

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

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby amends Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

These amendments implement 2013 Iowa Acts, House File 644, passed by the 85th General Assembly and signed by the Governor on May 24, 2013, and House File 307, passed by the 85th General Assembly and signed by the Governor on April 5, 2013. The legislation provides for changes to Iowa Code chapter 34A. These amendments focus on the creation of a stand-alone Department from a Division of the Department of Public Defense and on surcharge collection and disbursement issues.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1463C** on May 14, 2014. A public hearing was conducted on June 3, 2014. No public comment was received. The adopted amendments are identical to those published under Notice.

The Homeland Security and Emergency Management Department adopted these amendments on June 19, 2014.

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

These amendments are intended to implement Iowa Code chapter 34A and 2013 Iowa Acts, House Files 644 and 307.

These amendments will become effective on August 13, 2014.

The following amendments are adopted.

ITEM 1. Rescind the definition of “Administrator” in rule **605—10.2(34A)**.

ITEM 2. Adopt the following new definition of “Director” in rule **605—10.2(34A)**:

“*Director*,” unless otherwise noted, means the director of the homeland security and emergency management department.

ITEM 3. Amend the following definitions in rule **605—10.2(34A)**:

“*E911 program manager*” means that person appointed by the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

“*Recurring costs*” means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, personnel time directly associated with database management and personnel time directly associated with addressing, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.

“*Wire-line E911 service surcharge*” means a charge ~~set by the E911 service operating authority~~ and assessed on each wire-line access line which physically terminates within the E911 service area in accordance with Iowa Code section 34A.7.

ITEM 4. Amend rule 605—10.3(34A) as follows:

605—10.3(34A) Joint E911 service boards. Each county board of supervisors shall establish a joint E911 service board.

10.3(1) and 10.3(2) No change.

10.3(3) Joint E911 service board bylaws. Each joint E911 service board shall develop bylaws to specify, at a minimum, the following information:

a. to m. No change.

Each member shall sign the adopted bylaws.

The joint E911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the E911 program ~~administrator~~ manager at the ~~state~~ homeland security and emergency management ~~division~~ department.

10.3(4) Executive board. The joint E911 service board may, through its bylaws, establish an executive board to conduct the business of the joint E911 service board. Members of the executive board must be selected from the eligible voting members of the joint E911 service board. The executive board will have such other duties and responsibilities as assigned by the joint E911 service board.

10.3(5) No change.

ITEM 5. Amend rule 605—10.4(34A) as follows:

605—10.4(34A) Enhanced 911 service plan (wire-line).

10.4(1) The joint E911 service board shall be responsible for developing an E911 service plan as required by Iowa Code section 34A.3 and as set forth in these rules. The plan will remain the property of the joint E911 service board. Each joint E911 service board shall coordinate planning with each contiguous joint E911 service board. A copy of the plan and any modifications and addenda shall be submitted to:

- a. The ~~state~~ homeland security and emergency management ~~division~~ department.
- b. All public and private safety agencies serving the E911 service area.
- c. All providers affected by the E911 service plan.

10.4(2) The E911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the ~~administrator~~ director. Each plan shall include:

- a. The mailing address of the joint E911 service board.
- b. A list of voting members on the joint E911 service board.
- c. A list of nonvoting members on the joint E911 service board.
- d. The name of the chairperson and vice chairperson of the joint E911 service board.
- e. A geographical description of the enhanced 911 service area.
- f. A list of all public and private safety agencies within the E911 service area.
- g. The number of public safety answering points within the E911 service area.
- h. Identification of the agency responsible for management and supervision of the E911 emergency telephone communication system.
- i. A statement of ~~estimated charges~~ recurring and nonrecurring costs to be incurred by the joint E911 service board, ~~including separate estimates of recurring and nonrecurring charges.~~ These charges costs shall be limited to charges costs directly attributable to the provision of E911 service. ~~The charges shall include the following:~~
 - ~~(1) Item(s) or unit(s) of measurement, or both, and the associated tariff prices applicable in the development of the charges.~~
 - ~~(2) Where tariff prices are not available, work papers showing the development of the charges by item(s)/unit(s) shall be included.~~
 - ~~(3) Charges shall be justified as being attributable to the provision of E911 telephone communication service.~~
- j. ~~Information from communications service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.~~
- ~~k. j.~~ The total number of telephone access lines by telephone company or companies having points of presence within the E911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).
- ~~l.~~ ~~The estimated number of pay telephones within the E911 service area.~~
- ~~m. k.~~ If applicable, a schedule for implementation of the plan throughout the E911 service area. A joint E911 service board may decide not to implement E911 service.
- ~~n. l.~~ The total property valuation in the E911 service area.
- ~~o. m.~~ Maps of the E911 service area showing:
 - (1) to (5) No change.
- ~~p. n.~~ A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).
- ~~q. o.~~ A plan to migrate to an internet protocol-enabled next generation network.

10.4(3) to 10.4(5) No change.

ITEM 6. Amend rule 605—10.5(34A) as follows:

605—10.5(34A) Referendum and wire-line Wire-line E911 service surcharge.

~~10.5(1)~~ The surcharge referendum may be initiated only by the joint E911 service board and shall be conducted in accordance with the provisions of Iowa Code sections 34A.6 and 34A.6A and Iowa Administrative Code rule 721—21.810(34A). The surcharge is not a local option tax that can be presented to the voters under Iowa Code chapter 422B. One source of funding for the E911 emergency communications system shall come from a surcharge of one dollar per month, per access line on each access line subscriber.

~~10.5(2)~~ The following information shall be filed with the E911 program manager before the surcharge may be imposed:

a.—A copy of the “Abstract of Election” (Form 156-K) from each commissioner of elections, in each county or partial county included within the E911 service area, showing passage of the referendum allowing for the imposition of a surcharge for E911 service.

b.—An E911 service plan for the proposed E911 service area approved by the joint E911 service board.

c.—A letter signed by the chairperson of the joint E911 service board requesting that the surcharge be imposed within the E911 service area.

~~10.5(3)~~ **10.5(2)** The E911 program manager shall notify a local communications service provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, and by the E911 program manager, and by the service area referendum, and that collection of the surcharge is to begin within 60 days. The E911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to local exchange service providers shall also apply when an adjustment in the wire-line surcharge rate is made.

~~10.5(4)~~ **10.5(3)** The local communications service provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber’s monthly billing entitled “E911 emergency communications service surcharge.”

~~10.5(5)~~ **10.5(4)** The local communications service provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider’s costs for the billing and collection of the surcharge, the deficiency shall be included in the provider’s costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

~~10.5(6)~~ **10.5(5)** The local communications service provider shall remit the collected surcharge to the joint E911 service board on a calendar quarter basis within 20 days of the end of the quarter.

~~10.5(7)~~ **10.5(6)** The joint E911 service board may request, not more than once each quarter, the following information from the local communications service provider:

a. to f. No change.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

~~10.5(8)~~ **10.5(7)** Collection for a surcharge shall terminate if E911 service ceases to operate within the respective E911 service area. The E911 program manager for good cause may grant an extension.

a. The ~~administrator~~ director shall provide 100 days’ prior written notice to the joint E911 service board or the operating authority and to the local communications service provider(s) collecting the fee of the termination of surcharge collection.

b. No change.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state homeland security and emergency management ~~division~~

department. Moneys received by the ~~division~~ department shall be used only to offset the costs for the administration of the E911 program.

ITEM 7. Amend rule 605—10.7(34A) as follows:

605—10.7(34A) Enhanced wireless E911 service plan. Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless E911 service plan for statewide implementation of enhanced wireless E911 service.

10.7(1) Plan specifications. The enhanced wireless E911 service plan shall include, at a minimum, the following information:

1. Maps showing ~~geographic area to be served by the geographic location within the county of each PSAP receiving that receives~~ enhanced wireless E911 telephone calls.

2. A list of all public and private safety agencies within the enhanced wireless E911 service area ~~safety answering points within the state of Iowa.~~

3. ~~The geographic location of each PSAP receiving enhanced wireless E911 calls and the name of the person responsible for the management of the PSAP.~~

4. ~~3.~~ A set of guidelines for determining eligible cost as set forth in Iowa Code section 34A.7A.

5. ~~4.~~ A schedule for the implementation and maintenance of the next generation 911 systems to provide enhanced wireless 911 phase I and phase II service.

10.7(2) Adoption by reference. The “Wireless ~~Enhanced 911~~ NG911 Implementation and ~~Operation~~ Operations Plan,” effective ~~November 1, 2012~~ July 1, 2013, and available from the Homeland Security and Emergency Management ~~Division~~ Department, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~March 27, 2013~~ June 18, 2014.

ITEM 8. Amend rule 605—10.8(34A) as follows:

605—10.8(34A) Emergency communications service surcharge.

10.8(1) The E911 program manager shall adopt a monthly surcharge of ~~up to 65 cents~~ one dollar to be imposed on each wireless communications service number provided in this state. ~~The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 65 cents per month, per customer service number.~~ The surcharge shall not be imposed on wire-line-based communications or prepaid wireless telecommunications service.

10.8(2) ~~The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator’s best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.~~

10.8(3) 10.8(2) The E911 program manager shall order the imposition of a surcharge uniformly on a statewide basis and simultaneously on all communications service numbers by giving at least 60 days’ prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 60-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

10.8(4) 10.8(3) The wireless surcharge shall be ~~65 cents~~ one dollar per month, per customer service number, until changed by rule.

10.8(5) 10.8(4) The communications service provider shall list the surcharge as a separate line item on the customer’s billing indicating that the surcharge is for E911 emergency telephone service. The communications service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber’s periodic billing. The wireless E911 surcharge is not subject to sales or use tax.

~~10.8(6)~~ **10.8(5)** Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management ~~Division~~ Department, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

ITEM 9. Amend subrule 10.9(1) as follows:

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the ~~administrator~~ director.

ITEM 10. Amend subrule 10.9(3) as follows:

10.9(3) Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly shall be allocated to the homeland security and emergency management ~~division~~ department for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall reimburse local communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

c. The program manager shall reimburse local communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

d. The program manager shall allocate 13 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2016.

~~d. e.~~ A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the ~~State of Iowa Wireless E911~~ NG911 Implementation and Operation Operations Plan. The request is due to the program manager on May 15, or the next business day, of each year.

The amount allocated under 10.9(3)-~~"d"~~ "e" shall be 46 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3)-~~"d"~~ "e" shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

e. f. If moneys remain after all obligations under 10.9(3) “a” to “~~d~~,” “e,” as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future network improvements and public safety answering point improvements. These moneys may also be used for wireless service providers’ transport costs related to wireless E911 phase 2 II services, if those costs are not otherwise recovered by the wireless service provider’s customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

ITEM 11. Amend subrule 10.9(4) as follows:

10.9(4) Payments to local communications service providers and wireless service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State of Iowa Accounting ~~Policies~~ Policy and Procedures Manual.

ITEM 12. Amend subrule 10.9(6) as follows:

10.9(6) If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the ~~state~~ homeland security and emergency management ~~division~~ department. If resolution of the debt does not occur and the debt is at least \$50, the ~~state~~ homeland security and emergency management ~~division~~ department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the ~~state~~ homeland security and emergency management ~~division~~ department may withhold future payments to the entity.

ITEM 13. Amend subrule 10.11(2) as follows:

10.11(2) The E911 service funds shall be subject to examination by the ~~division~~ department at any time during usual business hours. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the ~~division~~ department within 30 days of receipt. If through the audit or monitoring process the ~~division~~ department determines that a joint E911 service board is not adhering to an approved plan or does not have a valid board membership, or if the ~~division~~ department determines that a joint E911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the ~~administrator~~ director may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the E911 service fund. The joint E911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the E911 program manager determines that the board or department of public safety is in compliance with the approved plan, board membership, and fund usage limitations.

ITEM 14. Amend rule 605—10.12(34A) as follows:

605—10.12(34A) Operating budgets.

10.12(1) ~~Each~~ By March 31 of each year, each joint E911 service board and the department of public safety shall provide to the E911 program manager a copy, ~~to the E911 program manager, within 30 days of adoption,~~ of the operating budget for the ensuing fiscal year for the fund as established under subrule 10.11(1).

10.12(2) ~~The E911 program manager shall, upon review of the operating budget, make necessary adjustments to the surcharge as provided in Iowa Code chapter 34A.~~

ITEM 15. Amend paragraph **10.14(3)“c”** as follows:

c. The communications service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the ~~administrator~~ director, the department of public safety, a joint E911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

ITEM 16. Amend rule 605—10.15(34A) as follows:

605—10.15(34A) Administrative hearings and appeals.

10.15(1) E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

10.15(2) Request for a hearing shall be made in writing to the ~~state~~ homeland security and emergency management ~~division administrator~~ department director within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

10.15(3) The ~~administrator~~ director shall schedule a hearing within 10 working days of receipt of the request for hearing. The ~~administrator~~ director shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

10.15(4) The ~~administrator~~ director shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(5) Any party adversely affected by the ~~administrator's~~ director's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The ~~administrator~~ director will schedule a hearing within 20 days after the receipt of the written request. The ~~administrator~~ director shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(6) Any party adversely affected by the ~~administrator's~~ director's ruling may file a written appeal to the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The ~~administrator~~ director shall issue a ruling regarding the matter within 90 days of the hearing. The ~~administrator's~~ director's ruling constitutes final agency action for purposes of judicial review.

ITEM 17. Amend rule 605—10.16(34A) as follows:

605—10.16(34A) Confidentiality. All financial or operations information provided by a communications service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said communications service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the ~~administrator~~ director if the aggregated information does not reveal any information attributable to an individual communications service provider.

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