. To account for this, EPA requested that the Department modify the definitions of "permitting authority" contained in the Iowa Administrative Code for purposes of CAIR and CAMR allocations by adopting the definition in the federal regulations. EPA made a written request for the changes to the Department on February 16, 2007. EPA then followed this letter with an E-mail, dated April 10, 2007, requesting that the Department commit to a schedule allowing for final rule adoption by January 2008. This time line is necessary so that the adopted amendments become effective before any trading commences under the CAIR program, which could occur as early as January 2008.

Item 1 amends rule 567—34.201(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 96.102 for purposes of its use in the definitions of "allocate or allocation" or "CAIR NO<sub>x</sub> allowance," also set forth in 40 CFR 96.102, and shall mean the Iowa Department of Natural Resources in all other references.

Item 2 amends rule 567—34.210(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 96.202 for purposes of its use in the definitions of "allocate or allocation" or "CAIR SO<sub>2</sub> allowance," also set forth in 40 CFR 96.202, and shall mean the Iowa Department of Natural Resources in all other references.

Item 3 amends rule 567—34.221(455B) to specify that the definition of "permitting authority" shall mean the definition

contained in 40 CFR 96.302 for purposes of its use in the definitions of "allocate or allocation" or "CAIR NO<sub>x</sub> ozone season allowance," also set forth in 40 CFR 96.302, and shall mean the Iowa Department of Natural Resources in all other references.

Item 4 amends rule 567—34.301(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 60.4102 for purposes of its use in the definitions of "allocate or allocation" or "Hg allowance," also set forth in 40 CFR 60.4102, and shall mean the Iowa Department of Natural Resources in all other references.

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

These amendments will become effective on November 28, 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 [34.201, 34.210, 34.221, 34.301] is being omitted. These amendments are identical to those published under Notice as **ARC 6092B**, IAB 8/1/07.

[Filed 10/4/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

**ARC 6352B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 2007, as **ARC 5898B**. Six public hearings were held, with notice of the hearings sent to various individuals, organizations, associations and interest groups and to statewide news network organizations. Comments were received from nine persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The adopted amendment has been modified from that published in the Notice. The following modifications were made after all comments from the public hearings were considered.

1. Termination of rule making for 1.4 µg/l Arsenic (III) Class HH fish consumption criterion. The department is conducting additional research to determine an appropriate criterion due to ambiguity surrounding the 1.4 µg/l national criterion value.

2. Vinyl Chloride Class HH fish consumption criterion correction. The Notice originally proposed a criterion of 240 µg/l. This has been changed to a value of 24 µg/l to be consistent with the EPA's 304(a) national criterion for vinyl chloride.

3. Silver Class B(WW-1), B(WW-2), and B(WW-3) acute criterion correction. The Notice originally proposed a criterion of 4 µg/l. This has been changed to a value of 3.8 µg/l to be consistent with the EPA's 304(a) national criterion for silver.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

With the inclusion of the modifications described above, the adopted amendment implements changes to the Commission's Water Quality Standards (WQS) as summarized below:

- Changes the current numerical criteria for 20 chemical parameters to protect aquatic life for the following use designations: Class B(WW-1), Class B(WW-2), and Class B(WW-3).
- Changes current numerical criteria for 42 chemical parameters to protect human health for Class HH – Human Health.
- Adds the chemical parameter aldrin to protect aquatic life and human health.

The 20 parameters to protect aquatic life for the Class B(WW-1), Class B(WW-2), and Class B(WW-3) designations include: arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, zinc, cyanide, chlordane, 4,4-DDT, endosulfan, heptachlor, heptachlor epoxide, polychlorinated biphenyls (PCBs), toxaphene, aluminum, and total residual chlorine.

The 41 parameters to protect human health for the Class HH designation include: antimony, benzene, benzo(a)Pyrene, bromoform, carbon tetrachloride, chlordane, chlorobenzene, chlorodibromomethane, cyanide, 4,4-DDT, para-dichlorobenzene, 3,3-dichlorobenzidine, dichlorobromo-

methane, 1,2-dichloroethane, 1,1-dichloroethylene, 1,2-trans-dichloroethylene, 1,2-dichloropropane, bis(2-ethylhexyl) phthalate, dieldrin, 2,3,7,8-TCDD (dioxin), endosulfan, endrin, ethylbenzene, heptachlor, heptachlor epoxide, hexachlorobenzene, gamma-BHC (lindane), hexachlorocyclopentadiene, nickel, polynuclear aromatic hydrocarbons (PAHs), pentachlorophenol (PCP), polychlorinated biphenyls (PCBs), phenols, selenium, tetrachlorethylene, thallium, toluene, toxaphene, trichloroethylene (TCE), vinyl chloride, and zinc.

This amendment revises the current criteria for the chemical parameters listed above to reflect the latest scientific information and Environmental Protection Agency guidance.

Additional information on Iowa's water quality standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

This amendment may have an impact upon small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

This amendment shall become effective November 28, 2007.

The following amendment is adopted.

Amend subrule 61.3(3), Table 1, Criteria for Chemical Constituents, as follows:

**TABLE 1. Criteria for Chemical Constituents**

(all values as micrograms per liter *as total recoverable* unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	
Alachlor	MCL	—	—	—	—	—	—	2	—
Aldrin	Acute	—	—	3	3	3	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00050 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	.00049 <sup>(f)</sup>
Aluminum	Chronic	87	—	388 87	773 87	773 87	748	—	—
	Acute	1106	—	4539 750	9035 750	9035 750	983	—	—
Antimony	Human Health — Fish	—	—	—	—	—	—	—	640 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	14- 5.6 <sup>(f)</sup>
Arsenic (III)	Chronic	200	—	200 150	4000 150	4000 150	200	—	—
	Acute	360	—	360 340	1800 340	1800 340	360	—	—
	Human Health — Fish	—	—	—	—	—	—	—	50 <sup>(e)</sup> (g)
	Human Health — F & W	—	—	—	—	—	—	—	.18 <sup>(f)</sup> (g)
Asbestos	Human Health — F & W	—	—	—	—	—	—	—	7 <sup>(a)</sup> (f)
Atrazine	MCL	—	—	—	—	—	—	3	—
Barium	Human Health + — F & W	—	—	—	—	—	—	—	1000 <sup>(f)</sup>









## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Oxamyl (Vydate)	MCL	—	—	—	—	—	—	200	—
Parathion	Chronic	.013	—	.013	.013	.013	.013	—	—
	Acute	.065	—	.065	.065	.065	.065	—	—
Pentachlorophenol (PCP)	Chronic	(d)	—	(d)	(d)	(d)	(d)	—	—
	Acute	(d)	—	(d)	(d)	(d)	(d)	—	—
	Human Health — Fish	—	—	—	—	—	—	—	82.30 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	28.27 <sup>(f)</sup>
Picloram	MCL	—	—	—	—	—	—	500	—
Polychlorinated Biphenyls (PCBs)	Chronic	.014	—	.014	± .014	± .014	.014	—	—
	Acute	2	—	2	2	2	2	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0004 .00064 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.0017 .00064 <sup>(f)</sup>
Polynuclear Aromatic Hydrocarbons (PAHs)**	Chronic	.03	—	.03	3	3	.03	—	—
	Acute	30	—	30	30	30	30	—	—
	Human Health — Fish	—	—	—	—	—	—	—	3.18 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.044 .038 <sup>(f)</sup>
Phenols	Chronic	50	—	50	50	50	50	—	—
	Acute	1000	—	2500	2500	2500	1000	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	300 1700* <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	21* <sup>(f)</sup>
Selenium (VI)	Chronic	10	—	125.5	125.5	125.5	70	—	—
	Acute	15	—	175.19.3	175.19.3	175.19.3	100	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	170 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	4200 <sup>(e)</sup>
Silver	Chronic	N/A	—	N/A	N/A	N/A	N/A	—	—
	Acute	30	—	100.3.8	100.3.8	100.3.8	4	—	—
	MCL	—	—	—	—	—	—	50	—
2,4,5-TP (Silvex)	MCL	—	—	—	—	—	—	10	—
Simazine	MCL	—	—	—	—	—	—	4	—
Styrene	MCL	—	—	—	—	—	—	100	—
Tetrachloroethylene	Human Health — F & W	—	—	—	—	—	—	—	8.6.9 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	33 <sup>(e)</sup>
Thallium	Human Health + — F & W	—	—	—	—	—	—	—	1.7.24 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	.47 <sup>(e)</sup>

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)			
Toluene	Chronic	50	—	50	150	150	50	—	—	
	Acute	2500	—	2500	7500	7500	2500	—	—	
	Human Health + — Fish	—	—	—	—	—	—	—	300 15*(e)	
	Human Health + — F & W	—	—	—	—	—	—	—	6800 1300(f)	
Total Residual Chlorine (TRC)	Chronic	10	—	20 11	25 11	25 11	10	—	—	
	Acute	35	—	35 19	40 19	40 19	20	—	—	
Toxaphene	Chronic	.037	—	.037 .002	.037 .002	.037 .002	.037	—	—	
	Acute	.73	—	.73	.73	.73	.73	—	—	
	Human Health — Fish	—	—	—	—	—	—	—	.0075 .0028(e)	
	Human Health — F & W	—	—	—	—	—	—	—	.0073 .0028(f)	
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—	
1,1,1-Trichloroethane	MCL	—	—	—	—	—	—	200	—	
	Human Health + — Fish	—	—	—	—	—	—	—	173*(e)	
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	—	6(f)	
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—	
	Acute	4000	—	4000	4000	4000	4000	—	—	
	Human Health — Fish	—	—	—	—	—	—	—	807 300(e)	
	Human Health — F & W	—	—	—	—	—	—	—	27 25(f)	
Trihalomethanes (total)(c)	MCL	—	—	—	—	—	—	80	—	
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	—	20 .25(f)	
	Human Health — Fish	—	—	—	—	—	—	—	5250 24(e)	
Xylenes (total)	MCL	—	—	—	—	—	—	10*	—	
Zinc	Chronic	200	—	450 120(l)	2000 120(l)	2000 120(l)	100	—	—	
	Acute	220	—	500 120(l)	2200 120(l)	2200 120(l)	110	—	—	
	Human Health + — Fish	—	—	—	—	—	—	—	5000 26*(e)	
	Human Health + — F & W	—	—	—	—	—	—	—	9100 7.4*(f)	

\* units expressed as milligrams/liter

\*\* to include the sum of known and suspected carcinogenic PAHs (includes benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene)

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- (a) units expressed as million fibers/liter (longer than 10 micrometers)  
 (b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured  
 (c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.  
 (d) Class B numerical criteria are for pentachlorophenol are a function of pH using the equation:  
 Criterion ( $\mu\text{g/l}$ ) =  $e^{[1.005(\text{pH}) - x]}$ , where  $e = 2.71828$  and  $x$  varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

- (e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.  
 (f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.  
 (g) *inorganic form only*  
 (h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for cadmium are a function of hardness (as  $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$
Chronic	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$

- (i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for copper are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$
Chronic	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$

- (j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for lead are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$
Chronic	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$

- (k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for nickel are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$
Chronic	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$

- (l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as  $\text{CaCO}_3$  (mg/l)). Numerical criteria ( $\mu\text{g/l}$ ) for zinc are a function of hardness ( $\text{CaCO}_3$  (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$
Chronic	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

**ARC 6349B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

Notice of Intended Action was published as **ARC 6072B** in the August 1, 2007, issue of the Iowa Administrative Bulletin.

The Iowa Legislature passed legislation (2007 Iowa Acts, Senate File 499) granting rule-making authority to the Environmental Protection Commission in response to provisions of the federal Energy Policy Act of 2005. The Iowa legislation requires the Commission to adopt rules consistent with Environmental Protection Agency guidance (see <http://www.epa.gov/OUST/index.htm>) requiring that all new underground storage tank and piping installations and replacements be constructed to provide secondary containment (i.e., double-walled tanks and piping) if they are within 1,000 feet of a community water system or a potable drinking water well. Under-dispenser containment systems must also be

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installed whenever new dispensers are installed or dispensers are replaced. The legislation requires adoption of rules consistent with EPA guidance to authorize a mechanism to prohibit the delivery of regulated substances to UST systems that are out of compliance with operation and maintenance rules.

The Iowa legislation requires that all new and replacement UST systems installed after August 1, 2007, comply with EPA secondary containment guidance until Commission rules are adopted. The rules require secondary containment for all new underground storage tank and piping installations and replacements unless an exception can be proved by the tank owner. Most sites with an underground storage tank system provide water onsite and will be within 1,000 feet of a community water system or a potable drinking water well. Exceptions from the requirement to install secondary containment will be rare.

The replacement of piping with secondary containment is required when more than ten feet of piping is replaced. Under-dispenser containment is required when a dispenser is replaced along with changes in piping under the dispenser or when ten feet or more of piping is replaced within ten feet of the dispenser.

EPA guidance requires that states consider an exception to the delivery prohibition remedy if it would jeopardize the availability of and access to fuel delivery in rural or remote areas. The Department determined through mapping of all registered UST sites in Iowa, that prohibiting fuel, though inconvenient, should not substantially jeopardize availability and access to fuel. Though Iowa is an agricultural state, a person is within 10 to 15 miles of two or more existing service stations. Furthermore, as stated in these rules, except in emergencies and cases where USTs are leaking, owners and operators will be given the opportunity to sell remaining fuel. This should give them the opportunity to advise customers of the need to seek alternative fuel sources until redelivery of fuel is authorized. The need for a process to exempt UST systems from delivery prohibition was considered to be unnecessary.

The amendments broaden the existing UST registration and annual tank management fee tagging system to require owners and operators to certify compliance with spill and overflow, release detection, and corrosion protection rules. UST systems that are potentially out of compliance would also be identified through biennial third-party compliance inspections and inspections of facilities by the Department.

The amendments establish criteria for determining non-compliance sufficient to warrant imposition of the delivery prohibition. Minimum procedural due process such as notice and an opportunity to contest the factual and legal basis for the delivery prohibition is provided to the owner and operator prior to the initiation of delivery prohibition. UST facilities may be designated as operating under "provisional" status if they are found to have a pattern of violations. Owners and operators would be offered a remedial plan, and if they fail to satisfy the terms of the plan, owners and operators would then be subject to the delivery prohibition after notice and an opportunity for a contested case hearing. This remedy is in addition to other enforcement mechanisms, such as the issuance of orders and the assessment of penalties.

Owners and operators subject to the delivery prohibition shall be required to return to the Department any registration tag or current annual tank management fee tag within three days. If the tags are not returned, the Department will attach a "red tag" to the UST fill pipe. It is illegal for an owner or

operator to accept fuel or for a person to deposit fuel into a UST without current tags or with a "red tag."

Three public hearings were held during the public comment period, and the Department received several comments in response to the amendments. The Iowa Water Well Association (IWWA) asked that the exception to the secondary containment requirement for situations where the UST system installation would not be within 1,000 feet of a public well or other potable water well be removed. IWWA stated that secondary containment should be required of all new and replacement USTs regardless of their separation from any water well. With over 72 percent of Iowans relying on groundwater as their drinking water source, IWWA says it is imperative that the Department make every effort to ensure the safety and quality of Iowa's groundwater. Although the Department believes the policy of requiring only secondary containment systems is the better policy, the exception was left in because Iowa Code section 455B.474(7) requires that Commission rules be "consistent with" and "not exceed" the requirements of federal regulations, and because the Department believes that it would be an extremely rare case where conditions for an exception could be met. The Federal Act and EPA guidance appear to limit the secondary containment requirement to situations where the installation is within 1,000 feet of a public or potable water well.

No further substantive changes were made to these amendments in response to public comments. A copy of the comments and the Department's responses can be requested by contacting Paul Nelson by mail at the Wallace State Office Building, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail [paul.nelson@dnr.iowa.gov](mailto:paul.nelson@dnr.iowa.gov).

These amendments are intended to implement Iowa Code section 455B.474 as amended by 2007 Iowa Acts, Senate File 499.

These amendments shall become effective November 28, 2007.

The following amendments are adopted.

ITEM 1. Amend paragraph **135.1(3)"d"** as follows:

d. Deferrals. Rule 135.5(455B) does not apply to any UST system that stores fuel solely for use by emergency power generators. *All new and replacement UST systems for emergency power generators must meet the secondary containment requirements in subrule 135.3(9) and the leak detection and delivery prohibition requirements in subrule 135.3(8).*

ITEM 2. Amend rule **567—135.2(455B)** as follows:

Adopt the following **new** definitions in alphabetical order: "Appurtenances" means devices such as piping, fittings, flanges, valves, dispensers and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"Dispenser" means equipment that is used to transfer a regulated substance from underground piping through a rigid or flexible hose or piping located aboveground to a point of use outside the underground storage tank system, such as a motor vehicle.

"Replace" or "replacement" means the installation of a new underground tank system or component, including dispensers, in substantially the same location as an existing tank system or component in lieu of that tank system or component.

"Secondary containment tank" or "secondary containment piping" means a tank or piping which is designed with an inner primary shell and a liquid-tight outer secondary shell or jacket which extends around the entire inner shell, and

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which is designed to contain any leak through the primary shell from any part of the tank or piping that routinely contains product, and which also allows for monitoring of the interstitial space between the shells and the detection of any leak.

“Under-dispenser containment (UDC)” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- Be intact and liquid-tight on its sides and bottom and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and monitoring and access to the components in the containment system.

Amend the definition of “pipe” or “piping” as follows:

“Pipe” or “piping” means a hollow cylinder or tubular conduit that is constructed of nonearthen materials *and that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.*

ITEM 3. Amend paragraph **135.3(3)“j”** as follows:

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 135.3(455B). *It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if the person has received notice from the department that the underground storage tank is subject to a delivery prohibition or if there is a “red tag” attached to the UST fill pipe or fill pipe cap as provided in subrule 135.3(8).*

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, ~~and~~ those that have not been issued tank tags, *and those subject to a delivery prohibition pursuant to subrule 135.3(8).* These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags *or those displaying a delivery prohibition “red tag” as provided in subrule 135.3(8).*

(3) A person shall not deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

ITEM 4. Amend paragraph **135.3(5)“d”** as follows:

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a current registration tag, *a current annual tank management fee tag, or a delivery prohibition “red tag” as provided in subrule 135.3(8).* If the tag is not affixed to the fill pipe or fill pipe cap *or if a delivery prohibition “red tag” is displayed,* the person ~~may~~ shall not deposit the substance in the tank.

ITEM 5. Adopt **new** subrules 135.3(8) and 135.3(9) as follows:

**135.3(8)** Delivery prohibition process.

a. Identifying sites subject to delivery response prohibition action.

(1) Annual registration tag and tank management fee process. Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to subrule 135.3(5):

1. Installation and performance of an approved UST and piping release detection method as provided in rule 135.5(455B), including an annual line tightness test and a line leak detector test if applicable.

2. Installation of an approved overflow and spill protection system as provided in paragraph 135.3(1)“c.”

3. Installation of an approved corrosion protection system as provided in paragraphs 135.3(1)“a” and “b.”

4. If the UST system has been out of operation for more than three months, that the UST system has been temporarily closed in accordance with rule 135.15(455B) and a certification of temporary closure has been submitted to the department.

5. If the UST system has been removed or filled in place within the last 12 months, the date of removal or filling in place and whether a closure report has been submitted as provided in rule 135.15(455B).

(2) Sites with provisional status. If the UST system has been classified as operating under provisional status as provided in paragraph 135.3(8)“c,” owners and operators when applying for annual tank tags pursuant to subrule 135.3(5) must certify on a form prepared by the department that the owners and operators are in compliance with an approved provisional status remedial plan as provided in paragraph 135.3(8)“c.”

(3) Compliance inspections. The department may initiate a delivery prohibition response action based on: (1) a finding resulting from a third-party compliance inspection conducted pursuant to rule 135.20(455B); (2) a department investigation and inspection conducted pursuant to Iowa Code section 455B.475; or (3) review of a UST system check or other documentation submitted in response to a suspected release under rule 135.6(455B) or in response to a confirmed release under rule 135.7(455B).

b. Delivery prohibition eligibility criteria. A delivery prohibition response action may be initiated upon a finding that the UST system is out of compliance with department rules and meets the eligibility criteria as specified below. Reinstatement criteria define the standards and process for owners and operators to document that they have taken corrective action sufficient to authorize resumption of fuel to the USTs. Prior to initiation of the delivery prohibition, owners and operators are afforded a minimum level of procedural due process such as prior notice and the opportunity to present facts to dispute the finding. Where notice and the opportunity to take corrective action prior to initiation of a delivery prohibition response action are required, notice by the department or by a certified compliance inspector as provided in rule 135.20(455B) shall be sufficient.

If the department finds that any one of the following criteria has been satisfied, the department may initiate a delivery prohibition response action following the notice procedures outlined in paragraph “e” of this subrule. After initiation of the delivery prohibition response action, the department will offer the owner or operator an opportunity to establish reinstatement criteria by written documentation and, if requested, an in-person meeting.

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(1) An approved release detection method for USTs or UST piping is not installed, such as automatic tank gauging, groundwater monitoring wells and line leak detectors, and there is no record that an approved method such as inventory control, statistical inventory reconciliation, or interstitial space monitoring has been employed during the previous three months. If the owner or operator claims to have documentation that an approved release detection method has been conducted, the owner or operator will be given two business days to produce the documentation.

REINSTATEMENT CRITERIA: The owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b.” The owner or operator must also document installation and operation of an approved release detection system. This may include proof that a contract has been signed with a qualified statistical inventory reconciliation provider or that a qualified inventory control method has been implemented and training has been provided to onsite supervisory personnel.

(2) No documentation of a required annual line tightness test or line leak detector test has been provided, and the owner or operator has failed to conduct the required testing within 14 days of written notice by the department or a certified compliance inspector as provided in rule 135.20(455B).

REINSTATEMENT CRITERIA: The owner or operator must provide documentation of a passing line precision tightness test at the 0.1 gallon-per-hour leak rate in paragraph 135.5(5)“b” and a line leak detector test as provided in paragraph 135.5(5)“a.”

(3) Overfill and spill protection is not installed.

REINSTATEMENT CRITERION: The owner or operator must provide documentation that overfill and spill protection equipment has been installed.

(4) A corrosion protection system is not installed or there is no record that an impressed current corrosion protection system has been in operation for the prior six months.

REINSTATEMENT CRITERIA: A manned entry tank integrity inspection must be completed prior to installation of a corrosion protection system, and the owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b.” A corrosion protection analysis must be completed and approved by the department.

(5) The owner or operator has failed to provide proof of financial responsibility in accordance with 567—Chapter 136.

REINSTATEMENT CRITERION: The owner or operator must submit acceptable proof of financial responsibility in accordance with 567—Chapter 136.

(6) A qualified UST system release detection method is installed and is being used but the documentation or the absence of documentation is sufficient to question the reliability of the release detection over the past 12-month period. The owner or operator shall be notified of the deficiencies, shall be given at least two business days to produce documentation of compliance and, if necessary, shall be required to conduct a leak detection system analysis and a system tightness test within 14 days. If the owner or operator fails to produce documentation of compliance or to conduct the system analysis and the UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b,” the department may initiate a delivery prohibition response action. Notice by the department or a compliance inspector as provided in rule 135.20(455B) shall be sufficient to initiate a delivery prohibition response action.

REINSTATEMENT CRITERIA: The owner or operator must submit documentation that the leak detection method analysis sufficiently documents compliance and explains the reasons for the accuracy and reliability concerns. If necessary, the owner or operator must submit passing results of a UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b.”

(7) The owner or operator has failed to document completion of a three-year corrosion protection test or to repair defective corrosion protection equipment within 30 days after notice of the violation by the department or a certified compliance inspector as provided in rule 135.20(455B).

REINSTATEMENT CRITERION: The owner or operator must submit documentation of a three-year corrosion protection test as provided in rule 135.3(455B).

(8) The owner or operator has failed to complete a compliance inspection required by rule 135.20(455B) within 60 days after written notice of the violation by the department.

REINSTATEMENT CRITERION: The owner or operator must submit a compliance inspection report as provided in rule 135.20(455B).

(9) The owner or operator has failed to take necessary abatement action in response to a confirmed release as provided in subrules 135.7(2) and 135.7(3).

REINSTATEMENT CRITERION: The owner or operator must document compliance with the abatement provisions in subrules 135.7(2) and 135.7(3).

(10) The owner or operator has failed to undertake and document release investigation and confirmation steps within seven days in response to a suspected release as provided in paragraph 135.6(3)“a.”

REINSTATEMENT CRITERION: The owner or operator must document release confirmation and system check as provided in paragraph 135.6(3)“a.”

c. Provisional status. The department may classify a UST system as operating under a provisional status when the department documents a pattern of UST operation and maintenance violations under rules 135.3(455B) through 135.5(455B) and suspected release and confirmed release response actions under rules 135.6(455B) and 135.7(455B). The department shall provide the owner or operator with a notice specifying the basis for the proposed classification and a proposed remedial action plan. The objective of the remedial action plan is to provide the owner and operator an opportunity to undertake certain remedial actions sufficient to establish a reasonable likelihood that future regulatory compliance will be achieved.

The remedial action plan may include but is not limited to provisions for owner/operator training, development of a facility-specific compliance manual, more frequent third-party compliance inspections than otherwise required under rule 135.20(455B), monthly reporting, and retention of a third-party compliance manager/consultant. If the owner or operator and the department cannot reach agreement on a remedial action plan, the department may initiate enforcement action by issuance of an administrative order pursuant to 567—Chapter 10. This provision does not grant the owner or operator an entitlement to this procedure, and the department reserves all discretion to undertake an enforcement action and assess penalties as provided in Iowa Code sections 455B.476 and 455B.477.

d. Administrative orders. The department may impose a delivery prohibition as a remedy for violations of the operation and maintenance provisions in rules 135.3(455B) through 135.5(455B) and the suspected and confirmed release response actions in rules 135.6(455B) and

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135.7(455B). This remedy may be in addition to the assessment of penalties as provided in Iowa Code section 455B.476 and other appropriate injunctive relief necessary to correct violations.

e. Due process prior to initiation of a delivery prohibition response action.

(1) Prior to imposing a delivery prohibition response action under paragraph 135.3(8)“b” above, the department will provide notice to the owner or operator or, if notice to the owner or operator cannot be confirmed, to a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Notice may be by verbal contact, by facsimile, or by regular or certified mail to the UST facility address or the owner’s or operator’s last-known address. The owner and operator will be given a minimum of one business day to provide documentation that the finding is inaccurate or that reinstatement criteria in subparagraphs 135.3(8)“b”(1) through (5) have been satisfied. Additional days and the opportunity for a telephone or in-person conference may be provided the owner and operator to contest the factual basis for a finding under subparagraphs 135.3(8)“b”(6) through (10). Additional procedural due process may be afforded the owner and operator on a case-by-case basis sufficient to satisfy Constitutional due process standards.

If insufficient information is submitted to change the finding, the department will notify the owner or operator and a person in charge at the UST facility of the final decision to impose the delivery prohibition response action.

(2) Provisional status. Upon a finding that an owner or operator under provisional status has failed to comply with the terms of a remedial action plan as provided above, the department may initiate a delivery prohibition response action by giving actual notice to the owner or operator of the basis for the finding of noncompliance and the department’s intent to initiate a delivery prohibition response action. The delivery prohibition response action shall not be imposed without providing the owner or operator the opportunity for an evidentiary hearing consistent with the provisions for suspension and revocation of licenses under 567—Chapter 7.

f. Delivery prohibition procedure. Upon oral or written notice that the delivery prohibition response action has been imposed, the owner or operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until conditions for reinstatement of eligibility are satisfied. Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or the tank registration tags if there are no tank management fee tags. Owners and operators are required to provide the department with names and contact information for all persons who convey or deposit regulated substances to the USTs. The department will attempt to notify known persons who convey or deposit regulated substances to the USTs that they are not authorized to deliver to the USTs until further notice by the department as provided in paragraph 135.3(3)“j” and subrule 135.3(5).

If the tank tags are not returned within three business days, the department shall visit the site, remove the tags, and affix a “red tag” to the fill pipes or fill pipe caps of all affected USTs. It is unlawful for any person to deposit or accept a regulated substance into a UST that has a “red tag” affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless the department determines there is an immediate risk of a release or other risk to human health, safety or the

environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to the action, and steps the owner or operator must take to reinstate fuel delivery.

**135.3(9)** Secondary containment requirements for new and replacement UST system installations. All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products installed after November 28, 2007, shall have secondary containment in accordance with this subrule. The secondary containment provision includes the installation of turbine sumps, transition or intermediate sumps and under-dispenser containment (UDC).

a. The secondary containment may be manufactured as an integral part of the primary containment or constructed as a separate containment system.

b. Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.

c. Any replacement of ten feet or more of piping shall have secondary containment.

d. All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.

e. The design and construction of all primary and secondary containment shall meet the performance standards in subrule 135.3(1) and paragraphs 135.5(3)“b” and 135.5(4)“g.” At a minimum, the secondary containment must:

(1) Contain regulated substances released from the tank system until detected and removed;

(2) Prevent the release of regulated substances into the environment at any time during the operational life of the underground storage tank system; and

(3) Be checked for evidence of a release at least every 30 days as provided in paragraph 135.5(2)“a.”

f. Secondary containment with interstitial monitoring in accordance with paragraphs 135.5(3)“b,” 135.5(4)“g” and 135.5(5)“d” shall become the primary method of leak detection for all new and replacement tanks and piping installed after November 28, 2007.

g. Testing and inspection. Secondary containment systems shall be liquid-tight and must be inspected and tested every two years. The sensing devices must be tested every two years.

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps, and under-dispenser containment) shall:

1. Consist of a visual inspection by an Iowa-licensed installer or Iowa-certified inspector every two years. Sumps must be intact (no cracks or perforations) and liquid-tight, including sides and bottom.

2. Sumps must be maintained and kept free of debris, liquid and ice at all times.

3. Regulated substances spilled into any spill catchment basin, turbine sump, transition/intermediate sump or under-dispenser containment shall be immediately removed.

(2) Sensing devices used to monitor the interstitial space shall be tested at least every two years for proper function.

h. Under-dispenser containment. When installing a new motor fuel dispenser or replacing a motor fuel dispenser, a UDC shall be installed whenever:

(1) A motor fuel dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system); or

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(2) An existing motor fuel dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. A UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) A UDC shall also be installed beneath the motor fuel dispenser whenever ten feet or more of piping is repaired or replaced within ten feet of a motor fuel dispenser.

i. Exceptions from secondary containment standards. A tank owner or operator may request an exception from the secondary containment standard if the location of the UST system is greater than 1,000 feet from a community water system or potable drinking water well. A community water system includes the distribution piping.

(1) "Community water system (CWS)" means a public water system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. "Public water supply system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A "public water supply system" is either a "community water system" or a "noncommunity water system."

(2) "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater and that supplies water for a noncommunity public water system or supplies water for household use (consisting of drinking, bathing, and cooking or other similar uses). Such wells may provide water to entities such as a single-family residence, a group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. A "noncommunity water system" is defined in rule 567—40.2(455B) as a public water system that is not a community water system. A "noncommunity water system" is either a "transient noncommunity water system (TNC)" or a "nontransient noncommunity water system (NTNC)."

(3) To determine if a new or replacement underground storage tank, piping, or motor fuel dispenser system is within 1,000 feet of an existing community water system or an existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replacement underground storage tank or piping or the motor fuel dispenser system to:

1. The closest part of the nearest existing community water system, including:

- The location of the wellhead(s) for groundwater and the location of the intake point(s) for surface water;
- Water lines, processing tanks, and water storage tanks; and
- Water distribution/service lines under the control of the community water system operator.

2. The wellhead of the nearest existing potable drinking water well.

(4) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing community water system will be installed, and a community water system that will be within 1,000 feet of the UST system is planned or a permit application has been submitted to the department under 567—Chapter 40, secondary containment and under-dispenser containment are required unless the permit is denied.

(5) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing potable drinking water well will be installed and the owner will be installing a potable drinking water well at the new facility, or a private water well permit has been submitted pursuant to 567—Chapter 38 and pursuant to applicable county and municipal ordinances for a potable drinking water well that will be within 1,000 feet of the UST system, secondary containment and under-dispenser containment are required unless the permit is denied.

j. Documentation for exception from secondary containment. The following documentation must be provided by the tank owner or operator when requesting an exception from the UST system secondary containment requirement.

(1) A statement from the manager of the local community water system that the community water system is not located or planned within 1,000 feet of the UST system location. This would include rural water systems.

(2) A map showing homes and businesses within 1,000 feet of the UST system location.

(3) Identification of the source of water for the business at the UST system location.

(4) The results of an on-foot search around businesses and homes within a 1,000-foot radius for possible potable drinking water wells. Documentation that there are no pending nonpublic water well permit applications within 1,000 feet of the UST system from any applicable municipal permitting authority, county department of health with department-delegated authority, or the department if there is not delegated permitting authority.

(5) Search results from the Geographic Information System (GIS) well mapping for well locations available from the Iowa Geological Survey.

(6) Documentation that the department's water supply section has no pending applications for a public water supply construction permit within 1,000 feet of a proposed UST system installation or replacement or motor fuel dispenser installation or replacement.

ITEM 6. Amend paragraph 135.5(4)"g" as follows:

g. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For ~~double-walled UST~~ *secondary containment* systems, the sampling or testing method ~~can~~ *must be able to* detect a release through the inner wall in any portion of the tank that routinely contains product:

1. *Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space; or*

2. *Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.*

3. *The interstitial space shall be maintained and kept free of liquid, debris or anything that could interfere with leak detection capabilities.*

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) and (3) No change.

ITEM 7. Adopt **new** paragraph **135.5(5)“d”** as follows:

d. Interstitial monitoring of secondary containment. Interstitial monitoring may be used for any piping with secondary containment designed for and capable of interstitial monitoring.

(1) Leak detection shall be conducted:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or containment sump; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or containment sump, such as visual inspection.

(2) The interstitial space or sump shall be maintained and kept free of water, debris or anything that could interfere with leak detection capabilities.

(3) At least every two years, any sump shall be visually inspected for integrity of sides and floor and tightness of piping penetration seals. Any automatic sensing device shall be tested for proper function.

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6356B

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### Adopted and Filed

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.

These amendments were published under Notice of Intended Action as **ARC 6184B** in the August 29, 2007, Iowa Administrative Bulletin. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 6185B**. These amendments have been changed since the Notice of Intended Action. For clarification, the definition of "manufacturer's representative" has been added to the list of amended terms in Item 6 and has been revised to read as follows:

"Manufacturer's representative" means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that promotes or sells electrical and mechanical amusement devices required to be registered under Iowa Code section 99B.10(4) or promotes or sells individual components for use in such devices on behalf of a manufacturer of such devices or components. An agreement between the manufacturer's representative and the manufacturer may be in place, but is not necessary.

In addition, a new item has been added to update the implementation sentence for 481—Chapter 105.

No public comment was received.

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.

These amendments will become effective November 28, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 104, 105] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6184B** and Adopted and Filed Emergency as **ARC 6185B**, IAB 8/29/07.

[Filed 10/5/07, effective 11/28/07]

[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6361B

### INSURANCE DIVISION[191]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends 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 amendments implement changes to procedures necessitated by changes in technology and changes in the Division's relationships with outside entities. The amendments will be effective November 28, 2007, and insurance producers and companies must comply on and after January 1, 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6202B**. A public hearing was held on September 18, 2007, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. The Division received no comments related to the proposed amendments. No changes were made to the Notice.

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

The amendments will become effective November 28, 2007.

The following amendments are adopted.

## INSURANCE DIVISION[191](cont'd)

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](http://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)**.

[Filed 10/5/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6363B

### INSURANCE DIVISION[191]

#### Adopted and Filed

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

The new chapter sets forth standards, based on model rules adopted by the National Association of Insurance Commissioners, 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. 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). Chapter 25 will become effective November 28, 2007, and insurance producers and insurance companies operating in Iowa must comply with these rules beginning January 1, 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6203B**. A public hearing was held on September 18, 2007, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. The Division received comments related to the proposed amendments.

Based on comments received at the public hearing and in writing and on further staff review, the following changes have been made:

To clarify when the law would be applied to those affected by the law, the language in subrule 25.1(4) related to the effective date of the chapter was deleted so that the subrule now reads as follows:

**"25.1(4)** This chapter shall apply to acts or practices committed on or after January 1, 2008."

Two clarifications were made to rule 191—25.8(505). The first change was made in subrule 25.8(1), where the second reference "Iowa Code chapter 507B" was changed to "Iowa Code chapters 505 and 507B." The second change was made in subrule 25.8(2), where the words "will be reported by the commissioner pursuant to, and" were inserted. Subrules 25.8(1) and 25.8(2) now read as follows:

**"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 chapters 505 and 507B.

**"25.8(2)** Any insurance producer or insurer found after hearing to have violated a provision of this chapter will be reported by the commissioner pursuant to, and 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)."

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

These rules will become effective November 28, 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 25] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 6203B**, IAB 8/29/07.

[Filed 10/5/07, effective 11/28/07]

[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6366B

### INSURANCE DIVISION[191]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8 and 2007 Iowa Acts, House File 499, section 26, the Insurance

## INSURANCE DIVISION[191](cont'd)

Division hereby adopts new Chapter 55, "Licensing of Public Adjusters," Iowa Administrative Code.

The new chapter sets forth 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. Chapter 55 will become effective November 28, 2007, and insurance producers and insurance companies operating in Iowa must comply with these rules beginning January 1, 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6204B**. A public hearing was held on September 18, 2007, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. The Division received comments related to the proposed rules.

Based on comments received at the public hearing and in writing, the following changes have been made:

The title of the chapter has been changed from "Licensing of Adjusters" to "Licensing of Public Adjusters."

As proposed, subrule 55.14(2), paragraph "b," read as follows:

"b. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses as approved by the insured."

Paragraph "b" has been divided into two sentences to clarify the meaning and now reads as follows:

"b. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract. Any additional expenses shall be approved by the insured."

The following language has been added at the end of the last sentence in subrule 55.18(3) to clarify a difference in fee methods: "unless the loss is being handled by the public adjuster on a time-plus-expense basis." Subrule 55.18(3) now reads as follows:

"**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, unless the loss is being handled by the public adjuster on a time-plus-expense basis."

The following sentence has been deleted from paragraph (3) of the Appendix: "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."

The following paragraph has been added to the Appendix:

"(6) An insured may contact the Iowa Insurance Division with questions about insurance law toll-free from within Iowa at (877)955-1212 or through the Division's Web site at [www.iid.state.ia.us](http://www.iid.state.ia.us)."

These rules are intended to implement 2007 Iowa Acts, House File 499, section 26.

These rules will become effective November 28, 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 55] is being omitted. With the exception of the

changes noted above, these rules are identical to those published under Notice as **ARC 6204B**, IAB 8/29/07.

[Filed 10/5/07, effective 11/28/07]

[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

**ARC 6343B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

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 adopts new Chapter 15, "Purchasing," Iowa Administrative Code.

The purpose of this rule making is to adopt administrative rules relating to purchasing and competitive bidding as directed by 2007 Iowa Acts, Senate File 431, section 19. The 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.

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.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6194B**. The Authority received no written or oral comments on the purchasing rules. These rules are identical to those published under Notice of Intended Action.

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

The Iowa Finance Authority adopted these rules on October 3, 2007.

These rules will become effective on November 28, 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 15] is being omitted. These rules are identical to those published under Notice as **ARC 6194B**, IAB 8/29/07.

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

**ARC 6342B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.181, the Iowa Finance Authority hereby adopts amendments to Chapter 19, "State Housing Trust Fund," Iowa Administrative Code.

The purpose of these amendments is to complete the bifurcation of the State Housing Trust Fund Allocation Plan

## IOWA FINANCE AUTHORITY[265](cont'd)

into two separate allocation plans, one for local housing and the other for the project-based housing program. These amendments adopt an allocation plan for the project-based housing program.

Chapter 19 does not provide for waivers. Persons seeking waivers of a rule contained in Chapter 19 must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6159B**. The Authority received one written comment on the proposed amendments and, in response, changed the December 30 date listed in Section 2.10 of the 2008 Allocation Plan for the Project-Based Housing Program to December 31.

These amendments are intended to implement Iowa Code sections 16.5(17) and 16.181.

The Iowa Finance Authority adopted these amendments on October 3, 2007.

These amendments will become effective on November 28, 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 [19.1, 19.2] is being omitted. These amendments are identical to those published under Notice as **ARC 6159B**, IAB 8/15/07.

[Filed 10/3/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

**ARC 6344B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19, and 2005 Iowa Acts, chapter 179, sections 161 and 162, the Iowa Finance Authority hereby adopts amendments to Chapter 25, “Entrepreneurs with Disabilities Program,” Iowa Administrative Code.

The purpose of these amendments is to move the daily operations of the program from an outside consultant to the Iowa Vocational Rehabilitation Services through the use of a business consultant employed by the Iowa Department of Education’s Vocational Rehabilitation Services Division. These amendments define the role of business planner, specify to whom the applicant will submit an application for technical assistance and financial assistance grants, and clarify that the Authority can monitor the records related to the program.

Chapter 25 does not provide for waivers. Persons seeking waivers must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6160B**. The Authority received no written or oral comments on the amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 16.5(17) and 2005 Iowa Acts, chapter 179, sections 161 and 162.

The Iowa Finance Authority adopted these amendments on October 3, 2007.

These amendments will become effective on November 28, 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 [25.2, 25.4(3), 25.5 to 25.7] is being omitted. These amendments are identical to those published under Notice as **ARC 6160B**, IAB 8/15/07.

[Filed 10/4/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

**ARC 6337B****REAL ESTATE APPRAISER  
EXAMINING BOARD[193F]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 3, “Examination,” Iowa Administrative Code.

The amendments to Chapter 3 further define requirements for work product review to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board. The amendment to subrule 3.5(5) removes the reference to the 30-day processing time, as this restriction is inaccurate and misleading to the applicant. At the time the rule was promulgated, there were approximately 10 to 15 applicants for licensure per year. Since that time, the Board has experienced a significant increase in the number of applicants to approximately 75 per year. Furthermore, the Board does not have a full-time appraiser on staff; it relies on a small number of volunteer peer reviewers. Actual processing times, due to the increased number of applicants desiring certification prior to mandated criteria changes, are closer to 60 calendar days.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6113B**. No public comments were received. Since publication of the Notice of Intended Action, the word “facial” has been replaced with the acronym “USPAP” in subrule 3.5(5). With this change, the first sentence of subrule 3.5(5) now reads as follows: “The board, or a committee of the board, will evaluate the submitted work product for USPAP compliance with applicable appraisal standards.”

These amendments were adopted by the Board on September 25, 2007.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

These amendments will become effective on November 28, 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 [3.2(5), 3.5] is being omitted. With the exception of the change noted above, these amendments are

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

identical to those published under Notice as **ARC 6113B**, IAB 8/1/07.

[Filed 10/3/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6359B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to 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.

Notice of Intended Action was published in IAB Vol. XXX; No. 5, p. 445, on August 29, 2007, as **ARC 6211B**.

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 deduction 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).

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 28, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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.

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 [40.1, 40.53(3), 40.71, 40.72,

42.2(11)"b," 43.4(5), 52.7(3)"c," 52.7(5)"c"] is being omitted. These amendments are identical to those published under Notice as **ARC 6211B**, IAB 8/29/07.

[Filed 10/5/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6360B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXX; No. 4, p. 353, on August 15, 2007, as **ARC 6167B**.

Item 1 adopts new rule 701—40.70(422), which provides for an exclusion for individual income tax for income received from the sale, rental or furnishing of tangible personal property or services directly related to a film, television or video project registered with the film office of the Iowa Department of Economic Development.

Item 2 adopts new rule 701—42.35(15,422), which provides for a film qualified expenditure tax credit for individual income tax, and rule 701—42.36(15,422), which provides for a film investment tax credit for individual income tax.

Item 3 adopts new rule 701—52.34(15,422), which provides for a film qualified expenditure tax credit for corporation income tax, and rule 701—52.35(15,422), which provides for a film investment tax credit for corporation income tax.

Item 4 amends rule 701—53.1(422) to reference new rule 701—53.25(422).

Item 5 adopts new rule 701—53.25(422), which provides for an exclusion for corporation income tax for income received from the sale, rental or furnishing of tangible personal property or services directly related to a film, television or video project registered with the film office of the Iowa Department of Economic Development.

Item 6 adopts new rule 701—58.19(15,422), which provides for a film qualified expenditure tax credit for franchise tax, and rule 701—58.20(15,422), which provides for a film investment tax credit for franchise tax.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 28, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 2007 Iowa Acts, House File 892, sections 3 to 9.

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 [40.70, 42.35, 42.36, 52.34, 52.35, 53.1, 53.25, 58.19, 58.20] is being omitted. These amendments are

REVENUE DEPARTMENT[701](cont'd)

identical to those published under Notice as **ARC 6167B**, IAB 8/15/07.

[Filed 10/5/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6358B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59 and 452A.76, the Department of Revenue hereby adopts amendments to Chapter 67, "Administration," and Chapter 68, "Motor Fuel And Undyed Special Fuel," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXX, No. 5, p. 447, on August 29, 2007, as **ARC 6209B**.

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).

Items 1 through 10 and 12 are clarifying amendments. Item 11 is a procedural reporting change, and Items 13 and 14 implement 2007 Iowa Acts, Senate File 601, sections 113 and 114.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 28, 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 [67.3(1) to 67.3(5), 67.3(7) to 67.3(9), 67.3(11), 67.3(12), 67.6, 67.24, 68.2] is being omitted. These amendments are identical to those published under Notice as **ARC 6209B**, IAB 8/29/07.

[Filed 10/5/07, effective 11/28/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6335B

### STATE PUBLIC DEFENDER[493]

#### Adopted and Filed

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.

Notice of Intended Action to solicit public comment on this amendment was published in the August 29, 2007, Iowa Administrative Bulletin as **ARC 6180B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 6181B**.

A public hearing was held and no comments were received.

This amendment, adopted by the State Public Defender on October 3, 2007, is identical to the amendment published under Notice of Intended Action and Adopted and Filed Emergency.

This amendment will become effective December 1, 2007, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code chapters 13B and 815.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [13.2(2)] is being omitted. This amendment is identical to that published under Notice as **ARC 6180B** and Adopted and Filed Emergency as **ARC 6181B**, IAB 8/29/07.

[Filed 10/3/07, effective 12/1/07]  
[Published 10/24/07]

[For replacement pages for IAC, see IAC Supplement 10/24/07.]

## ARC 6345B

### VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 35D.3, the Commission of Veterans Affairs hereby amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6157B**. A public hearing on the amendments was held on September 5, 2007. No one attended the public hearing; two written comments were received. In response to the written comments, the Commission of Veterans Affairs has made a change in paragraph 10.40(1)"c" by adding "in response to a request based on probable cause" in the third sentence.

The intent of the adopted amendments is to reflect the clinical programming changes that the Iowa Veterans Home will be initiating.

These amendments were adopted by the Commission of Veterans Affairs on September 26, 2007.

These amendments shall become effective November 28, 2007.

These amendments are intended to implement Iowa Code chapter 35D.

The following amendments are adopted.

ITEM 1. Amend rule **801—10.1(35D)** by rescinding the definition of "licensed physician."

ITEM 2. Amend subrule **10.40(1)** by adding the following **new** paragraph "**c**" and relettering existing paragraphs "**c**" to "**h**" as "**d**" to "**i**":

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

c. The use of illegal substances while a member of IVH is prohibited. A urinalysis shall confirm the presence of illegal substances. A member's refusal to submit to a urinalysis in response to a request based on probable cause shall be considered a positive result and is grounds for discharge.

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

## ARC 6347B

### VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 2007 Iowa Acts, House File 817, sections 3 and 4, the Iowa Department of Veterans Affairs hereby adopts new Chapter 14, "Veterans Trust Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6126B**.

Chapter 14 establishes the Veterans Trust Fund. For the fiscal period beginning July 1, 2006, and ending June 30, 2009, Iowa Code section 35A.13(5) requires a minimum balance of \$5 million in the trust fund prior to expenditure of moneys from the trust fund. The trust fund now meets the minimum balance requirement. Interest and earnings on the fund plus any devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source made to the fund shall, as implemented in these rules, be used for the purposes set out in Iowa Code section 35A.13(7).

The Department held a public hearing on Tuesday, August 21, 2007, to receive comments on the proposed rules. Comments were received and incorporated as follows.

The adopted rules clarify that income thresholds apply only to subrules 14.4(1) to 14.4(6), increase income guidelines to 200 percent of the federal poverty level, and increase liquid-asset limits to \$15,000. VA pension benefits and service-connected disability payments were excluded from income guidelines, and real property and personal vehicles were excluded from the calculation of liquid assets. The amount of unemployment assistance allowed also has been modified, with the annual limit raised to \$3,000. The liquid-asset thresholds for eligibility for health care aid and counseling also were raised to \$3,000.

Additionally, the definition of "children" was limited to biological or adopted children, and language was added to clarify that payments to children may be made when a veteran "died or was disabled as a result of injuries or illness incurred while on active federal service." The stipulation prohibiting honor guards from receiving an honorarium from the family while serving at a funeral also has been removed.

The Iowa Commission of Veterans Affairs approved these rules on Wednesday, September 26, 2007.

The Iowa Department of Veterans Affairs adopted these rules on October 4, 2007.

These rules will become effective on November 28, 2007.

These rules are intended to implement Iowa Code section 35A.13 as amended by 2007 Iowa Acts, House File 817, section 7.

The following **new** chapter is adopted.

#### CHAPTER 14 VETERANS TRUST FUND

**801—14.1(35A) Purpose.** These rules establish the requirements for veterans or their spouses or dependents to receive benefits from the veterans trust fund.

**801—14.2(35A) Definition.** For purposes of this chapter, "veteran" means the same as defined in Iowa Code section 35.1, or a resident of Iowa who served in the armed forces of the United States, completed a minimum aggregate of 90 days of active federal service, and was discharged under honorable conditions.

**801—14.3(35A) Eligibility.** Veterans, their spouses, and their dependents applying for benefits available under subrules 14.4(1) through 14.4(6) must meet the following threshold requirements.

**14.3(1) Income.** For the purposes of this chapter, an applicant's household income, excluding VA pension benefits and service-connected disability income, shall not exceed 200 percent of the federal poverty guidelines for the number of family members living in the primary residence in effect on the date the application is received by the county director of veterans affairs. Federal poverty guidelines shall be those guidelines established by the Iowa department of human services for the veteran's family size. The commission shall adjust the guidelines on July 1 of each year to reflect the most recent federal poverty guidelines.

**14.3(2) Resources.** The department may not pay benefits under this chapter if the available liquid assets of the veteran are in excess of \$15,000. For the purposes of this chapter, "available liquid assets" means cash on hand, cash in a checking or savings account, stocks, bonds, certificates of deposit, treasury bills, money market funds and other liquid investments owned individually or jointly by the applicant and the applicant's spouse, unless the applicant and spouse are separated or are in the process of obtaining a divorce, but does not include funds deposited in IRAs, Keogh plans or deferred compensation plans, unless the veteran is eligible to withdraw such funds without incurring a penalty. Cash surrender value of life insurance policies, real property, or a personal vehicle shall not be included as available liquid assets.

**14.3(3) Funding from other sources.** Applications shall not be approved if the applicant is eligible to receive aid from other sources to meet the purposes authorized in this chapter.

**14.3(4) Additional requirements and limitations.** Applicants must meet any additional requirements and are subject to any limitations which may be set out in this chapter or which may be established for a particular benefit.

**801—14.4(35A) Benefits available.** Applications may be approved for any of the following purposes.

**14.4(1) Travel expenses for wounded veterans directly related to follow-up medical care.** Travel expenses under this subrule include the cost of airfare, lodging, and a per diem of \$25 per day. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence the injury or disability is service-connected, the necessity of treatment in a particular facility, and documentation of expenses. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$1,000.

## VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

**14.4(2)** Job training or college tuition assistance for job retraining.

a. The commission may pay a veteran not more than \$3,000 for retraining to enable the veteran to obtain gainful employment. The commission may provide aid under this subrule if all of the following apply:

(1) The veteran is enrolled in a training course in a technical college or school or is engaged in a structured on-the-job training program.

(2) The veteran is unemployed or underemployed or has received a notice of termination of employment.

(3) The commission determines that the veteran's proposed program will provide retraining that could enable the veteran to find gainful employment. In making its determination, the commission shall consider whether the proposed program provides adequate employment skills and is in an occupation for which favorable employment opportunities are anticipated.

(4) The veteran requesting aid has not received reimbursement from any other retraining or education programs and the veteran does not have other assets or income available to meet retraining expenses.

b. The veteran shall provide such evidence as the commission may require to satisfy the requirements of this subrule.

**14.4(3)** Unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service. The commission may provide subsistence payments only to a veteran who has suffered a loss of income due to prolonged physical or mental illness or disability resulting from military service. The commission may provide subsistence payments of up to \$500 per month to a veteran on a month-to-month basis. No payment may be made under this subrule if the veteran has other assets or income available to meet basic subsistence needs. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence that the mental illness or disability is service-connected and evidence that the veteran is unemployed for the period of payments. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$3,000.

**14.4(4)** Expenses relating to nursing facility or home care.

a. The commission may provide health care aid to a veteran residing in a long-term care facility or under a formal home health care agreement for dental care, including dentures; vision care, including eyeglass frames and lenses; and hearing care, including hearing aids.

b. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed \$2,500 for dental care, \$500 for vision care, and \$1,500 per ear for hearing care.

c. The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of \$3,000.

**14.4(5)** Benefits provided to children of disabled or deceased veterans. The commission may provide a one-time payment of \$250 to minor children of veterans who were disabled as a result of injuries or illness incurred while on active federal service or \$1,000 to minor children of veterans who died as a result of injuries or illness incurred while on active

federal service, following September 11, 2001. Minor children claiming eligibility due to the disability or death of a veteran shall submit, through the parent or guardian of the child, evidence from the appropriate military service indicating that the veteran died or was disabled as a result of injuries or illness incurred while on active federal service. For the purposes of this subrule, "children" means any biological child or any adopted child. The applicant shall provide such evidence as the commission may require to satisfy the requirements of this subrule.

**14.4(6)** Individual counseling or family counseling programs.

a. The commission may make mental health and family counseling available to veterans and their families. Individual family members are eligible for counseling.

b. The assistance may include appropriate counseling and treatment programs for veterans and their families in need of services.

c. Any assistance provided under this subrule shall not duplicate other services readily available to veterans and their families.

d. The maximum amount that may be paid under this subrule for any consecutive 12-month period shall not exceed \$2,500.

e. The commission may not provide counseling under this subrule unless the aid recipient's counseling service provider agrees to accept, as full payment for the counseling services provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the department determines the veteran is capable of paying. The department shall not pay for counseling under this subrule if the available liquid assets of the veteran are in excess of \$3,000.

**14.4(7)** Family support group programs or programs for children of members of the military.

a. The commission may award grants to unit family readiness/support groups, family support offices, and other such organizations providing support and programs to families and children of family members.

b. The grant shall be only for projects or programs which are not funded from any other source. The commission shall determine that the applicant's proposed project or program will provide the intended support. In making its determination, the commission shall consider whether the proposed program will provide anticipated favorable results.

c. The maximum amount of aid payable in a consecutive 12-month period under this subrule to a family readiness/support group is \$500.

**14.4(8)** Honor guard services.

a. The commission may reimburse veterans organizations for providing military funeral honors as follows:

(1) If a single veterans organization provides basic honors, \$25.

(2) If a single veterans organization provides full honors, \$50.

(3) If two or more veterans organizations participate in providing full honors and one of the organizations provides a firing detail, \$50. The organizations may request that the commission split the reimbursement.

(4) If two or more veterans organizations participate in providing basic honors, \$25. Payment shall be to one veterans organization, as determined by the commission.

b. Notwithstanding paragraph "a," the commission shall not reimburse a veterans organization if federal funding is available to reimburse the veterans organization for providing military funeral honors. The veterans organization shall

## VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

request reimbursement from federal sources. If a veterans organization receives federal funding for providing military funeral honors at the reimbursement rate of one funeral per day, the department shall reimburse the organization for the provision of military funeral honors at any additional funerals on that day.

c. The maximum amount of aid payable in a consecutive 12-month period under this subrule to a veterans organization is \$500.

**801—14.5(35A) Application procedure.** Applications for benefits from the veterans trust fund may be obtained at any county veterans affairs office. The county director of veterans affairs shall date-stamp the application and submit it to the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824.

**14.5(1) Application process.** A person who wishes to apply shall complete an Application for Veterans Trust Fund form and provide such documentation or other evidence as the commission may require in order to determine the awarding or denial of the benefits available under this chapter.

**14.5(2) Date of application.** The date of the application shall be the date the signed application and written verification are received by the county director of veterans affairs.

**14.5(3) Eligibility determination.** The county director of veterans affairs or members of the county commission shall make a recommendation to the Iowa commission of veterans affairs as to whether to approve or deny the application. The Iowa commission of veterans affairs shall approve or deny all applications at its quarterly meetings as set forth in 801—paragraph 1.2(2)“a” or during a conference call for the sole purpose of voting on a trust fund expenditure. Applications must be approved by a majority vote of the commission membership. The director of the Iowa department of veterans affairs shall notify an applicant within 15 days of the commission’s decision. An explanation of the reasons for rejection of an application will accompany denials.

**14.5(4) Waiting list.** After all veterans trust fund moneys have been obligated, the commission shall deny pending applications.

a. The denial notice shall state either that the applicant meets eligibility requirements but no funds are available and the applicant will be placed on the waiting list or that the applicant does not meet eligibility requirements.

b. Applicants not awarded funding who meet the eligibility requirements shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the county commission of veteran affairs. In the event that more than one application is received at one time, the applicant shall be entered on the waiting list on the basis of the day of the month of the person’s birthday, the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

c. When funding allows additional applicants to be approved, their names shall be taken from the statewide waiting list, and their need and eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility,

shall be sent to each applicant for completion. Packets shall be returned to the Iowa department of veterans affairs within time lines specified by the department. If the signed application and verification of continuing eligibility are not received by the time line specified by the department, the applicant shall not be considered for funding.

**801—14.6(35A) Recovery of erroneous payments.**

**14.6(1) Erroneous payments.** The commission may recover payments made as a grant under this chapter if any of the following apply:

a. The information provided by the applicant is inaccurate.

b. The commission incorrectly calculated the grant amount.

c. The applicant is not entitled to a grant or is entitled to a lower grant amount as a result of a change in circumstances that affects the applicant’s eligibility to receive the grant.

**14.6(2) Amount of recovery.** The commission may recover only the portion of the grant to which the applicant would not have been entitled if the correct information had been provided or if the grant had been properly calculated or as a change in circumstances warrants.

**14.6(3) Remedies.** The commission may request repayment of the amount due under subrule 14.6(2). In lieu of a lump-sum payment, the commission may enter into an agreement under which the applicant may repay the amount due within a 12-month period. If the applicant fails to repay the amount due within 30 days of a request for repayment or fails to comply with the terms of a repayment agreement, the commission may offset future grants that the applicant may be entitled to under this chapter until the amount due has been recovered. The commission may also suspend other benefits available to the applicant until the amount due has been recovered.

**14.6(4) Waiver.** The commission may temporarily or permanently waive its authority to recover payments under subrule 14.6(1) or suspend benefits under subrule 14.6(3) if the applicant’s household income is totally exempt from Iowa garnishment law.

**14.6(5) Appeal.** Any commission decision under this chapter is subject to appeal under rule 801—14.7(35A).

**801—14.7(35A) Appeal rights.**

**14.7(1) Final agency action.** The approval or denial of an application by the commission shall be the final decision of the agency.

**14.7(2) Judicial review.** Judicial review of the commission’s final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 35A.13 as amended by 2007 Iowa Acts, House File 817, section 7.

[Filed 10/4/07, effective 11/28/07]

[Published 10/24/07]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/24/07.

**IOWA ADMINISTRATIVE BULLETIN**  
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