

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 99B.13, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 104, “General Provisions for All Amusement Devices,” and Chapter 105, “Registered Amusement Devices,” Iowa Administrative Code.

The proposed amendments are technical changes to make the rules consistent with current statutory language, including changing prize limits from \$5 to \$50 and updating penalties. These amendments also eliminate the requirement for an annual report, which is not required by the Iowa Code, and change instances of “electrical and mechanical” to “electrical or mechanical” to make the terminology consistent.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 24, 2015. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code section 99B.13.

The following amendments are proposed.

ITEM 1. Amend rule **481—104.1(10A,99B)**, definitions of “Amusement device” and “Prize,” as follows:

“*Amusement device*” means an electrical ~~and~~ or mechanical device possessed and used in accordance with Iowa Code section 99B.10. An amusement device is not a game of skill or chance as defined in Iowa Code section 99B.1, a gambling device, or a device that plays poker, blackjack, or keno. Roulette wheels, slot machines, and other devices specified in Iowa Code section 725.9 as gambling devices are not amusement devices.

“*Prize*” means a ticket(s) or token(s) that is dispensed by an amusement device as an award for use and that is worth up to \$~~5~~ \$50 in merchandise.

ITEM 2. Amend rule 481—104.2(99B) as follows:

481—104.2(99B) Device restrictions. An amusement device, except for an amusement device which shall be registered pursuant to ~~2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ Iowa Code section 99B.10(1)“f.” may be owned, possessed, or offered for use by any person at any location. All amusement devices shall comply with all of the following:

1. to 3. No change.
4. The device may be designed or adapted to award merchandise or tickets or tokens redeemable for merchandise not to exceed a retail value of more than \$~~5~~ \$50 per play or game.
5. to 9. No change.

ITEM 3. Amend subrule 104.4(1) as follows:

104.4(1) Merchandise with a retail value of no more than \$~~5~~ \$50 per transaction may be awarded.

ITEM 4. Amend paragraph **104.4(3)“c”** as follows:

c. Tickets or tokens may be redeemed for merchandise if the retail value of the merchandise does not exceed ~~\$\$~~ \$50 per transaction.

ITEM 5. Amend paragraph **104.4(3)“d”** as follows:

d. Tickets or tokens may be accumulated to purchase merchandise not greater than ~~\$\$~~ \$50 per transaction in retail value.

ITEM 6. Amend paragraph **104.4(3)“e”** as follows:

e. Tickets or tokens may be redeemed for food and beverage if the combined value of the food and beverage does not exceed ~~\$\$~~ \$50 per transaction.

ITEM 7. Amend rule 481—104.5(99B) as follows:

481—104.5(99B) Registration. An amusement device must be registered if it meets the registration requirements set forth in ~~2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ Iowa Code section 99B.10(1)“f.” Additional licenses or registrations under Iowa Code chapter 99B are not required.

ITEM 8. Amend the following definitions in rule **481—105.1(10A,99B)**:

“Amusement device registration availability” means a registration position which becomes available:

1. ~~when~~ When a distributor or owner:

- ~~is~~ Is going out of business,
- ~~fails~~ Fails to renew a registration by the renewal due date, or
- ~~has~~ Has an electrical ~~and~~ or mechanical device seized by law enforcement and the seizure is upheld through a forfeiture hearing; or

2. ~~when~~ When any other legal order has been issued which pertains to violations of Iowa Code chapter 99B, 123, or 123A.

“Distributor” means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person who owns electrical ~~and~~ or mechanical amusement devices that are registered as provided in Iowa Code section 99B.10(4) and that are offered for use at more than a single location or premises.

“Manufacturer” means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that originally produces an electrical ~~and~~ or mechanical amusement device required to be registered under Iowa Code section 99B.10(4) or produces individual components for use in such a device.

“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~~ or 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.

“Owner” means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable electrical ~~and~~ or mechanical amusement device ~~required to be registered under 2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ registered electrical or mechanical amusement device. An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)“m” is allowed up to four machines at a single location.

“Prize” means a ticket(s) or token(s) that is dispensed by a registered amusement device as an award for use and that is worth up to ~~\$\$~~ \$50 in merchandise.

“Registered amusement device” means an electrical ~~and~~ or mechanical amusement device in operation subject to registration by the department pursuant to ~~2007 Iowa Acts, Senate File 510, section 2(1)“f.”~~ Iowa Code section 99B.10(1)“f” and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word “change” as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the

repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

“*Security mechanism*” means an appliance which prevents a person from operating an electrical ~~and~~ or mechanical amusement device by not allowing the acceptance of money until action is taken by the owner or owner’s designee to allow the person to operate the device.

ITEM 9. Amend subrule 105.2(1) as follows:

105.2(1) The number of electrical ~~and~~ or mechanical amusement devices registered by the department shall not exceed 6,928, the total number of devices registered by the department as of April 28, 2004.

ITEM 10. Amend subrule 105.2(2) as follows:

105.2(2) The department shall not initially register an electrical ~~and~~ or mechanical amusement device that is required to be registered pursuant to ~~2007 Iowa Acts, Senate File 510, section 2(1)“f,”~~ to an owner for a location for which only a Class “B” or a Class “C” beer permit has been issued pursuant to Iowa Code chapter 123 on or after April 28, 2004.

ITEM 11. Amend subrule **105.2(3)**, Example 1, as follows:

EXAMPLE 1: An electrical ~~and~~ or mechanical amusement device is registered with the department and is located at a convenience store that has a Class “C” beer permit.

1. If the amusement device needs to be repaired, the owner may repair it without losing the registration position or buying a new registration tag. A repair constitutes any changes to a device as long as the type of game and the number of devices in a location is not changed.

2. If the amusement device needs to be replaced because it is defective, it must be replaced with the same game in order to keep the registration position.

3. The amusement device cannot be moved from one location to another under a Class “B” or a Class “C” beer permit, even if the number of registered devices at a location does not change.

4. If a location with a Class “B” or a Class “C” beer permit had only one amusement device registered on April 28, 2004, the maximum number of devices allowed at that location shall be one.

ITEM 12. Amend subrule 105.2(6) as follows:

105.2(6) The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section 99B.10 ~~as amended by 2007 Iowa Acts, Senate File 510, section 2,~~ this chapter, 481—Chapter 104, and any other applicable laws or rules.

ITEM 13. Amend subrule 105.2(8) as follows:

105.2(8) If the department, or the department’s designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, manufacturer’s representative, distributor, or owner, may be revoked or suspended.

ITEM 14. Amend paragraph **105.2(10)“c”** as follows:

c. A person may request to be added to the waiting list by calling or writing the department at Department of Inspections and Appeals, Social and Charitable ~~Gaming~~ Gambling Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; (515)281-6848 6840.

ITEM 15. Amend subrule **105.2(11)**, Example 3, as follows:

EXAMPLE 3: An amusement device is located in a bar that has the appropriate liquor license. On April 28, 2004, this location had only one amusement device. An additional amusement device may be added to this location.

1. If the amusement device needs to be repaired, it may be repaired without the loss of the device’s registration position.

2. If the amusement device is defective and needs to be replaced, it can be replaced with the same game under the original registration without the incurring of additional charges.

3. If the amusement device is replaced with a new amusement device that has a different game, before the device is moved to the premises, the process for initial registration shall be followed pursuant to this chapter and Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510. The replacement of the amusement device creates an amusement device registration availability, and the position will be offered to the next person on the waiting list pursuant to this rule.

ITEM 16. Amend subrule 105.2(14) as follows:

105.2(14) The registration application for all new amusement devices must be accompanied by the receipt, invoice, or bill of sale containing the seller's name, company name, and address, transaction date, ~~and motherboard serial number, and name of the game.~~

ITEM 17. Amend subrule 105.5(1) as follows:

105.5(1) Each person that registers with the department shall pay an annual registration fee as follows:

- a. For a manufacturer or manufacturer's representative, \$2,500, ~~effective upon renewal.~~
- b. For a distributor, \$5,000, ~~effective upon renewal.~~
- c. For an owner of no more than two ~~electrical and mechanical amusement devices registered as provided in Iowa Code section 99B.10(4)~~ registered amusement devices at a single location or premises that is not an organization that meets the requirements of Iowa Code section 99B.7(1) "m," \$2,500. ~~The registration fee shall be effective immediately.~~

ITEM 18. Amend subrule 105.5(2) as follows:

105.5(2) Registration forms are available from the Department of Inspections and Appeals, Social and Charitable ~~Gaming~~ Gambling Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, or by telephone at (515)281-6848 6840.

ITEM 19. Amend subrule 105.6(5), introductory paragraph, as follows:

105.6(5) Each electrical ~~and or~~ or mechanical amusement device required to be registered pursuant to Iowa Code section 99B.10 ~~as amended by 2007 Iowa Acts, Senate File 510, section 2,~~ shall include on the amusement device a counting mechanism.

ITEM 20. Amend subrule 105.6(6) as follows:

105.6(6) Each electrical ~~and or~~ or mechanical device required to be registered pursuant to Iowa Code section 99B.10 at a location for which only a Class "B" or a Class "C" beer permit has been issued pursuant to Iowa Code chapter 123 shall include on the device a security mechanism that prevents the device from being operated by a person until action is taken by the owner or owner's designee to allow the person to operate the device.

ITEM 21. Amend rule 481—105.7(99B) as follows:

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B may result in the following:

1. Conviction for illegal gambling may result under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license may result under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.
4. Violation of any laws pertaining to gambling may result in suspension or revocation of a registration as prescribed in Iowa Code section 99B.10B or 99B.10C.
5. ~~The department may revoke a registration or refuse to issue a registration for cause.~~
6. ~~A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B.~~
7. 5. A Unless otherwise prescribed in Iowa Code section 99B.10B or 99B.10C, a registration may be revoked upon the violation of any rule adopted by the department under this chapter gambling law, rule or regulation including Iowa Code chapter 99B, 481—Chapter 104, or this chapter.

~~8. 6.~~ A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.

~~9.~~ The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.

~~10. 7.~~ A person under the age of 21 shall not participate in the operation of an electrical and or mechanical amusement device. A person who violates the provisions of Iowa Code section 99B.10C(1) commits a scheduled violation under Iowa Code section 805.8C(4).

~~11.~~ A person owning or leasing an electrical and mechanical amusement device who knowingly allows a person under the age of 21 to participate in the operation of an electrical and mechanical amusement device or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of 21 is guilty of a simple misdemeanor.

~~The period for revocation or refusal to issue or both shall not exceed two years.~~

ITEM 22. Amend subrule 105.9(1) as follows:

105.9(1) The department may revoke, suspend, or deny a registration issued pursuant to Iowa Code section 99B.10A as amended by 2007 Iowa Acts, Senate File 510, sections 3 and 4, for cause following 30 days' written notice delivered by certified mail, return receipt requested, or by personal service and an opportunity for hearing pursuant to 481—105.8(10A,99B).

ITEM 23. Rescind subrules **105.9(6)** and **105.9(9)**.

ITEM 24. Renumber subrules **105.9(7)**, **105.9(8)** and **105.9(10)** as **105.9(6)**, **105.9(7)** and **105.9(8)**.

ITEM 25. Amend rule 481—105.10(99B) as follows:

481—105.10(99B) Reports Annual verification of device location. Each distributor, or owner, or qualified organization that owns amusement devices shall annually submit a report of the volume of business activity for each device by location and a cumulative total for all locations, with the annual distributor or owner registration, verify all device locations.

~~**105.10(1)** The report forms are available from the Department of Inspections and Appeals, Social and Charitable Gaming Unit, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The report form shall contain all information required by the department of inspections and appeals to accurately determine the volume of business activity for each device. Information collected by the department as part of the reporting process shall be considered confidential pursuant to 481—paragraph 5.13(1)“e.”~~

~~**105.10(2)** Distributors, owners, and qualified organizations may also complete the report form electronically at the following Web site: <https://dia.iowa.gov/gmms>.~~

~~**105.10(3)** The reports are due July 31. When the due date falls on Saturday, Sunday or a legal holiday, the report is due on the next business day. The reporting period begins July 1 and ends the following June 30.~~

~~**105.10(4)** Records pertaining to the volume of business of the amusement device shall be maintained for a period of five years and shall be made available upon request to representatives of the department or the department's designee.~~

ITEM 26. Amend paragraph **105.11(1)“a”** as follows:

a. The applicant and responsible person's history of compliance with Iowa Code sections 99B.10, 99B.10A and 99B.10B as amended by 2007 Iowa Acts, Senate File 510, and with other gambling laws and rules.

ITEM 27. Amend rule 481—105.12(10A,99B) as follows:

481—105.12(10A,99B) Suspension or revocation of a registration. If a registrant or the person responsible for the amusement device violates the law, including Iowa Code chapter 99B as amended by 2007 Iowa Acts, Senate File 510, 481—Chapter 104, this chapter, or any other laws or administrative rules, the registrant's registration may be suspended or revoked.

Examples of violations of law or rules include: awarding cash prizes, redeeming tokens or tickets for more than \$5 \$50 of merchandise in a transaction, allowing a person ~~less~~ younger than 21 years of age to use a registered amusement device, moving an amusement device without updating its registration to the new location, allowing an amusement device in a location without the appropriate liquor control license, and failing to file an annual ~~report~~ verification of device location.

ITEM 28. Amend **481—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 99B as amended by 2007 Iowa Acts, Senate File 510~~ sections 99B.10, 99B.10A, 99B.10B, and 99B.10C.