



IOWA ADMINISTRATIVE BULLETIN

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Pages 1665 to 1738

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
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CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2009

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
Dec. 24 '08	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	***May 13***	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	***June 24***	July 15	Aug. 19	Nov. 16
May 13	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
June 24	July 15	Aug. 4	Aug. 19	***Aug. 19***	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
Aug. 19	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	***Oct. 28***	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	***Nov. 12***	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	***Nov. 25***	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	***Dec. 9***	Dec. 30	Feb. 3 '10	May 3 '10
Oct. 28	Nov. 18	Dec. 8	Dec. 23	***Dec. 23***	Jan. 13 '10	Feb. 17 '10	May 17 '10
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
Nov. 25	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
Dec. 9	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
Dec. 23	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 6, 2009	February 25, 2009
19	Friday, February 20, 2009	March 11, 2009
20	Friday, March 6, 2009	March 25, 2009

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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, February 9, 2009, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Practice of public accounting; practice privilege; transition to annual renewal for individual licensees, chs 1 to 21 Notice **ARC 7484B** 1/14/09

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Review of operational standards by the public and period of public comment—address updates, 25.7 Filed Without Notice **ARC 7492B** 1/14/09
Tax-sheltered annuities—eligibility modifications, 64.12 Filed Without Notice **ARC 7515B** 1/14/09
Outside employment or activity, 66.3 Notice **ARC 7501B** 1/14/09
Contractual limitations of vendor liability provisions, ch 108 Filed **ARC 7509B** 1/14/09

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Application by reciprocity, 2.2 Notice **ARC 7486B** 1/14/09

ATTORNEY GENERAL[61]

Identity theft passport, ch 35 Notice **ARC 7528B** 1/28/09

CULTURAL AFFAIRS DEPARTMENT[221]

Iowa community cultural grants program, 6.3, 6.5, 6.6 Filed **ARC 7490B** 1/14/09

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Renewable fuel infrastructure program, amendments to chs 311 to 314 Filed **ARC 7506B** 1/14/09

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Chapter reorganization, rescind chs 14 to 22; adopt chs 12 to 24 Filed **ARC 7520B** 1/14/09
Class A license requirements, 13.10 Filed **ARC 7518B** 1/14/09

EDUCATION DEPARTMENT[281]

Physical activity and cardiopulmonary resuscitation course requirements, 12.2, 12.5(6), 12.5(19), 12.5(20) Notice **ARC 7504B** 1/14/09
Competent private instruction and dual enrollment, 31.1 to 31.10 Filed **ARC 7502B** 1/14/09
School breakfast and lunch program—nutritional content standards, 58.1, 58.2, 58.9 to 58.11 Notice **ARC 7503B** 1/14/09
Definition of "teacher" updated; evaluator approval training, 83.2, 83.5 Notice **ARC 7489B** 1/14/09

HUMAN SERVICES DEPARTMENT[441]

FIP recipients—semiannual reporting of earned income, amendments to chs 7, 40, 41, 46 Filed Emergency After Notice **ARC 7480B** 1/14/09
Updates to requirements for participation in PROMISE JOBS, amend chs 40, 41, 47, 58; adopt ch 93 Filed **ARC 7491B** 1/14/09
Family-centered child welfare services; interim contracting for foster group care services, amend chs 75, 77, 83, 133, 150, 156; rescind chs 152, 157, 182, 183, 185; adopt ch 152 Notice **ARC 7526B** 1/28/09
New Medicaid provider category for occupational therapists in independent practice, 77.31, 78.35, 79.1(2) Filed **ARC 7481B** 1/14/09
Medicaid reimbursement rate for nonemergency medical transportation by car, 78.13(5) Filed **ARC 7483B** 1/14/09

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Clarification of "CE term," 11.2 Notice **ARC 7536B** 1/28/09
Duties and procedures for producers and nonadmitted insurers, 21.1 to 21.6, 21.9 Notice **ARC 7537B** 1/28/09
Long-term care insurance—insurer information, 39.51(1) Filed Emergency **ARC 7524B** 1/14/09
Credentialing—retrospective payment of clean claims, 70.10 Notice **ARC 7525B** 1/28/09

IOWA FINANCE AUTHORITY[265]

- Qualified midwestern disaster area bond allocation, ch 30
Notice **ARC 7512B**, also Filed Emergency **ARC 7511B** 1/14/09
- Council on homelessness, ch 31 Notice **ARC 7514B**, also Filed Emergency **ARC 7513B** 1/14/09

NATURAL RESOURCE COMMISSION[571]

- NATURAL RESOURCES DEPARTMENT[561]"umbrella"**
- Contracts for public improvement projects, 8.1 Notice **ARC 7535B** 1/28/09
- Agricultural lease program—threshold for lease negotiation, 21.4(7) Notice **ARC 7533B** 1/28/09
- Zoning of Mississippi River, City of Burlington, 40.56 Filed **ARC 7532B** 1/28/09
- State parks and recreation areas—cabin rental, 61.4(1), 61.5(1)"a," 61.5(3)"b" Notice **ARC 7539B** 1/28/09
- Beach use and swimming at state parks and recreation areas, 61.7(2) Notice **ARC 7499B** 1/14/09
- Ginseng harvesting and sale, ch 78 Notice **ARC 7498B** 1/14/09
- Nonresident deer hunting—license quotas, hunting from blinds, January antlerless season, 94.6(2), 94.7(6), 94.12 Notice **ARC 7500B** 1/14/09

NATURAL RESOURCES DEPARTMENT[561]

- Contracts for public improvement projects, 8.2, 8.4(1) Notice **ARC 7534B** 1/28/09

NURSING BOARD[655]

- PUBLIC HEALTH DEPARTMENT[641]"umbrella"**
- License denial—appeal and hearing processes, 3.9 Notice **ARC 7485B** 1/14/09
- Documentation in support of residency; multistate licensure discipline, 16.2, 16.3 Notice **ARC 7487B** 1/14/09
- Nonpayment of child support, student loan, or state debt, rescind chs 17 and 18; adopt ch 17 Notice **ARC 7488B** 1/14/09

PROFESSIONAL LICENSURE DIVISION[645]

- PUBLIC HEALTH DEPARTMENT[641]"umbrella"**
- Reactivation fee for certified health service providers in psychology, 5.16(12) Filed **ARC 7479B** 1/14/09
- Fees for fingerprint and criminal history background checks, 5.17(1), 5.17(4) Filed Emergency After Notice **ARC 7523B** 1/14/09
- Board of behavioral science, rescind chs 30, 34; amend chs 31 to 33 Filed **ARC 7476B** 1/14/09
- Board of dietetics, rescind chs 80, 84; amend chs 81 to 83 Filed **ARC 7477B** 1/14/09
- Board of hearing aid dispensers, rescind chs 120, 125; amend chs 121, 122, 124 Filed **ARC 7478B** 1/14/09
- Board of speech pathology and audiology, rescind chs 299, 305; amend chs 300, 303, 304 Filed **ARC 7507B** 1/14/09

PUBLIC HEALTH DEPARTMENT[641]

- Practice of tattooing, ch 22 Notice **ARC 7530B** 1/28/09
- Plumbing and mechanical systems licensure fees, ch 28 Filed Emergency After Notice **ARC 7516B** 1/14/09
- Plumbing and mechanical systems professionals—application, licensure, and examination, ch 29 Filed Emergency After Notice **ARC 7517B** 1/14/09
- Breast and cervical cancer early detection program, ch 37 Notice **ARC 7538B** 1/28/09
- Nonpayment of state debt, ch 194 Notice **ARC 7540B** 1/28/09

PUBLIC SAFETY DEPARTMENT[661]

- Approved evidentiary breath testing equipment, 157.2 Filed **ARC 7529B** 1/28/09

REAL ESTATE COMMISSION[193E]

- Professional Licensing and Regulation Bureau[193]**
- COMMERCE DEPARTMENT[181]"umbrella"**
- Definition of moral turpitude, 2.1 Notice of Termination **ARC 7505B** 1/14/09
- Definition of moral turpitude, 2.1 Notice **ARC 7508B** 1/14/09
- Continuing education attendance requirements, 16.7, 17.2(4) Filed **ARC 7510B** 1/14/09

REVENUE DEPARTMENT[701]

- Bonding procedure, 11.10 Filed **ARC 7493B** 1/14/09
- Use tax exemption, 32.3, 33.9, 33.10 Filed **ARC 7495B** 1/14/09
- Inheritance tax exemption for qualified tuition plans, 86.5(14) Filed **ARC 7497B** 1/14/09
- Inheritance and estate tax—applicability dates, 86.15, 87.1, 87.6 Filed **ARC 7496B** 1/14/09
- License sanctions for collection of state debt, ch 153 Filed **ARC 7494B** 1/14/09
- Local option sales tax urban renewal projects, ch 239 Notice **ARC 7531B** 1/28/09

TRANSPORTATION DEPARTMENT[761]

- Traffic safety improvement program application deadline, 164.9(1)"b" Notice **ARC 7482B** 1/14/09

TREASURER OF STATE[781]Fairgrounds infrastructure grant program, ch 20 Filed **ARC 7527B** 1/28/09**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 Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

Senator Wally Horn
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Cedar Rapids, Iowa 52404

Senator John P. Kibbie
P.O. Box 190
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Senator James Seymour
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Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

AGENCY	HEARING LOCATION	DATE AND TIME
ACCOUNTANCY EXAMINING BOARD[193A]		
Practice of public accounting; practice privilege; transition to annual renewal for individual licensees, chs 1 to 21 IAB 1/14/09 ARC 7484B	Second Floor Conference Room 1918 S.E. Hulsizer Rd. Ankeny, Iowa	February 3, 2009 10 a.m.
EDUCATION DEPARTMENT[281]		
Physical activity and cardiopulmonary resuscitation course requirements, 12.2, 12.5(6), 12.5(19), 12.5(20) IAB 1/14/09 ARC 7504B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	February 3, 2009 2:30 to 4 p.m.
	Keystone AEA 1 1400 2nd St. Elkader, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 103, Northwest AEA 1382 4th Ave. NE Sioux Center, Iowa	February 3, 2009 2:30 to 4 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	February 3, 2009 2:30 to 4 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	February 3, 2009 2:30 to 4 p.m.
	Great Prairie AEA 3601 West Ave. Burlington, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 2, Keystone AEA 1 2310 Chaney Rd Dubuque, Iowa	February 3, 2009 2:30 to 4 p.m.
	Louisa Room, River Bend AEA 9 729 21st Street Bettendorf, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Drive Mason City, Iowa	February 3, 2009 2:30 to 4 p.m.
	Turner Room, Green Valley AEA 14 1405 N Lincoln Creston, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	February 3, 2009 2:30 to 4 p.m.
	Great Prairie AEA 2814 N Court Street Ottumwa, Iowa	February 3, 2009 2:30 to 4 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
EDUCATION DEPARTMENT[281] (Cont'd)		
<p>Room 2102, Wolfe Education Ctr. Area Education Agency 267 3405 S Center St. Marshalltown, Iowa</p> <p>Tentative site: The reader is advised to check with this location.</p>		February 3, 2009 2:30 to 4 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	February 3, 2009 2:30 to 4 p.m.
	Public Library 424 Central Ave. Fort Dodge, Iowa	February 3, 2009 2:30 to 4 p.m.
<p>Tentative site: The reader is advised to check with this location.</p>	Area Education Agency 8 500 NE 6th Street Pocahontas, Iowa 712/335-3588	February 3, 2009 2:30 to 4 p.m.
<p>Tentative site: The reader is advised to check with this location.</p>	Room 203B, Linn Hall Kirkwood Community College Cedar Rapids, Iowa 319/398-5452	February 3, 2009 2:30 to 4 p.m.
<p>School breakfast and lunch program—nutritional content standards, 58.1, 58.2, 58.9 to 58.11 IAB 1/14/09 ARC 7503B (ICN Network)</p>	ICN Room Grimes State Office Bldg. Des Moines, Iowa	February 3, 2009 1 to 2:30 p.m.
	Keystone AEA 1 1400 2nd St. Elkader, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 103, Northwest AEA 1382 4th Ave. NE Sioux Center, Iowa	February 3, 2009 1 to 2:30 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	February 3, 2009 1 to 2:30 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	February 3, 2009 1 to 2:30 p.m.
	Great Prairie AEA 3601 West Ave. Burlington, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 2, Keystone AEA 1 2310 Chaney Rd Dubuque, Iowa	February 3, 2009 1 to 2:30 p.m.
	Louisa Room, River Bend AEA 9 729 21st Street Bettendorf, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Drive Mason City, Iowa	February 3, 2009 1 to 2:30 p.m.
	Turner Room, Green Valley AEA 14 1405 N Lincoln Creston, Iowa	February 3, 2009 1 to 2:30 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
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EDUCATION DEPARTMENT[281] (Cont'd)

	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	February 3, 2009 1 to 2:30 p.m.
	Great Prairie AEA 2814 N Court Street Ottumwa, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 2102, Wolfe Education Ctr. Area Education Agency 267 3405 S Center St. Marshalltown, Iowa	February 3, 2009 1 to 2:30 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	February 3, 2009 1 to 2:30 p.m.
	Public Library 424 Central Ave. Fort Dodge, Iowa	February 3, 2009 1 to 2:30 p.m.
Tentative site: The reader is advised to check with this location.	Area Education Agency 8 500 NE 6th Street Pocahontas, Iowa 712/335-3588	February 3, 2009 1 to 2:30 p.m.
Tentative site: The reader is advised to check with this location.	Room 203B, Linn Hall Kirkwood Community College Cedar Rapids, Iowa 319/398-5452	February 3, 2009 1 to 2:30 p.m.

HUMAN SERVICES DEPARTMENT[441]

Family-centered child welfare and foster group care services, amend chs 75, 77, 83, 133, 150, 156; rescind chs 152, 157, 182, 183, 185; adopt ch 152 IAB 1/28/09 ARC 7526B	Auditorium Wallace State Office Bldg. Des Moines, Iowa	February 20, 2009 9 a.m. to noon
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INSURANCE DIVISION[191]

Clarification of "CE term," 11.2 IAB 1/28/09 ARC 7536B	330 Maple St. Des Moines, Iowa	February 17, 2009 10:30 a.m.
Producers and nonadmitted insurers—duties and procedures, 21.1 to 21.6, 21.9 IAB 1/28/09 ARC 7537B	330 Maple St. Des Moines, Iowa	February 17, 2009 10 a.m.
Credentialing—retrospective payment of clean claims, 70.10 IAB 1/28/09 ARC 7525B	330 Maple St. Des Moines, Iowa	February 20, 2009 10 a.m.

NATURAL RESOURCE COMMISSION[571]

State parks and recreation areas—cabin rental, 61.4(1), 61.5(1) IAB 1/28/09 ARC 7539B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 17, 2009 10 a.m.
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AGENCY	HEARING LOCATION	DATE AND TIME
NATURAL RESOURCE COMMISSION[571] (Cont'd)		
Beach use and swimming at state parks and recreation areas, 61.7(2) IAB 1/14/09 ARC 7499B	Wickiup Hills Outdoor Learning Center near Toddville, Iowa	February 3, 2009 2 to 4 p.m. and 6 to 8 p.m.
	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 4, 2009 10 a.m.
Ginseng harvesting and sale, ch 78 IAB 1/14/09 ARC 7498B (ICN Network)	Room 157, Heritage Classroom C State Historical Bldg. 600 E. Locust Des Moines, Iowa	February 4, 2009 6 p.m.
	Room 112 Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	February 4, 2009 6 p.m.
	Room 300 Eastern Iowa Comm. College District 326 W. 3rd St. Davenport, Iowa	February 4, 2009 6 p.m.
	Public Library 202 Winnebago St. Decorah, Iowa	February 4, 2009 6 p.m.
	Room 119 Central Comm. Jr-Sr High School 400 1st St. N.W. Elkader, Iowa	February 4, 2009 6 p.m.
	Rm. 101, St. Edmund High School 501 N. 22nd St. Fort Dodge, Iowa	February 4, 2009 6 p.m.
	Clayton Ridge Middle School 502 W. Watson Garnavillo, Iowa	February 4, 2009 6 p.m.
	Iowa City High School 1900 Morningside Dr. Iowa City, Iowa	February 4, 2009 6 p.m.
	Room 119 North Iowa Area Comm. College 500 College Dr. Mason City, Iowa	February 4, 2009 6 p.m.
	Tama Hall, Hawkeye Comm. College 1501 E. Orange Rd. Waterloo, Iowa	February 4, 2009 6 p.m.
	Trustee Hall Room 528 Southeastern Community College 1500 W. Agency West Burlington, Iowa	February 4, 2009 6 p.m.
Nonresident deer hunting—license quotas, hunting from blinds, January antlerless season, 94.6(2), 94.7(6), 94.12 IAB 1/14/09 ARC 7500B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 10, 2009 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC HEALTH DEPARTMENT[641]		
Practice of tattooing, ch 22 IAB 1/28/09 ARC 7530B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	February 18, 2009 2 to 4 p.m.
	Fourth Floor Trospar-Hoyt County Services Bldg. 822 Douglas St. Sioux City, Iowa	February 18, 2009 2 to 4 p.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	February 18, 2009 2 to 4 p.m.
	Room 110, Tama Hall Hawkeye Community College 1 1501 E. Orange Rd. Waterloo, Iowa	February 18, 2009 2 to 4 p.m.
	Videoconferencing & Training Center Indian Hills Community College 5 651 Indian Hills Dr. Ottumwa, Iowa	February 18, 2009 2 to 4 p.m.
	Rm. 118, Iowa Lakes Comm. College 1900 N. Grand Ave. Spencer, Iowa	February 18, 2009 2 to 4 p.m.
	Room 204, Prairie Lakes AEA 8 330 Avenue M Fort Dodge, Iowa	February 18, 2009 2 to 4 p.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	February 18, 2009 2 to 4 p.m.
	Kirkendall Public Library 1210 NW Prairie Ridge Dr. Ankeny, Iowa	February 18, 2009 2 to 4 p.m.
	Public Library 321 Main Davenport, Iowa	February 18, 2009 2 to 4 p.m.
	Burlington National Guard Armory 2500 Summer St. Burlington, Iowa	February 18, 2009 2 to 4 p.m.
	Room 2, Keystone AEA 1 2310 Chaney Rd. Dubuque, Iowa	February 18, 2009 2 to 4 p.m.
	Orchard Place 925 Porter Ave. Des Moines, Iowa	February 18, 2009 2 to 4 p.m.
	Newman Catholic High School 2445 19th St. SW Mason City, Iowa	February 18, 2009 2 to 4 p.m.
	Decorah High School 100 E. Claiborne Dr. Decorah, Iowa	February 18, 2009 2 to 4 p.m.
	Jefferson High School 1243 20th St. SW Cedar Rapids, Iowa	February 18, 2009 2 to 4 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
REAL ESTATE COMMISSION[193E]		
Definition of "moral turpitude," 2.1 IAB 1/14/09 ARC 7508B	Second Floor Conference Room 1920 S.E. Hulsizer Rd. Ankeny, Iowa	February 3, 2009 9 a.m.
TRANSPORTATION DEPARTMENT[761]		
Traffic safety improvement program application deadline, 164.9(1)"b" IAB 1/14/09 ARC 7482B	South Conference Room Administration Building 800 Lincoln Way Ames, Iowa	February 5, 2009 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Electric load service limiters, 20.1(3), 20.4 IAB 12/17/08 ARC 7409B	350 Maple St. Des Moines, Iowa	February 5, 2009 10 a.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]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
CIVIL RIGHTS COMMISSION[161]
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]
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]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
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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]
Status of Iowans of Asian and Pacific Islander Heritage[436]
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]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
Homeland Security and Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Professional Licensure Division[645]
Dental 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]

ARC 7528B

ATTORNEY GENERAL[61]

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 715A.9A(6), the Attorney General hereby gives Notice of Intended Action to adopt new Chapter 35, "Identity Theft Passport," Iowa Administrative Code.

Iowa Code section 715A.9A permits the Attorney General to issue an identity theft passport to a person who is a victim of identity theft as described in Iowa Code section 715A.8 and who has filed a police report with any law enforcement agency citing that the person is a victim of identity theft.

Iowa Code section 715A.9A(2) provides that an identity theft victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through the law enforcement agency. That section also requires the law enforcement agency to forward the police report and identity theft passport application to the Attorney General, who must process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

Iowa Code section 715A.9A(3) provides that the victim may present the passport to a law enforcement agency to help prevent the victim's arrest or detention for any offense committed by someone other than the victim who is using the victim's identity and to a creditor of the victim to aid in the creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity.

Iowa Code section 715A.9A(4) provides that a law enforcement agency or creditor may accept the passport from the victim and may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

Finally, Iowa Code section 715A.9A(6) requires the Attorney General to adopt rules necessary to implement section 715A.9A, which must include a procedure by which the Attorney General shall ensure that an identity theft passport application has an identity theft claim that is legitimate and adequately substantiated.

The primary purposes of the proposed rules are as follows: to define certain terms needed to implement Iowa Code section 715A.9A and these rules, including but not limited to definitions for "identity theft" and "victim"; to state the procedure for the application, processing and issuance of an identity theft passport; and to provide the form to be furnished by law enforcement to persons who wish to apply for identity theft passports.

Any interested person may make written suggestions or comments on these proposed rules on or before February 17, 2009. Such written materials should be directed to Marti Anderson, Director, Crime Victim Assistance Division, Department of Justice, Lucas State Office Building, Ground Floor, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 715A.9A.

The following amendment is proposed.

Adopt the following **new** 61—Chapter 35:

CHAPTER 35
IDENTITY THEFT PASSPORT

61—35.1(715A) Definitions.

"*Creditor*" means a person or entity who is owed money or property by another person via the extension of credit to that other person to defer payment of debt, to incur debt and defer its payment, or

ATTORNEY GENERAL[61](cont'd)

to purchase property or services and defer payment therefor, or a person or entity to whom a creditor's right to payment has been assigned.

"Division" means the crime victim assistance division in the attorney general's office.

"Division director" means the director of the crime victim assistance division in the attorney general's office.

"Identity theft" means the commission of the offense of identity theft, as stated in Iowa Code section 715A.8(2), which includes when a person fraudulently uses or attempts to fraudulently use identification information of another person, with the intent to obtain credit, property, services, or other benefit.

"Law enforcement agency" means an agency that employs peace officers.

"Peace officer" means the same as defined in Iowa Code section 801.4(11).

"Person" means an individual.

"Report of identity theft" means a request by a person to a peace officer in any jurisdiction described in Iowa Code section 715A.8(5) for the peace officer to take a report regarding an alleged commission of identity theft against the person.

"Victim" means a person who alleges that identity theft has been committed against the person.

61—35.2(715A) Application for identity theft passports.

35.2(1) Completion of application.

a. A person who has filed a report of identity theft may apply for an identity theft passport through the law enforcement agency to which the report was made.

b. An application for an identity theft passport shall include the following:

(1) Completion by the person, or by another on behalf of the person, and by the law enforcement agency, of the identity theft passport application form and the identity theft verification form set out in rule 61—35.8(715A), along with any documentation supporting the claim that the person is a victim of identity theft.

(2) A copy of the report of identity theft made to the law enforcement agency.

(3) Photographic identification of the victim in one of the following formats in order of preference:

1. A copy of the victim's current driver's license or state-issued nonoperator's identification card.

2. A current photograph of the victim certified as valid by signature of the law enforcement investigator who received the report of identity theft.

c. Upon completion of the application for an identity theft passport, the law enforcement agency which received the application shall forward it to the crime victim assistance division of the office of the attorney general.

35.2(2) Confidentiality of application. An application made with the attorney general shall be confidential and shall not be a public record subject to disclosure under Iowa Code chapter 22.

61—35.3(715A) Issuance of identity theft passports.

35.3(1) Upon receipt of a completed application for an identity theft passport, the division shall review the application and determine whether to issue the applicant an identity theft passport. In determining whether to issue the identity theft passport, the division shall consider all the facts and circumstances reported in the application, any recommendations received from the law enforcement agency to which the report was made, and any other facts that the division deems necessary to make the determination.

35.3(2) An identity theft passport shall be in the form of a card or certificate as determined by the attorney general.

61—35.4(715A) Usage of identity theft passports. An identity theft victim may present the passport to:

35.4(1) A law enforcement agency to help prevent the victim's arrest or detention for any offense committed by someone other than the victim who is using the victim's identity, and

ATTORNEY GENERAL[61](cont'd)

35.4(2) A creditor of the victim to aid in the creditor’s investigation and establishment of whether fraudulent charges were made against accounts in the victim’s name or whether accounts were opened using the victim’s identity.

61—35.5(715A) Acceptance of identity theft passports. A law enforcement agency or creditor may accept an identity theft passport from the victim and may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

61—35.6(715A) Expiration of identity theft passports. An identity theft passport issued by the office of the attorney general shall be valid for a period of five years from the date of issuance or renewal. The victim to whom an expired identity theft passport was issued may reapply to the office of the attorney general for renewal of the identity theft passport within 30 days after its expiration. The office of the attorney general may renew the identity theft passport in the same manner that initial passports are issued, as outlined in rule 61—35.3(715A).

61—35.7(715A) Revocation of identity theft passports.

35.7(1) If the division determines that an identity theft passport which has been issued should not have been issued, the division shall notify the person to whom the identity theft passport was issued of the intended revocation of the identity theft passport and the reasons for the intended revocation.

35.7(2) The person who has received a notice of intended revocation of an identity theft passport may request reconsideration of the intended revocation. The request and all information in support of a reconsideration of the intended revocation shall be submitted to the division director within 30 calendar days of the mailing date on the notice of intended revocation.

35.7(3) The division director will issue a decision regarding the reconsideration of the intended revocation of the identity theft passport within 30 days of receipt of the request for reconsideration whenever possible. The decision of the division director regarding the revocation of the identity theft passport constitutes final agency action.

35.7(4) If, after notice, the division determines that the identity theft passport is revoked, the division shall notify the person of the revocation in a mailing to the person’s last-known residential address.

35.7(5) A person shall not use a revoked identity theft passport for any purpose.

61—35.8(715A) Identity theft passport application and verification forms.

35.8(1) *Identity theft victim application and affidavit.* The following form may be used to apply for an identity theft passport.

**Iowa Attorney General’s Office
Identity Theft Victim Application and Affidavit**

Iowa Code section 715A.9A(2): A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through the law enforcement agency. The law enforcement agency shall send a copy of the police report and the application to the attorney general, who shall process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

Section I: Victim Information	
a. Full given name: _____	
b. Common use name: _____	
c. Aliases: _____	
d. Birth date: _____	e. Social Security Number: _____
f. Driver’s License Number: _____	

ATTORNEY GENERAL[61](cont'd)

g. Street address: _____
 h. City: _____ State: _____ Zip Code: _____
 i. Your home telephone number: _____

Section II: Crime Information

a. Date(s) of identity theft: _____
 b. Item(s) stolen: _____
 c. Location of crime: _____ d. Date(s) reported: _____
 e. Law Enforcement Agency: _____
 f. Name of suspect, if known: _____
 g. Relationship of suspect to victim: _____
 h. Other information (use additional page(s) if necessary): _____

Section III: Other Information to Be Supplied Before a Passport May Be Issued

a. A copy of the victim's current driver's license or state-issued nonoperator's identification card; or, if neither is available,
 b. A current photograph of the victim certified as valid by signature of the law enforcement investigator who received the report of identity theft.

By signing this affidavit, I attest that the information provided above is true and accurate. I acknowledge that I did file an accurate and true law enforcement report of this incident(s).

Signature_____
Date

35.8(2) Identity theft law enforcement report verification. The following form must be completed by the investigating officer and submitted in conjunction with the identity theft application and affidavit.

**Iowa Attorney General's Office
 Identity Theft
 Law Enforcement Report Verification**

Iowa Code section 715A.9A(5): An application made with the attorney general under subsection 2, including any supporting documentation, shall be confidential and shall not be a public record subject to disclosure under chapter 22.

Section I: Law Enforcement Agency

a. Name of Law Enforcement Agency: _____
 b. Law Enforcement Agency telephone number: _____
 c. Name of Investigating Officer completing this report: _____

Section II: Information Requested from Law Enforcement Agency

a. Did the victim named in the attached Identity Theft Application and Affidavit report to your law enforcement agency the crime of identity theft? Yes No
 b. Date of report: _____ c. LE case number: _____
 d. Has a suspect been identified? Yes No
 e. If yes, name of suspect: _____
 f. Have charges been filed? _____

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<p>g. Is issuance of an Identity Theft Passport warranted in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>h. Other information (use additional paper if necessary): _____</p> <p>_____</p>
--

Signature of Investigating Officer	Date
------------------------------------	------

35.8(3) Submission of documentation. In order to be considered for an identity theft passport, a victim must submit the following documentation to the Crime Victim Assistance Division, Ground Floor, Lucas State Office Building, Des Moines, Iowa 50319:

- a. The Identity Theft Victim Application and Affidavit form, signed by the victim.
 - b. The Identity Theft Law Enforcement Report Verification form, signed by the investigating officer.
 - c. A copy of the law enforcement agency’s investigative report.
- These rules are intended to implement Iowa Code section 715A.9A.

CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2008, is approximately \$12,436.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 7526B

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 sections 234.6 and 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 83, “Medicaid Waiver Services,” Chapter 133, “IV-A Emergency Assistance Program,” and Chapter 150, “Purchase of Service,” to rescind Chapter 152, “Contracting,” and adopt new Chapter 152, “Foster Group Care Contracting,” to amend Chapter 156, “Payments for Foster Care and Foster Parent Training,” and to rescind Chapter 157, “Purchase of Adoption Services,” Chapter 182, “Family-Centered Services,” Chapter 183, “Adult Support Services,” and Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

In a rule making published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6098B**, the Department eliminated Medicaid coverage for rehabilitative treatment services, which previously funded most family-centered services, family preservation services, foster family care services, and

HUMAN SERVICES DEPARTMENT[441](cont'd)

foster group care services for children. Some of these services were subsumed into new Medicaid coverage for remedial services, which was adopted in rules published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5514B**.

The Department adopted interim child welfare amendments that were published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5651B**. In a rule making published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5819B**, the Department removed references to rehabilitative and nonrehabilitative family-centered, family preservation, family foster care, and group care services except as necessary to maintain the interim contracting arrangements.

In a rule making published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5937B**, the Department adopted a new chapter of rules for family-centered child welfare services and established that rehabilitative and nonrehabilitative services under Chapter 182 would end by December 31, 2007. Providers for the new services were selected through competitive bidding.

In a rule making published in the Iowa Administrative Bulletin on January 2, 2008, as **ARC 6515B**, the Department extended the transition period for family-centered services until March 31, 2008, for the Council Bluffs service area only due to a delay in contracting for the new services. Because the transition to the new family-centered child welfare services has been completed, these proposed amendments rescind Chapter 182 and remove references to Chapter 182 from other chapters.

The Department no longer purchases family foster care supervision. Based on the case plan, a child in foster family care may get support from the contractor for family, safety, risk, and permanency services (one of the family-centered child welfare services). The foster family may receive support through the Department's retention and recruitment contractor, the contractor for support for resource families, or the contractor for family, safety, risk, and permanency services. Department service workers are responsible for monthly visits and development of the family case plan, as addressed in Chapter 202.

Interim contracting arrangements for foster group care services continue. These amendments will move the rules necessary to develop and enforce these contracts from Chapter 185 into the new Chapter 152, rescind Chapter 185, and remove the remaining references to Chapter 185 in other chapters.

Chapter 157, "Purchase of Adoption Services," is being rescinded because the Department no longer purchases these services. Home studies for adoptive parents are purchased through the statewide contractor for retention and recruitment. Prospective adoptive parents take the same training as prospective foster parents. Services to the child are provided in a variety of ways, as described above for foster family care.

Chapter 183, "Adult Support Services," is being rescinded because the Department no longer purchases these services. Most services to adults are now provided through the county central points of coordination, through Medicaid targeted case management services provided under Chapter 90, or through Medicaid home- and community-based services waivers. The remaining direct services provided to adults by Department service workers are covered under Chapter 131, "Social Casework."

These amendments do not provide for waivers in specified situations. No contracts currently exist for purchasing services under Chapter 182 or Chapter 185. Requests for waiver of the other amendments in this rule making may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before February 20, 2009. 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.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Friday, February 20, 2009, from 9 a.m. till 12 noon at the Wallace Building Auditorium, 502 East Ninth Street, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Rescind subparagraph **75.1(35)“h”(4)**.

ITEM 2. Amend rule 441—77.12(249A) as follows:

441—77.12(249A) Remedial services providers. A provider of remedial services is eligible to participate in the medical assistance program when:

1. The provider is accredited by the mental health, mental retardation, developmental disabilities, and brain injury commission pursuant to 441—Chapter 24; or
2. The provider ~~is~~ was certified by the department as a provider of rehabilitative treatment services pursuant to 441—185.10(234) ~~as of August 31, before September 1, 2006; or~~
3. The provider can demonstrate to the Iowa Medicaid enterprise that the provider has the skills and resources necessary to implement a member’s treatment plan and remedial services implementation plan.

This rule is intended to implement Iowa Code section 249A.4 ~~and 2006 Iowa Acts, House File 2734, section 10, subsection 11.~~

ITEM 3. Amend subparagraph **77.46(3)“a”(1)** as follows:

(1) ~~Rehabilitative treatment~~ Remedial services ~~skill development~~ providers ~~certified in good standing~~ qualified under 441—185.10(234) 77.12(249A).

ITEM 4. Amend subparagraph **77.46(4)“a”(2)** as follows:

(2) ~~Rehabilitative treatment~~ Remedial services ~~therapy and counseling~~ providers ~~certified in good standing~~ qualified under 441—185.10(234) 77.12(249A).

ITEM 5. Rescind and reserve paragraph **83.62(3)“g.”**

ITEM 6. Amend paragraph **83.122(6)“d”** as follows:

d. A consumer may not receive children’s mental health waiver services and ~~any of the following family foster care services under 441—Chapter 202~~ at the same time:

- (1) ~~Rehabilitative treatment services under 441—Chapter 185; or~~
- (2) ~~Family foster care under 441—Chapter 202.~~

ITEM 7. Rescind the definitions of “Adolescent monitoring and outreach services,” “Family assistance fund,” “Family-centered services,” “Family-centered supportive services,” “Family preservation services,” “Foster care,” “Protective day care,” and “Wrap-around services or support funds” in rule **441—133.1(235)**.

ITEM 8. Amend rule **441—133.1(235)**, definition of “Emergency assistance,” as follows:

“*Emergency assistance*” means any one or more of the following services provided in response to a IV-A emergency assistance application:

1. Family-centered child welfare services as set forth in 441—~~Chapters 182 and 185~~ Chapter 172.
- ~~2. Family preservation services as set forth in 441—Chapters 181 and 185.~~
- ~~3. 2. Foster Shelter~~ care as set forth in 441—Chapters ~~185~~ 156 and 202, except for placements of less than 48 hours.
- ~~4. 3. Protective day~~ child care as set forth in 441—Chapter 170.
- ~~5. Wrap-around services as set forth in 441—Chapter 179.~~
- ~~6. 4. Adolesceent Tracking,~~ monitoring, and evaluation outreach as set forth in 441—Chapter 151, Division H III.

ITEM 9. Amend rule 441—133.2(235) as follows:

441—133.2(235) Application. An application for emergency assistance shall be made according to 441—~~Chapter 130 on Form SS-1120-0, Application for Social Services/IV-A Emergency Assistance~~ rule 441—130.2(234). An application shall be completed anytime a decision is made to provide emergency assistance or when an adult family member requests emergency assistance on behalf of a child.

133.2(1) The application shall be filed by a parent, except where both parents are absent or unwilling to apply on behalf of a child who meets all other eligibility conditions, in which case another adult

HUMAN SERVICES DEPARTMENT[441](cont'd)

member of the family with whom the child resides or has resided within the past six months acting on behalf of the child may file the application.

133.2(2) If the application is made on behalf of a child for whom the department has legal custody, the department worker may sign the application on behalf of the child.

ITEM 10. Amend subrule 133.3(4) as follows:

133.3(4) Service need. The applicant must demonstrate a need for one or more of the emergency assistance services as follows:

a. Family-centered child welfare services as established at ~~rules 441—182.2(234) and 441—185.2(234)~~ rule 441—172.12(234) or 441—172.22(234).

~~*b.* Family preservation services as established at rules 441—181.2(234) and 441—185.2(234).~~

~~*e. b.* Foster Shelter care as established at rules rule 441—202.2(234) and 441—185.2(234).~~

~~*d. c.* Protective ~~day~~ child care as established at ~~rule 441—170.2(234)~~ 441—subparagraph 170.2(2)“b”(3).~~

~~*e.* Wrap around funding as established at rule 441—179.2(234).~~

~~*f. d.* Adolescent Tracking, monitoring, and evaluation outreach as established at rule 441—151.22(235) 441—151.33(232).~~

ITEM 11. Amend subrule 133.3(6) as follows:

133.3(6) Financial eligibility. The applicant family:

a. ~~is~~ is receiving FIP, SSI, food ~~stamp~~ assistance benefits, or Medicaid in the month of the application, or

b. ~~does~~ Does not have cash to provide needed emergency care or services as evidenced by the applicant ~~family having an~~ family's income which ~~does not exceed~~ exceeding 800 percent of the poverty guidelines established by the Office of Management and Budget.

ITEM 12. Amend rules 441—133.4(235) and 441—133.5(235) as follows:

441—133.4(235) Method of service provision. Except for ~~wrap around~~ tracking, monitoring, and outreach services, services shall be provided through department workers or through purchase of service agreements with providers that are approved by the department as qualified to provide specified services and ~~who~~ have a current contract with the department of human services to provide services. ~~Organizations or persons selected by the department to provide services and support pursuant to an approved application for wrap around funding shall be considered eligible providers.~~

441—133.5(235) Duration of services. Services to families and children provided through the emergency assistance program as a result of a single application may be provided for either a period not to exceed 12 months, or until there is no longer a need for services according to eligibility criteria for the specified services, whichever occurs first. ~~Family centered supportive services, family assistance fund services, and wrap around services shall be discontinued when the funds allocated to those services are obligated or expended as set forth at rules 441—182.3(234), 441—181.3(234), and 441—179.11(234).~~

ITEM 13. Amend paragraphs **150.3(3)“j”** and **“m”** as follows:

j. Client reports. The provider shall maintain the following client records, ~~except when providing services as described in 441—Chapter 182, for which the requirements in 441—subrules 185.10(4), 185.10(5) and 185.10(6) shall apply, as specified in rule 441—182.7(234):~~

(1) to (3) No change.

m. Maintenance of client records. Records for clients served through a purchase of service contract must be retained by the provider for a period of three years after service to the client terminates, ~~except for services described in 441—Chapter 182, for which the requirements of rule 441—182.7(234) shall apply.~~

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ITEM 14. Rescind and reserve paragraph **150.3(4)“c.”**

ITEM 15. Amend paragraph **150.3(6)“c”** as follows:

c. Family-centered services. For family-centered services, the provisions in ~~rules 441—182.3(234) and 441—182.4(234)~~ rule 441—172.3(234) relating to approval, authorization, and referral shall apply.

ITEM 16. Rescind 441—Chapter 152 and adopt the following **new** chapter in lieu thereof:

CHAPTER 152
FOSTER GROUP CARE CONTRACTING

PREAMBLE

This chapter sets forth the contracting process used for providers of foster group care services on or after November 1, 2006. These rules outline the contracting process, provider requirements, service authorization procedures, documentation requirements, and service termination and appeal procedures. The rules also establish standards for rate-setting and payment mechanisms associated with foster group care services and for provider monitoring, audits, and sanctions. The term of the contract is limited to no more than six years pursuant to 11—Chapters 106 and 107. Refer to 441—Chapter 156 for additional program requirements.

441—152.1(234) Definitions.

“*Affiliates*” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

“*Authorized representative*,” within the context of rule 441—152.9(234), means that person appointed to carry out audit procedures, including an assigned auditor, fiscal consultant, or agent contracted for a specific audit or audit procedure.

“*Child*” means a person under 18 years of age or a person 18 or 19 years of age who meets the criteria in Iowa Code section 234.1.

“*Claim*” means each record the department receives that tells the amount of requested payment and the service rendered by a provider to a child and family.

“*Client*” means a child who has been found to be eligible for foster group care services through the Iowa department of human services.

“*Confidence level*” means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the universe from which the sample was drawn.

“*Contract*” means a formal written agreement between the Iowa department of human services and a provider of foster group care services.

“*Contract monitor*” means a department employee who is assigned to assist in developing, monitoring, and evaluating a contract and to provide related technical assistance.

“*Department*” means the Iowa department of human services.

“*Extrapolation*” means that the total dollars of overpayment or underpayment will be estimated by using sample data meeting the confidence level requirement.

“*Family*,” for purposes of child welfare service delivery, shall include the following:

1. The natural or adoptive parents, stepparents, and children who reside in the same household.
2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child’s household who are responsible for the child’s supervision. Relatives within the fourth degree of consanguinity include: full or half siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.

3. A child who lives alone or who resides with a person or persons not legally responsible for the child’s support.

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"Fiscal record" means a tangible and legible history that documents the criteria established for financial and statistical records as set forth in subrule 152.2(7).

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Host area" means:

1. The department service area where the provider's corporate office is located, or
2. The service area designated by the chief of the bureau of purchased services when the provider's corporate office is out of state.

"Juvenile court officer" means a person appointed as a juvenile court officer or chief juvenile court officer under Iowa Code chapter 602.

"Level of care" means a type of foster group care services that is differentiated by the ratio of staff to children. There are three levels of foster group care services:

1. Community-level group care (service code D1), which requires a minimum staff-to-client ratio of 1 to 8 during prime programming time.
2. Comprehensive-level group care (service code D2), which requires a minimum staff-to-client ratio of 1 to 5 during prime programming time.
3. Enhanced comprehensive-level group care (service code D3), which requires a minimum staff-to-client ratio of 1 to 3 during prime programming time.

"Nonprime programming time" means any period of the day other than prime programming time and sleeping time.

"Overpayment" means any payment or portion of a payment made to a provider that is incorrect according to the laws and rules applicable to foster group care services and results in a payment greater than that to which the provider is entitled.

"Prime programming time" means any period of the day when special attention, supervision, or treatment is necessary (for example, upon awakening of the clients in the morning until their departure for school, during meals, after school, during transition between activities, evenings and bedtime, and on nonschool days such as weekends, holidays, and school vacations).

"Probation" means a specified period of conditional participation in the provision of foster group care services.

"Provider" means any natural person, company, firm, association, or other legal entity that is seeking a contract or is under contract with the department pursuant to this chapter.

"Random sample" means a systematic (or every "nth" unit) sample for which each item in the universe has an equal probability of being selected.

"Referral worker" means the department worker or juvenile court officer who refers the case to a provider and who is responsible for carrying out the follow-up activities of determining client eligibility and ensuring that the service authorization is completed.

"Service authorization" means the process of determining service necessity and the level of care and number of units of service to be provided to a child.

"Service record" means an individual, tangible, and legible file that records service-related activities set forth in subrule 152.2(6).

"Site" means a location from which services are delivered or where staff report or records are kept. In the foster group care programs, each separately licensed location is a site.

"Sleeping time" means any period of the day during which clients are normally sleeping.

"Suspension of payments" means the withholding of all payments due a provider until resolution of the matter in dispute between the provider and the department.

"Underpayment" means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the foster group care services program and to which the provider is entitled.

"Unit of service" means one day.

"Universe" means all items (claims) submitted by a specific provider for payment during a specific period, from which a random sample will be drawn.

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“*Withholding of payments*” means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted claims for purposes of offsetting overpayments previously made to the provider.

441—152.2(234) Conditions of participation.

152.2(1) Provider licensure. The department shall enter into a contract with a provider for foster group care services only when the provider’s facility has achieved full licensure as follows:

- a. A facility providing community-level group care shall be licensed:
 - (1) As a community residential facility pursuant to 441—Chapter 114;
 - (2) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (3) Under comparable standards by the state in which the facility is located.
- b. A facility providing comprehensive-level group care shall be licensed:
 - (1) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (2) Under comparable standards by the state in which the facility is located.
- c. A facility providing enhanced comprehensive-level group care shall be licensed:
 - (1) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (2) Under comparable standards by the state in which the facility is located.

152.2(2) Provider staffing. At a minimum, all providers shall meet the requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 114 or as identified in appendices to Form 470-3052, Foster Group Care Services Contract.

a. All foster group care programs shall provide an appropriate number of hours of prime programming time sufficient to meet the child welfare service needs of the children served in the program.

b. Staffing during prime programming time, nonprime programming time, and sleeping time shall be sufficient to meet the group care maintenance needs of the children served in the program.

152.2(3) Services provided. The provider shall comply with the requirements for services to be provided, as described on Form 470-3051, Foster Group Care Services Contract Face Sheet, and appendices to Form 470-3052, Foster Group Care Services Contract. These services shall at a minimum meet the requirements found in 441—Chapter 156 and in 441—Chapter 114 or 441—Chapters 114 and 115, as applicable, or the contract may be terminated.

152.2(4) Provider charges. A provider shall not charge departmental clients more than it receives for the same foster group care services provided to nondepartmental clients. The provider shall agree not to require any fee from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy.

152.2(5) Compliance with the law. The provider and its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing services under the contract.

a. *Drug-free workplace.* The provider shall operate a drug-free workplace.

b. *Use of funds.* The provider shall:

(1) Agree that federally appropriated funds shall not be paid on behalf of the department or provider to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with:

- 1. The award of any federal contract,
- 2. The making of any federal grant,
- 3. The making of any federal loan,
- 4. The entering into of any cooperative agreement, or
- 5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

(2) Ensure that no funds received or expended will be used in any way to promote or oppose unionization.

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152.2(6) Maintenance of service records. A provider shall maintain complete and legible records as required in this subrule. A provider's client service records and case files for foster group care services shall comply with the requirements of this subrule and with the record-keeping requirements relating to licensure pursuant to 441—Chapter 114.

a. The provider shall establish and maintain confidential, individual service records for each client receiving foster group care services. The service records, specifically the daily logs, must adequately support the provision of child welfare services and group care maintenance as defined in rule 441—156.1(234). The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and the following:

- (1) Additional reports, if requested by the referral worker; and
- (2) Form 470-3055, Referral and Authorization for Child Welfare Services.

b. If individual case files include service records for services other than foster group care services, the provider has the responsibility to maintain the client records in compliance with all applicable rules.

c. The provider shall retain service records for clients receiving foster group care services for a period of not less than five years following the date of final payment or completion of any required audit or review, whichever is later. If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until the later of:

- (1) The completion of the action and resolution of all issues which arise from it, or
- (2) The end of the regular five-year period.

d. Failure to maintain records or failure to make records available to the department or to its authorized representatives upon request may result in a notice of violation and recoupment of payments, pursuant to rules 441—152.9(234) and 441—152.10(234).

152.2(7) Maintenance of financial and statistical records. The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. The records shall be available for review at any time during normal business hours by department personnel, the department's fiscal consultant, and state or federal audit personnel.

a. At a minimum, financial and statistical records shall include all revenue and expenses supported by a provider's general ledger and documentation on file in the provider's office. These records include, but are not limited to:

- (1) Payroll information.
- (2) Capital asset schedules.
- (3) All canceled checks, deposit slips, and invoices (paid and unpaid).
- (4) Audit reports (if any).
- (5) Board of directors minutes (if applicable).
- (6) Loan agreements and other contracts.

(7) Reviewable, legible census reports and documentation of units of service provided to departmental clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.

(8) For nondepartmental clients, sufficient documentation of utilization to establish a complete unit of service count.

b. The provider shall maintain the following documentation for each program.

- (1) A list of all staff and supervisors providing foster group care services and their qualifications.
- (2) The number of staff hired and terminated in the year to date.

c. The documentation prepared by the provider shall be retained for use when any financial report is prepared and for review by the department's fiscal consultant. Financial records must be retained for five years from the date of report submission or final payment for services.

d. Independent audits. When a provider has an audit conducted, a firm not related to the provider shall conduct the audit. The provider shall submit a copy of the independent audit report to the department within 30 days of receipt of the report. The bureau of purchased services shall maintain the report and provide a copy of the report to the fiscal consultant.

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152.2(8) *Special-purpose organizations.* A provider may establish a separate, special-purpose organization to conduct certain client-related or non-client-related activities on behalf of the provider. (For example, a provider may establish a development foundation to assume the provider's fund-raising activity.) Even if the provider does not own the special-purpose organization (e.g., a nonprofit, non-stock-issuing corporation) and has no common governing body membership, a separate special-purpose organization shall be considered a related party for purposes of this chapter when one of the following applies:

a. The provider controls the organization through contracts or other legal documents that give the provider the authority to direct the organization's activities, management, and policies.

b. For all practical purposes, the provider is the primary beneficiary of the organization's activities. The provider shall be considered the special-purpose organization's primary beneficiary if one or more of the following circumstances exist:

(1) The organization has solicited funds on the provider's behalf with provider approval, and substantially all funds so solicited were contributed with the intent of benefiting the provider.

(2) The provider has transferred some of its resources to the organization, substantially all of whose resources are held for the benefit of the provider.

(3) The provider has assigned certain of its functions to a special-purpose organization that is operating primarily for the benefit of the provider.

152.2(9) *Certification by department of transportation.*

a. If the provider furnishes public transit service as defined in rule 761—910.1(324A), the provider shall annually submit to the contract monitor information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules in 761—Chapter 910. This information shall include:

(1) Form 020107, Certification Application for Coordination of Public Transit Services, which the contract monitor shall submit to the department of transportation; and

(2) A copy of an ACORD Certificate of Insurance or similar self-insurance documentation, as applicable.

b. If a provider believes it does not furnish public transit service as defined in rule 761—910.1(324A) and, therefore, is exempt from the requirements in paragraph "a," the provider shall submit Form 020107 with only Section 1 completed when the provider enters into a new contract.

c. If a provider that has furnished public transit service as defined in rule 761—910.1(324A) ceases to do so, the provider becomes exempt from the requirements in paragraph "a."

d. If an exempt provider begins to furnish public transit service as defined in rule 761—910.1(324A), the provider shall inform the contract monitor within 30 days of the change and shall adhere to the procedures in paragraph "a."

e. Failure of the provider to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

152.2(10) *Copyright and patents.* The activities and results of contract activity may be published subject to confidentiality requirements.

441—152.3(234) *Determination of rates.* Rates for foster group care services effective on or after November 1, 2006, shall be based on the historical payment rate negotiated between the provider and the department and shall be calculated based on rule 441—156.9(234).

152.3(1) *Negotiation of rates.* Rates for services effective on or after November 1, 2006, must be established in accordance with this subrule, except as provided in subrule 152.3(4).

a. All historical rate negotiations made under the former rehabilitative treatment and supportive services program on or after February 1, 1998, remain true and valid.

b. The scope of negotiations is limited solely to the rate to be paid for each service.

c. No other items, such as, but not limited to, changes in staff qualifications, service definition, required components, allowable costs or any licensing or other contractual requirements, shall be the subject of negotiations or used as a basis for changing rates.

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d. The service area manager of the host area is responsible for the negotiation of rates for each provider whose contract for foster group care services is administered by the host area, regardless of where the services are provided. Only the service area manager of the host area may approve the rates negotiated for a provider, except as provided in subrule 152.3(4).

(1) The service area manager of the host area shall take into consideration the other service areas served by a provider when negotiating a rate for a service provided in multiple service areas.

(2) When a service is provided only in a nonhost area, the two service area managers shall determine which one will negotiate the rate for that service.

e. The service area manager of the host area and the provider are mutually responsible for initiating the rate negotiation process. Negotiations may be conducted in a manner acceptable to both parties, but shall be conducted face to face upon the request of either party.

f. At the initiation of the rate negotiation process, the provider must disclose all relevant subcontractual and related-party relationships involved in the provision of foster group care services.

g. Negotiated rates shall not exceed any rate ceiling established or authorized by the legislature.

h. Once a negotiated rate is established, it shall not be changed or renegotiated, except in the following circumstances:

(1) Rates may be changed when funds are appropriated for an across-the-board increase.

(2) Rates may be changed by mandated across-the-board decreases.

152.3(2) *New service.* When a prospective provider contracts to provide a foster group care service or an existing provider adds a new foster group care service on or after November 1, 2006, the rate for the new service shall be established based on a payment rate negotiated with the provider.

a. The starting point for negotiated rates shall be the weighted average for each service as of July 1, 1997, as previously established in accordance with 441—subrule 185.109(1), in effect at that time, and further calculated based on rule 441—156.9(234). These rates shall become the established weighted average rates for each service code as described in 441—Chapter 156 and in the appendices of the foster group care contract.

(1) The rate for community-level group care child welfare service is \$8.43 per unit of service.

(2) The rate for community-level group care maintenance is \$50.16 per unit of service.

(3) The rate for comprehensive-level group care child welfare service is \$10.13 per unit of service.

(4) The rate for comprehensive-level group care maintenance is \$60.31 per unit of service.

(5) The rate for enhanced comprehensive-level group care child welfare service is \$13.36 per unit of service.

(6) The rate for enhanced comprehensive-level group care maintenance is \$79.55 per unit of service.

b. In the event the department and a new provider or an existing provider adding a new foster group care service are unable to reach agreement on a rate for a service within 60 days of initiating rate negotiations, a rate resolution process may be used. If no rate is agreed upon within 60 days of initiation of a rate resolution process, no rate shall be established and the services in question shall not be part of any approved contract for foster group care services.

152.3(3) *Interruptions in a program.*

a. The rate for a new provider shall remain the same as the rate established for the former provider if:

(1) A provider assumes the delivery of a program from a related-party provider, or

(2) The difference between the former provider and the new provider is a change in name or a change in the legal form of ownership (i.e., a change from partnership to corporation).

b. If a provider ceases to contract for and provide a foster group care service on or before October 31, 2006, and before the calculation of new rates according to rule 441—156.9(234), the rate in effect when the contract ceased shall be used to calculate the new rates to be used as the starting point in negotiations.

c. If a provider ceases to contract for and provide a foster group care service after a rate has been established in accordance with rule 441—156.9(234) and then decides to again contract for and provide

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the foster group care service, the rate shall be established at the rate in effect when the service was interrupted.

152.3(4) *Exception to rate policy.* When a provider not located in Iowa has been granted an exception to these rules based upon another state's requirement that its providers be paid the same rate they are paid for clients from that home state, the exception shall continue in effect as written for the life of the contract.

152.3(5) *Across-the-board cuts.* Payment under the contract may be subject to across-the-board cuts pursuant to Iowa Code section 8.31.

441—152.4(234) *Initiation of contract proposal.* All potential providers have a right to request a contract.

152.4(1) *Initial contact.* The initial contact shall be between the potential provider and the bureau of purchased services.

a. At the beginning of the contract development process, the bureau shall give the potential provider:

- (1) Information about the contracting process; and
- (2) Instructions on how to access the foster group care services provider handbook electronically.

b. The provider shall sign Form 470-3057, Verification of Receipt, at the end of the contract development process to verify receipt of information on how to access the handbook.

152.4(2) *Contract proposal development.* When the bureau of purchased services determines that a new contract is to be developed, a contract monitor shall be assigned to assist in contract development and processing. The contract monitor shall assist the applicant in the completion of the contract proposal and required fiscal information. The contract proposal shall include all of the following:

- a.* Form 470-3051, Foster Group Care Services Contract Face Sheet.
- b.* Form 470 3404, Foster Group Care Services Negotiated Rate Establishment Amendment. This form need not be completed until the completion of the rate negotiation process, but the contract proposal will not be acted upon until the form is completed and attached to the contract proposal.
- c.* Form 470-3052, Foster Group Care Services Contract, or Form 470-3053, Amendment to Foster Group Care Services Contract.

152.4(3) *Contract proposal approval.* The department shall review all complete proposed contracts for compliance with state and federal requirements.

a. The applicant shall submit four copies of the contract proposal to the assigned contract monitor 60 calendar days in advance of the desired effective date of the contract.

b. Submission within the time frame does not ensure the effective date of the contract. The department shall give the applicant notice and explanation in writing of any delay in the approval process.

c. The contract monitor shall forward four signed copies of the contract proposal to the bureau of purchased services within four weeks of receipt.

d. Before the contract can be effective, it shall be approved and signed by the following persons:

- (1) An authorized representative of the provider.
- (2) The service area manager, who shall make a decision within one week of receipt.
- (3) The director of the department or the director's designee, who shall make a decision within 15 days of receipt.

152.4(4) *Rejection of contract proposal.* The department shall give the applicant notice and explanation in writing of the reasons for rejection of the contract proposal within ten working days of the decision. The following criteria may cause a proposed contract or proposed contract amendment to be rejected:

- a.* The proposed contract does not meet applicable rules, regulations, or guidelines.
- b.* The applicant has falsified any information required as a condition of participation.
- c.* Licenses submitted as a condition of participation in the contract process have never been approved or have been revoked or suspended.

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- d. The provider fails to provide notification within seven days of any changes that may significantly affect the licenses submitted as a condition of contracting.
- e. The department and the provider fail to reach agreement on negotiated rates.

441—152.5(234) Contract. All providers shall enter into a contract with the department using Form 470-3052, Foster Group Care Services Contract.

152.5(1) Contract effective date. When the agreed-upon contract conditions have been met, the effective date of a new contract, a renewed contract, or an amendment to add a new service code to the contract is the day following signature of the director of the department or the director's designee, unless the provider and the department agree to a later specified date.

a. The contract shall be effective only after the provider is licensed to provide foster group care services as described in subrule 152.2(1).

b. The contract shall be effective only when signed by all parties as required by paragraph 152.4(3) "d."

152.5(2) Liability for payment. The department shall not be liable for payment for any programs or services before:

a. The contract effective date, or

b. The effective date of the rate for the program or service.

152.5(3) Term of contract. Pursuant to the provisions of 11—Chapters 106 and 107, the term of the contract is limited to no more than six years from the effective date of the contract.

441—152.6(234) Client eligibility and referral.

152.6(1) Determination of eligibility. The department shall determine a child's eligibility for foster group care services. The department shall not make payment for foster group care services provided before the child's eligibility determination and service authorization.

152.6(2) Court order. If a child and family have been referred to the department and the department has not authorized foster group care services, but the services have been ordered by the juvenile court, the department shall make payment subject to availability of authorized funds.

152.6(3) Service authorization. Any change in the level of care or increase in the number of units or duration of foster group care services shall be authorized by the department.

441—152.7(234) Billing procedures. At the end of each month, the provider shall prepare Form 470-0020, Purchase of Service Provider Invoice, for contractual services provided during the month. Separate invoices shall be prepared for each county from which clients were referred. Each invoice shall contain claims for only one month of service. A separate invoice is required for each separate month of service if the service spans more than one month.

152.7(1) Submission of invoices. Complete invoices shall be sent to the department local office responsible for the client for approval and forwarding for payment. The time limit for submission of original invoices shall be 90 days from the date of service, except at the end of the state fiscal year when claims for services through June 30 shall be submitted by August 10.

152.7(2) Resubmittal of rejected claims. Valid claims that were originally submitted within the time limit specified in subrule 152.7(1) but were rejected because of an error shall be resubmitted as soon as corrections can be made.

152.7(3) Payment. The invoices shall be subject to audit and adjustment by the department. Within 60 days of the date of receipt of a valid invoice, the department shall make payment in full of all claims concerning foster group care services rendered to clients.

441—152.8(234) Contract management. During the contract period, the assigned contract monitor designated in the contract shall be the contract liaison between the department and the provider.

152.8(1) The provider shall contact the contract monitor about all interpretations and problems relating to the contract, and the contract monitor shall follow the issues through to their resolution.

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152.8(2) The contract monitor shall also monitor performance under the contract and shall provide or arrange for technical assistance to improve the provider's performance if needed. Form 470-0670, Report of On-Site Visit, shall be used to monitor performance under the contract.

152.8(3) The contract monitor shall make at least one on-site visit to each provider during the term of the provider's contract. The on-site visit shall be coordinated with on-site visits scheduled to fulfill requirements for provider reviews, licensing, or other on-site visits required by the department. Site visits to out-of-state providers shall be made at the discretion of the service area responsible for administration of the contract.

441—152.9(234) Provider reviews. The department may review any provider at its discretion at any time. Records generated and maintained by the department or its fiscal agent may be used by reviewers and in all proceedings of the department.

152.9(1) Review of provider records. The department shall have the authority to conduct a scheduled or an unannounced site visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster group care services.

152.9(2) Purpose. Upon proper identification, authorized representatives of the department shall have the right to review the service and fiscal records of the provider to determine whether:

- a. The department has accurately paid claims for services.
- b. The provider has furnished the services.
- c. The provider has retained service records and fiscal records, as described in subrules 152.2(6) and 152.2(7), that substantiate claims submitted for payment during the review period.
- d. Expenses reported to the department have been handled as required under subrule 152.2(8).

152.9(3) Method. The department shall select the appropriate method of conducting a review and shall protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department. Review procedures may include, but are not limited to, the following:

- a. Comparing service and fiscal records with each claim.
- b. Interviewing clients and employees of providers.

152.9(4) Sampling. The department's procedures for reviewing a provider's service records may include the use of random sampling and extrapolation. When these procedures are used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level.

a. *Findings.* The review findings generated through the review procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. *Extrapolation.* Findings of the sample will be extrapolated to the universe for the review period. The total of the payments determined to be in error in the review sample shall be divided by the total payments in the reviewed sample to calculate the percentage of dollars paid in error. This percentage shall then be multiplied by the total payment in the review universe to determine the extrapolated overpayment.

c. *Disagreement with findings.* When the provider disagrees with the department's review findings and the findings have been generated through sampling and extrapolation, the provider may present evidence to show that the sample was invalid. The burden of proof of compliance rests with the provider. The evidence may include a 100 percent review of the universe of provider records used by the department in the drawing of the department's sample. This review shall:

- (1) Be arranged and paid for by the provider.
- (2) Be conducted by a certified public accountant.
- (3) Demonstrate that bills and records not reviewed in the department's sample complied with program regulations and requirements.
- (4) Be submitted to the department with all supporting documentation.

152.9(5) Actions based on review findings.

a. The department shall report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 9.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. When an overpayment is found, the department may do one or more of the following:

- (1) Request repayment in writing.
- (2) Impose sanctions provided for in rule 441—152.10(234).
- (3) Investigate and refer the matter to an agency empowered to prosecute.

441—152.10(234) Sanctions against providers. Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions.

152.10(1) Grounds for sanction. The department may impose sanctions against a provider for committing one or more of the following actions:

a. Failing to provide and maintain the quality of the services to children and families within established standards, including:

- (1) Failing to meet standards required by state or federal law for licensure.
- (2) Failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.
- (3) Engaging in a course of conduct or performing an act that is in violation of state or federal regulations or continuing that conduct following notification that it should cease.
- (4) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions subject to this chapter.
- (5) Receiving a formal reprimand or censure by an association of the provider's peers for unethical practices.

(6) Being suspended or terminated from participation in another governmental program such as, but not limited to, workers' compensation or Medicaid remedial services.

(7) Committing negligent practice resulting in client death or injury.

b. Failing to disclose or make available to the department or its authorized agent records of services provided to a child and family and records of payments made for those services.

c. Engaging in deceptive billing practices, such as:

- (1) Presenting or causing to be presented for payment any false or deceptive claim for services.
- (2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

d. Submitting or causing to be submitted false information to meet service authorization requirements.

e. Inducing, furnishing or otherwise causing the child or family to receive services that are not authorized (overutilization of services).

f. Rebating or accepting a fee or portion of a fee or a charge for referrals of a child or family.

g. Failing to repay or arrange for the repayment of identified overpayments or other erroneous payments.

152.10(2) Notice of violation. Should the department have information that indicates that a provider may have submitted bills or been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted.

a. Notification shall set forth:

- (1) The nature of the discrepancies or violations.
- (2) The known dollar value of the discrepancies or violations.
- (3) The method of computing the dollar value.
- (4) Further actions to be taken or sanctions to be imposed by the department.
- (5) Any actions required of the provider.

b. The provider shall have 15 days after the date of the notice and before the department action to show cause why the action should not be taken.

152.10(3) Sanctions. The following sanctions may be imposed on providers based on the grounds specified in subrule 152.10(1).

a. A term of probation for provision of foster group care services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- b. Termination from participation in the provision of foster group care services.
- c. Suspension from provision of foster group care services.
- d. Suspension or withholding of payments to the provider.
- e. Review of 100 percent of the provider's claims before payment.
- f. Referral to the state licensing board for investigation.
- g. Referral of the matter to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.
- h. Suspension of foster group care services licensure.
- i. Termination of foster group care services licensure.

152.10(4) *Imposition and extent of sanction.* The department shall determine what sanction to impose. The following factors shall be considered in determining the sanction or sanctions to be imposed:

- a. Seriousness of the offense.
- b. Extent of violations.
- c. History of prior violations.
- d. Prior imposition of sanctions.
- e. Prior provision of technical assistance.
- f. Pattern of failure to follow program rules.
- g. Whether a lesser sanction will be sufficient to remedy the problem.
- h. Actions taken or recommended by peer review groups or licensing bodies.

152.10(5) *Scope of sanction.*

a. The sanction may be applied to all known affiliates of a provider. Each decision to include an affiliate shall be made on a case-by-case basis after giving due regard to all relevant factors and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated when the conduct was committed in the course of official duty or was effectuated with the knowledge or approval of that person.

b. When there are grounds for sanction pursuant to subrule 152.10(1) against a provider facility, the department may suspend or terminate the provision of foster group care services by:

- (1) The provider; or
- (2) The specific facility, campus, or site; or
- (3) Any individual within the provider's organization who is responsible for the violation.

c. No provider shall submit claims for payments to the department for any services provided by any facility, campus, site, or person within the organization that has been suspended or terminated from provision of foster group care services except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster group care services shall preclude the submission of claims to the department for payment for any services provided after suspension or termination, whether submitted personally or through the provider.

152.10(6) *Suspension or withholding of payments pending a final determination.* When the department has notified a provider of a violation pursuant to paragraph 152.9(5) "b" or subrule 152.10(2) and has demanded repayment of an identified overpayment, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payment pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

152.10(7) *Notice of sanction.* When a provider has been sanctioned, the department shall notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

441—152.11(234) Appeals of departmental actions. Providers may appeal decisions of the department, other than rate determinations, according to rules in 441—Chapter 7.

These rules are intended to implement Iowa Code section 234.6.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 17. Rescind the definitions of “Family foster care supervision” and “Foster family home study” in rule ~~441—156.1(234)~~.

ITEM 18. Amend rule ~~441—156.1(234)~~, definition of “Substance abuse treatment supervisor,” as follows:

“Substance abuse treatment supervisor” means the same as treatment supervisor as defined in ~~the substance abuse commission~~ department of public health rule ~~643—3.1(125)~~ ~~641—155.1(125)~~ as ~~treatment supervisor~~.

ITEM 19. Rescind and reserve rule ~~441—156.7(234)~~.

ITEM 20. Amend paragraph ~~156.9(2)“c”~~ as follows:

c. Appeals. The decision of the director regarding approval of an exception to the ~~cost principles rate determination~~ in ~~rules 441—185.101(234) to 441—185.108(234)~~ rule ~~441—152.3(234)~~ is not appealable.

ITEM 21. Amend paragraph ~~156.9(4)“a”~~ as follows:

a. The rate shall be determined according to the policies in ~~rules 441—185.101(234) to 441—185.108(234)~~ rule ~~441—152.3(234)~~ and added to the maintenance rate for the mother. The young child portion of the maintenance rate shall be limited to the costs associated with food, clothing, shelter, personal incidentals, and supervision for each young child and shall not exceed the maintenance rate for the mother. Costs for day care shall not be included in the maintenance rate.

ITEM 22. Rescind and reserve ~~441—Chapter 157~~.

ITEM 23. Rescind and reserve ~~441—Chapter 182~~.

ITEM 24. Rescind and reserve ~~441—Chapter 183~~.

ITEM 25. Rescind and reserve ~~441—Chapter 185~~.

ARC 7536B

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 sections 505.8 and 522B.18, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 11, “Continuing Education for Insurance Producers,” Iowa Administrative Code.

The rules in Chapter 11 set out the requirements, procedures and fees relating to the type, amount, and proof of continuing education that insurance producers must complete and relating to the approval of continuing education providers and courses.

The proposed amendment clarifies the definition for “CE term” as it applies to persons who are newly licensed as insurance producers and to persons who hold existing insurance producer licenses. The Insurance Division intends that the amendment will become effective April 29, 2009.

Any interested person may make written suggestions or comments on this proposed amendment on or before February 17, 2009. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on February 17, 2009, at 10:30 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views

INSURANCE DIVISION[191](cont'd)

either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code chapter 522B.

The following amendment is proposed.

Amend rule **191—11.2(505,522B)**, definition of “CE term,” as follows:

“*CE term*” means the period of time beginning that begins either on the date when a new producer’s insurance license is issued or renewed on the date after the expiration date of an existing producer’s license and that ends on the following license expiration date.

ARC 7537B

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 sections 505.8 and 515E.3A and chapter 515, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 21, “Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

The rules in Chapter 21 provide duties and procedures for insurance producers and nonadmitted insurers in order to provide excess and surplus lines insurance in Iowa. The proposed amendments to the rules update and clarify the duties and procedures. The Insurance Division intends that insurance companies and producers will comply with the rules beginning April 29, 2009, for policies sold or issued in Iowa on or after January 1, 2009.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 17, 2009. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on February 17, 2009, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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 chapters 515 and 515E.

The following amendments are proposed.

ITEM 1. Amend rule **191—21.1(515)**, definition of “Qualified surplus lines carrier,” as follows:

“*Qualified surplus lines carrier*” means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section ~~515.147~~ 515.120, but in no event shall “qualified surplus lines carrier” include an insurer described in Iowa Code section ~~515.148~~ 515.122.

INSURANCE DIVISION[191](cont'd)

ITEM 2. Amend rule 191—21.2(515) as follows:

191—21.2(515) Qualified surplus lines carriers' duties.

21.2(1) *Insurer liable.* Where, pursuant to Iowa Code section ~~515.147~~ 515.120, coverage is placed with a qualified surplus lines carrier, the qualified surplus lines carrier shall be liable for the premium tax required by Iowa Code section ~~515.147~~ 515.120.

21.2(2) *How premium tax quoted.* A qualified surplus lines carrier or a broker for a qualified surplus lines carrier is authorized to quote a premium which includes tax as is required by Iowa Code section ~~515.147~~ 515.120, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. ~~Policy~~ Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

ITEM 3. Amend rule 191—21.3(515) as follows:

191—21.3(515) Producers' duties.

21.3(1) No change.

21.3(2) *Quarterly reports required.* *Electronic reporting of premium tax.* A producer who places insurance with a qualified surplus lines carrier shall ~~file a report with the division. Reports shall be filed on April 10, July 10, October 10 and January 10, summarizing the surplus lines insurance issued during the prior calendar quarter. The reports shall be made using the division's Form SL2007 and shall be filed electronically or as otherwise directed by the division. A producer is not required to file a report for a quarter in which no surplus lines insurance was issued. If a producer does not file a quarterly report by the due date, the producer shall be fined \$100 on the day after the report was due and an additional \$100 on the first of each month thereafter until the report is filed.~~ file electronically the premium tax information with the division on or before March 1 for policies issued during the preceding calendar year.

21.3(3) *Annual report.* On or before March 1 of each year, every producer who has placed insurance with qualified surplus lines carriers when the policies have been issued during the preceding calendar year shall file electronically with the division or as otherwise directed by the division a sworn report of all such business written during the preceding calendar year and shall submit the amount to cover the taxes due on said business. If no business was written during the preceding calendar year, no report is required. Failure to file an annual return or pay the taxes imposed by Iowa Code section ~~515.147~~ 515.120 et seq., will be deemed grounds for the revocation of a producer's license by the insurance division, and failure to file an annual return or pay taxes within the time requirements of this rule will subject the producer to the penalties of ~~2006 Iowa Acts, Senate File 2364, section 68~~ [Iowa Code section ~~515.147A~~] 515.121.

ITEM 4. Amend rule 191—21.4(515) as follows:

191—21.4(515) Producers' duty to insured; evidence of coverage. A producer who places coverage with a qualified surplus lines carrier as defined herein shall deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code section ~~515.147~~ 515.120, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A producer may comply with this rule by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy.

ITEM 5. Amend subrules 21.5(1), 21.5(2) and 21.5(3) as follows:

21.5(1) *Application and procedures for initial qualification of a nonadmitted insurer as a qualified surplus lines carrier.*

a. Any insurer who wishes to qualify under Iowa Code section ~~515.147~~ 515.120 as a nonadmitted insurer shall make an application.

b. and *c.* No change.

21.5(2) *Procedures for renewal of a nonadmitted insurer as a qualified surplus lines carrier.*

INSURANCE DIVISION[191](cont'd)

~~a.~~ A nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that met the division's requirements for becoming a qualified surplus lines carrier shall, by March 1 of each year following the year of qualification:

- ~~(1)~~ a. Continue to comply with paragraph 21.5(1) "c";
- ~~(2)~~ b. Pay a \$100 renewal fee; and
- ~~(3)~~ c. Submit to the division the documents and materials listed on the division's Web site, www.iid.state.ia.us.

~~b. — In addition, a nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 shall file quarterly financial statements as required by the division.~~

21.5(3) Failure to comply. Failure of a nonadmitted insurer to timely submit the materials required in this rule or to otherwise fail to comply with this rule shall result in the termination of the nonadmitted insurer's status as a qualified surplus lines carrier.

ITEM 6. Amend rule 191—21.6(515E) as follows:

191—21.6(515E) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, they shall follow the procedure set forth in subrule 21.3(2). In the event that the group desires to pay the premium tax directly, ~~it~~ the group shall file electronically with the division, ~~electronically or as directed by the division, a sworn statement on Form No. SL264 and other information required through the division's Web site, www.iid.state.ia.us.~~

ITEM 7. Amend rule 191—21.9(515,515E) as follows:

191—21.9(515,515E) Failure to comply; penalties. Failure of a producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section ~~515.147, 515.148, or 515.149~~ 515.120, 515.121, or 515.122, or chapter 515E may subject the producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B or ~~2006 Iowa Acts, Senate File 2364, section 68~~ Iowa Code section ~~515.147A~~ 515.121.

ITEM 8. Amend ~~191—Chapter 21~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~515.147 to 515.149~~ 515.120 to 515.122.

ARC 7525B

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 2008 Iowa Acts, chapter 1123, section 28, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 70, "Utilization Review," Iowa Administrative Code.

The proposed amendment implements 2008 Iowa Acts, House File 2555, section 28, which requires the Commissioner to adopt rules to provide for the retrospective payment of clean claims for covered services during the credentialing period.

Chapter 70 does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

Any interested person may make written comments on the proposed amendment on or before February 20, 2009. Written comments may be sent to Angela Burke Boston, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to angela.burke.boston@iid.iowa.gov.

INSURANCE DIVISION[191](cont'd)

A public hearing will be held at the office of the Insurance Division at 10 a.m. on February 20, 2009. The Division is located at 330 Maple Street, Des Moines, Iowa.

This amendment is intended to implement 2008 Iowa Acts, chapter 1123, section 28.

The following amendment is proposed.

Adopt the following **new** rule 191—70.10(514F):

191—70.10(514F) Credentialing—retrospective payment.

70.10(1) Purpose. This rule implements Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] which requires the commissioner to adopt rules to provide for the retrospective payment of clean claims for covered services provided by a physician during the credentialing period, once the physician is credentialed.

70.10(2) Definitions. For purposes of this rule, the definitions found in Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] shall apply. In addition, the following definitions shall apply:

“*Application date*” means the date on which the health insurer receives the physician’s application for credentialing.

“*Clean claim*” means clean claim as defined in Iowa Code section 507B.4A(2) “b.”

“*Health insurer*” means the same as a carrier, as defined in Iowa Code section 513B.2(4), that provides health insurance coverage, as defined in Iowa Code section 513B.2(12).

70.10(3) Retrospective payment of clean claims. A health insurer shall make retrospective payment for all clean claims submitted by a physician after the credentialing period for covered services provided by the physician during the credentialing period subject to all of the following:

a. The credentialing period shall begin on the application date and end on the date the health insurer, or other person responsible for credentialing physicians on behalf of the health insurer, makes a final determination approving the physician’s application to be credentialed.

b. The health insurer shall notify an applicant of its determination regarding a properly submitted application for credentialing within 90 days of receipt of an application containing all information required by the health insurer’s credentialing form.

c. The physician shall not submit any claims to the health insurer during the credentialing period.

d. A health insurer shall not be required to pay any claims submitted by a physician during the credentialing period.

e. The health insurer shall not deny payment of any clean claims for medical services provided by a physician during the credentialing period due to the health insurer’s rules pertaining to timely claims submission.

f. After the physician has been credentialed, the physician shall submit all claims to the health insurer for covered services provided by the physician during the credentialing period.

g. After the physician has been credentialed, a health insurer shall pay all clean claims submitted by the physician for covered services provided by the physician during the credentialing period within the time periods specified in 191—15.32(507B).

70.10(4) Applicability.

a. This rule shall not apply to services provided by a physician that are covered by Medicaid, Medicare, TRICARE, or other health care benefit programs subject to federal regulations regarding eligibility and provider payments.

b. Nothing contained in this rule shall require a health insurer to take any action in violation of the requirements of the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation Commission (URAC).

c. Nothing contained in this rule shall require a health insurer to credential a physician or to permit a noncredentialed physician to participate in the health insurer’s provider network.

70.10(5) Effective date. This rule shall become effective on July 1, 2009.

ARC 7535B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

The proposed amendment will adopt by reference changes in 561 IAC Chapter 8, which increase the threshold amount for which the Department of Natural Resources must seek approval from the Natural Resource Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds are in line with changes to Iowa Code chapter 26. (See Natural Resources Department[561], **ARC 7534B** herein.)

Any interested person may make written suggestions or comments on the proposed amendment on or before February 17, 2009. Such written materials should be directed to Kelley Myers, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-7147; or E-mail Kelley.Myers@dnr.iowa.gov. Persons who wish to convey their views orally should contact Kelley Myers at (515)281-5634 or at Ms. Myers' office by visiting the fourth floor of the Wallace State Office Building.

This amendment is intended to implement Iowa Code section 455A.5.

The following amendment is proposed.

Amend rule 571—8.1(17A) as follows:

571—8.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 8, Iowa Administrative Code, as amended through ~~June 19, 1991~~ March 25, 2009.

ARC 7533B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 21, "Agricultural Lease Program," Iowa Administrative Code.

The proposed amendment increases the threshold for which negotiation, as opposed to competitive bidding, of a lease may be considered by the Department of Natural Resources.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 17, 2009. Such written materials should be directed to Travis Baker, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6749; or E-mail Travis.Baker@dnr.iowa.gov. Persons who wish to convey their views

NATURAL RESOURCE COMMISSION[571](cont'd)

orally should contact Travis Baker at (515)281-8068 or at Mr. Baker's office on the fourth floor of the Wallace State Office Building.

This amendment is intended to implement Iowa Code sections 461A.25, 456A.24(2), and 456A.24(5). The following amendment is proposed.

Amend subrule 21.4(7) as follows:

21.4(7) *Negotiated leases.* The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

- a. No bids are received.
- b. Gross annual rent is ~~\$2500~~ 5000 or less.
- c. Where land acquired by the department is subject to an existing tenancy.
- d. To synchronize the lease period of newly leased areas with other leases in the same management unit.
- e. Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.
- f. Where the director authorizes a lease as a condition of a land purchase or trade.

ARC 7539B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The proposed amendments update the camping fee breakdown to accommodate the state sales tax increase to 6 percent (no fee increase); establish new cabin rental fees for new cabins which are under construction at Pine Lake, Nine Eagles and Springbrook State Parks; and increase the camping cabin fee at Pleasant Creek State Recreation Area to the same fee as other state park camping cabins. The amendments also establish minimum stay requirements for the multifamily cabins, including a two-night minimum stay requirement throughout the year, a Friday/Saturday stay requirement for summer season weekends, and a three-night stay requirement for Memorial Day weekend, Fourth of July weekend, and Labor Day weekend.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 17, 2009. Such written material should be directed to the State Parks Bureau, Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or at the State Parks Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on February 17, 2009, at 10 a.m. in the Fourth Floor East Conference Room in the Wallace State Office Building, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments are intended to implement Iowa Code sections 461A.3, 461A.47, and 461A.57. The following amendments are proposed.

ITEM 1. Amend subrule 61.4(1) as follows:

61.4(1) Fees. The following are maximum per-night fees for camping in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event. In areas subject to a local option sales tax, the camping fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

	Fee	Sales Tax	Total Per Night
<i>a.</i> The following fees shall be in effect from May 1 to September 30 each year.			
Nonmodern	\$ 8.57 <u>8.49</u>	-.43 <u>.51</u>	\$ 9.00
Modern	10.48 <u>10.38</u>	-.52 <u>.62</u>	11.00
<i>b.</i> The following fees shall be in effect from October 1 to April 30 each year.			
Nonmodern	5.71 <u>5.66</u>	-.29 <u>.34</u>	6.00
Modern	7.62 <u>7.55</u>	-.38 <u>.45</u>	8.00
<i>c.</i> Electricity	4.76 <u>4.72</u>	-.24 <u>.28</u>	5.00
This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not).			
<i>d.</i> Organized youth group campsite, per group	14.29 <u>14.15</u>	-.71 <u>.85</u>	15.00
<i>e.</i> Cable television hookup	1.90 <u>1.89</u>	-.10 <u>.11</u>	2.00
<i>f.</i> Sewer and water hookup	2.85 <u>2.83</u>	-.15 <u>.17</u>	3.00
<i>g.</i> Additional fee for campgrounds designated for equestrian use	2.85 <u>2.83</u>	-.15 <u>.17</u>	3.00
This fee is in addition to applicable fees listed above.			
<i>h.</i> Camping tickets (per book of seven)	86.67 <u>85.85</u>	4.33 <u>5.15</u>	91.00

Camping tickets shall be valid for one year from the month of purchase. Persons using valid camping tickets purchased prior to any fee increase will not be required to pay the difference due to that fee increase.

ITEM 2. Amend paragraph **61.5(1)“a”** as follows:

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	Per Night*	Per Week
Backbone State Park, Delaware County		
Renovated modern cabins	\$ 50	\$300
Two-bedroom modern cabins	85	510
Deluxe cabins	100	600
Black Hawk State Park, Sac County	100	600
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Honey Creek State Park, Appanoose County	35	210

NATURAL RESOURCE COMMISSION[571](cont'd)

	Per Night*	Per Week
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County	35	210
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
<u>Nine Eagles State Park, Decatur County</u>	<u>75</u>	<u>450</u>
Palisades-Kepler State Park, Linn County	50	300
Pine Lake State Park, Hardin County		
<u>Multifamily cabin</u>	<u>200</u>	<u>1200</u>
Studio cabins (four-person occupancy limit)	65	390
One-bedroom cabins	75	450
Pleasant Creek State Recreation Area, Linn County	25 <u>35</u>	150 <u>210</u>
Prairie Rose State Park, Shelby County	35	210
Springbrook State Park, Guthrie County	35 <u>200</u>	210 <u>1200</u>
Stone State Park, Woodbury County	35	210
Waubonsie State Park, Fremont County		
Two-bedroom modern cabins	85	510
One-bedroom modern cabin <u>cabins</u>	60	360
Two-bedroom camping cabins	50	300
One-bedroom camping cabin <u>cabins</u>	35	210
Camping cabin	25	150
Wilson Island State Recreation Area, Pottawattamie County	25	150
Extra cots, where available	1	

*Minimum two nights

ITEM 3. Amend paragraph **61.5(3)“b”** as follows:

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in ~~subparagraph~~ subparagraphs 61.5(3)“b”(2) and 61.5(3)“b”(3), cabin reservations must be for a minimum of one week (Friday p.m. to Friday a.m.) beginning the Friday of the national Memorial Day holiday weekend through Thursday after the national Labor Day holiday. From the Friday after the national Labor Day holiday through the Thursday before the national Memorial Day holiday weekend, cabins may be reserved for a minimum of two nights.

(2) The cabins at Dolliver Memorial State Park; the camping cabins at ~~Brushy Creek~~, Pleasant Creek and Wilson Island State Recreation Areas and Green Valley, Honey Creek, Lake Darling and Stone State Parks; the yurts at McIntosh Woods State Park; and the group camps at Dolliver Memorial and Lake Keomah State Parks may be reserved for a minimum of two nights throughout the entire rental season.

(3) The multifamily cabins at Pine Lake and Springbrook State Parks may be reserved for a minimum of two nights throughout the entire rental season with the following exceptions:

1. From the Friday of the national Memorial Day holiday weekend through the Thursday after the national Labor Day holiday, a Friday and Saturday night stay is required for weekends.

2. A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

3. A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday or Saturday.

NATURAL RESOURCE COMMISSION[571](cont'd)

4. A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Monday.

~~(3)~~ (4) All unreserved cabins, yurts and group camps may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(4) ~~(5)~~ Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

ARC 7534B

NATURAL RESOURCES DEPARTMENT[561]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.4, the Director hereby gives Notice of Intended Action to amend Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

These proposed amendments will change the threshold amount for which the Department of Natural Resources may approve public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds proposed are in line with changes to Iowa Code chapter 26.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 17, 2009. Such written materials should be directed to Kelley Myers, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-7147; or E-mail Kelley.Myers@dnr.iowa.gov. Persons who wish to convey their views orally should contact Kelley Myers at (515)281-5634 or at Ms. Myers' office by visiting the fourth floor of the Wallace State Office Building.

These amendments are intended to implement Iowa Code section 455A.4.

The following amendments are proposed.

ITEM 1. Amend rule 561—8.2(17A,455B,456A,461A,473) as follows:

561—8.2(17A,26,455B,456A,461A,473) Contracts for public improvements.

8.2(1) Definition. As used in these rules, "public improvement" means ~~any building or construction work, including road or bridge construction, reconstruction and maintenance, to be paid for in whole or in part by the use of state funds~~ public improvement as defined by Iowa Code section 26.2. Iowa Code section ~~23.21~~ 73.3, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) Invitation for bids. When the total cost of a public improvement project exceeds the sum of ~~\$25,000~~ 100,000 as estimated by the department ~~or the construction services bureau of the administrative services division~~, the department shall ~~advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said notices shall be not less than 15 days prior to the date set for receiving bids.~~ Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. Plans, specifications and the contract form shall be provided to all prospective bidders as provided in the invitation for bids utilize the competitive bid process identified in Iowa Code chapter 26.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

~~8.2(3) Invitation for bids. The invitation for bids must state the following items:~~

- ~~a. — The time and place for filing sealed proposals.~~
- ~~b. — The time and place sealed proposals will be opened and considered on behalf of the department.~~
- ~~c. — The general nature of the public improvement on which bids are requested.~~
- ~~d. — The general terms when the work must be commenced and when it must be completed.~~
- ~~e. — Any further information or requirements which the department deems pertinent or advisable.~~

~~All sealed bids shall be publicly opened as specified in the notice to bidders. The bids shall be tabulated and made available in a written form to any interested party.~~

~~8.2(4) 8.2(3) Solicitation of quotations. Competitive quotations may be solicited on public improvement projects estimated by the department to cost less than \$25,000. At least three quotations shall be solicited unless there are an insufficient number of local, qualified contractors interested in the project. If the estimated total cost of a public improvement is \$100,000 or less, the department must utilize the competitive quotation process identified by Iowa Code section 26.14, as may be amended, unless otherwise provided by this rule. The department must utilize this competitive quotation process for public improvement contracts below the amount designated by Iowa Code section 26.14(2). The department may opt to use the competitive bid process referenced in subrule 8.2(2) instead of the competitive quotation process.~~

~~8.2(5) Failure to receive a qualified bid or quotation. In the event that no qualified sealed bids or quotations are received, the department may negotiate a contract with a qualified contractor.~~

~~8.2(6) 8.2(4) Exceptions to the requirement for bids or quotations. The director may authorize the negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids under the following circumstances: only as the law allows.~~

~~a. — If the contemplated project involves the provision of utility services or the construction of a utility system and it would not be practicable to allow someone other than the utility company to perform the work.~~

~~b. — Where competition is precluded because of patent rights, secret processes, or control of basic raw materials.~~

~~c. — Where the project involves work of such a specialized nature that only one firm or person can reasonably be expected to accomplish it.~~

~~d. — Where the service or product is provided by a nonprofit private corporation, a governmental body or an educational institution.~~

~~e. — When emergency repair of a public improvement is necessary and delay for advertising or solicitation of quotations might cause serious loss or injury to the state.~~

ITEM 2. Amend subrule 8.4(1) as follows:

~~8.4(1) Contract approval. All contracts for public improvement or professional services in excess of \$25,000 shall be approved by the director and the appropriate commission if required by statute. All contracts for public improvements in excess of \$100,000 shall be approved by the director and the appropriate commission. Contracts Professional services contracts less than \$25,000 shall be approved by the director and the appropriate commission only if required by statute or rule of the commission.~~

ARC 7530B**PUBLIC HEALTH DEPARTMENT[641]****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 135.37, the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 22, "Practice of Tattooing," Iowa Administrative Code, and adopt new Chapter 22 with the same title.

The proposed rules describe the requirements for tattoo artists and establishments in Iowa. The rules also include the procedures and fees for the practice of tattooing.

The following is a summary of the major changes from the existing rules:

Definitions for "inspection agency," "residential dwelling," "tattoo mobile unit," "temporary establishment permit," and "temporary event" were added.

The definition for "tattoo artist" was revised.

Subrule 22.3(6) was revised to no longer permit tattoo facilities to operate in a residential dwelling.

In subrule 22.4(2), the phrase "or directly adjacent to," in reference to a sink for handwashing, was omitted.

In subrule 22.4(4), the phrase "including the immediate area where the tattoo procedure is to be performed" was omitted and "150 square feet" was changed to "300 square feet."

In subrule 22.4(5), "have" was changed to "be finished with an."

In subrule 22.4(9), more detailed language was added concerning prohibitions.

In subrule 22.4(10), "guide dogs" was changed to "service dogs," and language was added to allow aquariums in the waiting room and nonprocedural areas of the tattoo facility.

In subrule 22.5(3), "and needles" was deleted.

In subrule 22.5(6), a three-year requirement for maintenance of records regarding sterilizer monitoring was added, and language regarding disposable equipment and instruments was added.

In subrule 22.5(7), more detailed language for sterilizer requirements was added.

In subrule 22.5(10), language regarding use of clippers for removal of unwanted hair was deleted, and language contained in former subrule 22.5(11) was incorporated into subrule 22.5(10).

New subrule 22.6(1) was added to require facilities to establish a written standard operating procedure for tattooing. Renumbering of subsequent subrules was necessary.

In subrule 22.6(4) (formerly subrule 22.6(3)), the phrase "it is recommended that" was deleted.

In subrule 22.6(6) (formerly subrule 22.6(5)), the phrases "an antiseptic such as" and "10 percent iodophor solution" were deleted, and the word "solution" was added.

In rule 641—22.7(135), the catchwords "Application for permit—fees" were changed to "Establishment permit requirements." This rule was reorganized to reflect requirements for tattoo establishments.

In subrule 22.7(4) (formerly 22.7(5)), the application fee of \$25 was changed to \$150 to be more in line with fees in surrounding states.

In subrule 22.7(5) (formerly subrule 22.7(7)), the phrase "tattoo artist permits" was deleted.

New subrules 22.7(6) and 22.7(7) add language to reflect requirements for change of ownership of a facility and change in location of a facility.

In rule 641—22.8(135), language for variances was deleted and the rule was reorganized to reflect requirements only for tattoo artists. Fees for artist permits were changed from \$40 to \$100. Educational requirements were added for tattoo artists. A requirement that tattoo artists be at least 18 years of age was also added.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Rule 641—22.9(135), formerly titled “Adverse actions and the appeal process,” is now titled “Permit issuance and renewal.” This rule outlines requirements and deadlines for tattoo permit applications. A fee of \$25 per each month delinquent was added for delinquent renewal applications. A requirement that the Department screen applicants for criminal convictions was also added.

New rule 641—22.10(135) outlines the inspection requirements for tattoo establishments. The inspection fee of \$200 was changed to \$250, and language was added to allow the local inspection agency to charge tattoo facilities a late fee of \$30 and additional fees when a special inspection is determined necessary. A requirement for facilities to establish material safety data sheets (MSDS) was also added.

New rule 641—22.11(135) requires tattoo inspectors to complete a bloodborne pathogen certification course from the American Red Cross.

New rule 641—22.12(135) requires tattoo facilities to keep and maintain specific records of clients.

New rule 641—22.13(135) adds temporary establishment permits. This rule outlines specifications for a facility to obtain a temporary establishment permit for a temporary event. The rule also includes an application fee of \$50 and an inspection fee of \$50 for each booth to be set up at a temporary event.

New rule 641—22.14(135) adds mobile unit permits and outlines specifications for mobile units.

New rule 641—22.15(135) (formerly rule 641—22.9(135)) now includes criminal penalties as well as civil penalties.

Any interested person may make written suggestions or comments on the proposed rules on or before February 18, 2009. Written materials should be directed to Talisa Miller, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail tmiller@idph.state.ia.us.

Also, there will be a public hearing on February 18, 2009, from 2 to 4 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

This hearing will originate from the Iowa Communications Network (ICN) Room on the 6th floor of the Lucas State Office Building and will be accessible over the ICN from the following locations:

Trospar-Hoyt County Services Bldg. Fourth Floor 822 Douglas Street Sioux City	Davenport Public Library 321 Main Davenport
Loess Hills AEA 13 24997 Hwy 92 Council Bluffs	Burlington National Guard Armory 2500 Summer Street Burlington
Hawkeye Community College 1 Tama Hall, Room 110 1501 East Orange Road Waterloo	Keystone AEA 1, Room 2 2310 Chaney Road Dubuque
Indian Hills Community College 5 Videoconferencing & Training Center Building 14 651 Indian Hills Drive Ottumwa	Orchard Place 925 Porter Avenue Des Moines
Iowa Lakes Community College Room 118 1900 North Grand Avenue Spencer	Newman Catholic High School 2445 19th Street SW Mason City

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Prairie Lakes AEA 8, Room 204
330 Avenue M
Fort Dodge

Green Valley AEA, Turner Room
1405 North Lincoln
Creston

Kirkendall Public Library
1210 NW Prairie Ridge Drive
Ankeny

Decorah High School
100 East Claiborne Drive
Decorah

Jefferson High School
1243 20th Street SW
Cedar Rapids

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 Department of Public Health and advise of specific needs.

These rules are intended to implement Iowa Code section 135.37.

The following amendment is proposed.

Rescind 641—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
PRACTICE OF TATTOOING

641—22.1(135) Purpose. The purpose of this chapter is to stipulate the permit and operational requirements for tattoo artists and tattoo establishments.

641—22.2(135) Definitions. For the purpose of these rules, the following definitions shall apply:

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Inspection agency” means the department or a city, county or district board of health that has executed an agreement with the department pursuant to the authority of a city, county or district board of health to inspect tattoo establishments and enforce these rules. The authority of a city, county or district board of health is limited to the geographic area defined in the agreement executed with the department. Within the defined geographic area, the city, county or district board of health is the “local inspection agency.”

“Minor” means a person who is under the age of 18 years.

“Permanent color technology” means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic purposes.

“Residential dwelling” is a place or structure intended to be occupied as a residence.

“Tattoo artist” means any person, including a permanent color technologist, engaged in the practice of tattooing within the state of Iowa.

“Tattoo establishment” means the building or mobile unit where tattooing is practiced.

“Tattooing” means to puncture the skin of a person with a needle and insert indelible permanent colors through the puncture to leave permanent marks or designs.

“Tattoo mobile unit” means a mobile establishment or unit which is self-propelled or otherwise movable from place to place, is self-sufficient for utilities such as gas, water, electricity and liquid waste disposal, and operates at a fixed location where a permitted artist performs tattooing procedures for no more than 14 days in conjunction with a single event.

“Temporary establishment permit” means a permit issued by the department to perform tattoo procedures at a temporary event.

“Temporary event” means any place or premises operating at a fixed location where a tattoo artist performs tattooing procedures for no more than seven days consecutively in conjunction with a single event or celebration.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—22.3(135) General provisions.

22.3(1) Tattoo artists and tattoo establishments that fail to meet the requirements of Iowa Code section 135.37 or these rules shall be guilty of a serious misdemeanor.

22.3(2) No person shall tattoo a minor. Violators shall be guilty of a serious misdemeanor.

22.3(3) No tattoo artist shall engage in the practice of tattooing without first obtaining a tattoo artist permit from the department.

22.3(4) Tattoo artists and tattoo establishments that are in compliance with Iowa Code section 135.37 and these rules are not relieved from the requirements of any other applicable state laws or local ordinances.

22.3(5) Tattooing shall be practiced only in facilities that have received a tattoo establishment permit from the department.

22.3(6) Tattooing shall not be practiced in a residential dwelling, inclusive of an attached garage, pursuant to local zoning codes. (NOTE: Establishments that are currently home-based will have one year from June 1, 2009, to establish a commercial-based tattoo establishment.)

22.3(7) Tattoo establishments shall be inspected annually.

641—22.4(135) Sanitation and infection control.

22.4(1) Tables, chairs, and other general-use equipment shall be constructed of impervious or smooth and easily cleanable material.

22.4(2) A sink for hand washing supplied with potable hot and cold running water shall be available in the tattooing area. Hand-washing facilities shall be supplied with liquid soap and single-use paper towels.

22.4(3) Toilet facilities must be available for employee use and patron use.

22.4(4) The tattoo establishment shall have an area of not less than 300 square feet and shall be adequately lighted and ventilated.

22.4(5) Floors in the immediate area where the tattoo procedure is to be performed shall be finished with an impervious, smooth, washable surface.

22.4(6) The entire premises and all facilities used in connection therewith shall be maintained in a clean, sanitary, vermin-free condition and in good repair.

22.4(7) All refuse shall be stored in rigid containers with plastic liners which are emptied at least once each business day.

22.4(8) Closed cabinets shall be used for the exclusive storage of instruments, dyes, pigments, stencils, tattoo machines, and other equipment.

22.4(9) The following prohibitions apply to tattoo establishments:

a. Smoking shall not be allowed pursuant to 641—Chapter 153 and 2008 Iowa Acts, House File 2212.

b. Consumption of food or drink shall not be allowed in any area where the actual tattoo procedure is being performed.

c. The owner or tattoo artist must not use, consume or serve intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

d. The owner or tattoo artist must not allow any other person to use, consume, or serve intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

e. The owner or tattoo artist shall not in any manner possess or distribute or allow any other person to possess or distribute intoxicating beverages or controlled substances on the establishment's premises during the hours the establishment is open to the public or while any procedure is being performed.

22.4(10) No animals, except service dogs for visually or hearing-impaired persons, shall be permitted in a tattoo establishment. Aquariums shall be allowed in waiting rooms and nonprocedural areas.

641—22.5(135) Equipment. All equipment shall be maintained in a clean and sanitary condition.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

22.5(1) Cups to hold ink or dye shall be for single-patron use.

22.5(2) Any dye or ink in which needles were dipped shall not be used on another person.

22.5(3) All tubes and needle bars used for the tattoo procedure which are not sterile, for single-patron use, and disposable shall be physically cleaned with a detergent according to manufacturers' recommendations and then steam-sterilized or dry-heat sterilized before use on another patron.

22.5(4) Steam sterilization shall be at 250 degrees Fahrenheit (121 degrees Celsius) for 15 minutes at a minimum pressure of 15 pounds per square inch.

22.5(5) Dry-heat sterilization shall be at 350 degrees Fahrenheit (170 degrees Celsius) for one hour.

22.5(6) Sterilizers shall be monitored monthly for spores of *Bacillus subtilis*, and records of results shall be maintained for three years. If all equipment and instruments used are disposable, a sterilizer is not required.

22.5(7) Each tattoo establishment shall maintain written procedures to follow in the event of positive spore tests.

a. In the event of a positive spore test, materials processed in that sterilizer, dating from the sterilization cycle having the positive biological indicator to the next cycle showing satisfactory biologic indicator challenge results, must be considered nonsterile and must be reprocessed before being used.

b. A sterilizer that has received a positive spore test must be immediately removed from service.

c. Prior to putting a sterilizer that has received a positive spore test back into service, the owner must ensure that there is evidence of one negative spore test.

d. The owner must notify the inspection agency of a positive spore test within 24 hours of the test result.

22.5(8) Each tattoo establishment shall be equipped with a container designated for disposal of used needles and other sharps. A written plan for disposal shall be maintained in the establishment and be made available upon request by the inspection agency.

22.5(9) Any bottles of solution shall be labeled as to contents and used according to manufacturers' directions.

22.5(10) Razors for removal of unwanted hair shall be for single-patron use and shall be disposable.

22.5(11) Topical ointments shall be for single-patron use.

641—22.6(135) Procedures.

22.6(1) Each tattoo establishment shall establish a written standard operating procedure (SOP), which shall include the process for setup and tear down of tattoo procedures. The SOP shall focus on procedures of hygiene and cross-contamination control.

22.6(2) For privacy purposes and at the patron's request, there shall be in place or readily available a panel or other barrier of sufficient height and width to effectively separate the patron from any unwanted observers or waiting patrons. Panels or other barriers shall be nontransparent and may be fixed or movable, rigid or flexible.

22.6(3) Tattoo artists shall scrub their hands thoroughly before beginning the tattoo procedure. Tattoo artists shall dry their hands with individual single-use towels.

22.6(4) Tattoo artists shall wear clean garments when performing tattoo procedures. Tattoo artists shall wear gloves during the tattoo procedure. Gloves shall be changed after each tattoo. Tattoo artists shall wash their hands before and after each tattoo procedure.

22.6(5) The skin area to be tattooed shall first be cleansed with soap and water. Single-use towels or sponges (gauze) shall be used during the cleansing procedure.

22.6(6) Before placing the tattoo design on the patron's skin, the tattoo artist shall prepare the skin with 70 percent ethyl or isopropyl alcohol solution or an equally effective antiseptic or antimicrobial.

22.6(7) Tattooing shall not be performed on any area where there is evidence of skin infection.

22.6(8) After the tattooing is completed, an adequate dressing shall be applied to the tattoo area.

22.6(9) Persons tattooed shall be provided with printed instructions regarding tattoo care during the healing process and shall be instructed to consult a physician if signs and symptoms of an infection develop.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—22.7(135) Establishment permit requirements.

22.7(1) No tattoo establishment shall be operated in the state without having a permit to operate issued by the department.

22.7(2) Each person acquiring or establishing a tattoo establishment shall apply for a permit prior to beginning operation.

22.7(3) A permit to operate shall be issued to a new establishment when the department or its representative has successfully completed an on-site inspection. Permits shall be posted in a conspicuous place in the tattoo establishment.

22.7(4) An annual, nonrefundable application fee of \$150, payable to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo establishment permit application.

22.7(5) Tattoo establishment permits are nontransferable.

22.7(6) Change in ownership. Within 30 days of a change in ownership of a tattoo establishment, the new owner shall submit an application and fee for a new permit.

22.7(7) Change in location. Within 30 days of a change of location of a tattoo establishment, the owner shall submit a new application and a nonrefundable fee of \$25 for a new permit.

641—22.8(135) Tattoo artist permit requirements.

22.8(1) An annual, nonrefundable application fee of \$100, payable to the Iowa Department of Public Health, shall be remitted with the initial or renewal tattoo artist permit application.

22.8(2) Persons shall be at least 18 years of age and must submit a photocopy of a birth certificate or other equivalent document to show proof of attaining the age of 18 years.

22.8(3) Persons must have a high school diploma or general educational development certificate (GED).

22.8(4) Upon initial application and permit renewal application, tattoo artists must complete and be current in the following American Red Cross certifications:

- a. Bloodborne pathogens; and
- b. Standard first aid.

22.8(5) Applicants must submit proof of successful completion of the certification programs listed in subrules 22.8(3) and 22.8(4). (NOTE: Artists that were permitted before [insert effective date of these rules] will not be required to obtain a high school diploma or GED.)

22.8(6) Tattoo artist permits are nontransferable.

22.8(7) Each permit issued will be in effect solely for the artist named thereon and shall remain with the artist upon change of employment.

641—22.9(135) Permit issuance and renewal.

22.9(1) Applications may be obtained from the department's Web site at <http://www.idph.state.ia.us/eh/tattoo.asp> or are available upon request from the Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

22.9(2) The department will act within 60 days upon receiving a completed application. If an applicant satisfies permit requirements, satisfies the requirements of this chapter, and complies with inspection requirements, the department will issue a permit.

22.9(3) If the applicant has been convicted of a felony or misdemeanor, the department shall review evidence including but not limited to the following:

- a. Official court record, which includes charges and disposition;
- b. Copies of arrest records;
- c. A letter from the applicant explaining the nature of the conviction;
- d. All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug- or alcohol-related offense and if treatment was obtained or required; and
- e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

22.9(4) All permits expire on December 31 of each year, regardless of date of issuance. Permits shall be renewed annually upon acceptance of a renewal application provided by the department and receipt of the renewal fee. Applicants who submit applications for renewal received after December 31 will be required to pay an additional \$25 for each month delinquent.

22.9(5) The department shall send a renewal notice by regular mail to each permit holder at the address on record at least 60 days prior to the expiration of the permit.

22.9(6) The permit holder is responsible for renewing the permit prior to its expiration. Failure of the permit holder to receive the notice does not relieve the permit holder of the responsibility for renewing the permit.

641—22.10(135) Inspection requirements.

22.10(1) The inspection agency shall bill the owner of a tattoo establishment \$250 upon completion of an inspection. Inspection fees are due upon receipt of a notice of payment due.

22.10(2) Tattoo establishments shall be inspected annually.

22.10(3) When the tattoo establishment is located within the jurisdiction of a local inspection agency, the local inspection agency may establish fees needed to defray the costs of inspection and enforcement under this chapter. Inspection fees billed by a local inspection agency shall be paid to the local inspection agency or its designee.

22.10(4) When an inspection agency determines that a special inspection is required, such as a follow-up inspection or an inspection generated by complaints, the inspection agency may charge a special inspection fee which shall be based on the actual cost of providing the inspection.

22.10(5) Unpaid inspection fees will be considered delinquent 30 days after the date of the bill. A late fee of \$30 will be assessed to the establishment owner after a 30-day notice. If inspection fees remain unpaid after 60 days, an order to cease and desist operations will be issued by the department.

22.10(6) Failure to permit an inspection is grounds for denial of an initial tattoo establishment permit or for issuance of an order requiring suspension of a tattoo establishment's existing operations.

22.10(7) If an imminent health hazard exists, the inspection agency or the department may, pursuant to Iowa Code section 17A.18A, order the establishment to cease operation immediately. Operation shall not be resumed until authorized by the inspection agency or the department.

22.10(8) Material safety data sheets (MSDS) for the chemicals used at the tattoo establishment shall be maintained at the establishment in a location known and readily accessible to the establishment staff and shall be made available upon request of the inspection agency.

22.10(9) An establishment inspected under this chapter shall post the most recent routine inspection report, along with any current complaint or reinspection reports, in a location at the establishment that is readily visible to the public.

641—22.11(135) Tattoo inspector qualifications. Each person designated as a tattoo inspector shall have successfully completed a bloodborne pathogen certification course from the American Red Cross. A copy of current certification shall be maintained by the local inspection agency.

641—22.12(135) Client records. A tattoo establishment shall keep a record of all persons who have had tattoo procedures performed.

22.12(1) Records shall include the client name, date of birth, photocopy of identification, date of the procedure, name of the tattoo artist who performed the procedure(s), and signature of client.

22.12(2) Records shall be retained in a confidential manner for a minimum of three years and shall be available to the department and the inspection agency upon request.

641—22.13(135) Temporary establishment permits.

22.13(1) A person who wishes to obtain a temporary establishment permit must submit a nonrefundable application fee of \$50, payable to the Iowa Department of Public Health, and submit floor plan(s) of the facility at least 30 days prior to the event. The request shall specify the following:

- a. The purpose for which the permit is requested;

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b. The period of time during which the permit is needed (not to exceed 7 calendar days per event, without reapplication);

c. The fulfillment of operator requirements as specified in 641—22.8(135); and

d. The location for which the temporary permit will be used.

22.13(2) The temporary event must be contained in a completely enclosed, nonmobile facility such as inside a permanent building.

22.13(3) The temporary establishment shall comply with the following:

a. Conveniently located hand-washing facilities with liquid soap, single-use towels and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes shall be provided. Tuberculocidal single-use hand wipes to augment the hand-washing requirements of this paragraph must be available in each booth.

b. A minimum of 80 square feet of floor space shall be provided for each booth.

c. There shall be at least 100 foot-candles of light at the level where the tattoo procedure is being performed.

d. Facilities to properly sterilize instruments and evidence of a spore test performed on sterilization equipment 30 days or less prior to the date of the event must be provided; or only single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed.

e. Tattoo artists must properly clean and sanitize the area used for tattoo procedures.

f. Floors of the facility shall be smooth and impervious or be covered with an impermeable barrier.

22.13(4) The facility where the temporary establishment permit is needed must be inspected by the designated inspection agency and issued a permit prior to the performance of any tattoo procedures. A \$50 inspection fee for each booth shall be made payable to the inspection agency.

22.13(5) Temporary establishment permits issued under the provisions of these rules may be suspended by the department for failure of the holder to comply with the requirements of these rules.

22.13(6) All establishment and artist permits and the disclosure notice must be readily seen by clients.

641—22.14(135) Mobile unit permits.

22.14(1) Mobile unit permits shall comply with all of the requirements of these rules. Tattoo mobile units and tattoo artists working from a mobile unit shall also comply with all of the following requirements.

22.14(2) Mobile units are permitted for use only at special events, lasting 14 calendar days or less. Permits must be obtained at least 14 days prior to the event, and no tattoo procedures shall be performed before a permit is issued. Permit holders are responsible for compliance with all other local regulations including but not limited to zoning and business license requirements.

22.14(3) The mobile unit shall be maintained in a clean and sanitary condition at all times. Doors shall be self-closing and tight-fitting. Openable windows shall have tight-fitting screens.

22.14(4) Mobile units must have approved sterilization equipment available, in accordance with all requirements of 641—22.5(135).

22.14(5) Mobile units shall be used only for the purpose of performing tattoo procedures. No habitation or food preparation is permitted inside the vehicle unless the tattoo work station is separated by walls, floor to ceiling, from culinary or domicile areas.

22.14(6) Mobile units shall be equipped with an equipment-washing sink and a separate hand sink for the exclusive use of the tattoo artist for hand washing and preparing the client for the tattoo procedures.

a. The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers.

b. An adequate supply of potable water shall be maintained for the mobile unit at all times during operation.

c. The source of the water and storage of the tank(s) shall also be identified.

d. Tuberculocidal single-use hand wipes to augment the hand-washing requirements of this subrule must be available.

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22.14(7) All liquid wastes shall be stored in an adequate storage tank with a capacity at least 50 percent greater than the capacity of the on-board potable water supply. Liquid wastes shall be disposed of at a publicly owned treatment works site approved by the department of natural resources (IDNR).

22.14(8) Restroom facilities must be available within the mobile unit.

- a.* A hand sink must be available inside the restroom cubicle.
- b.* The hand sink shall be supplied with hot and cold running water under pressure to a mixing-type faucet, as well as liquid soap and single-use towels in dispensers.
- c.* Restroom doors must be self-closing, and adequate ventilation must be available.

22.14(9) All tattoo artists working in a mobile unit must have a permit and must comply with the permit requirements of these rules.

22.14(10) No animals, except service animals of clients, shall be allowed in the mobile unit at any time.

22.14(11) All applicable permits shall be posted in a location where the public can view such permits.

641—22.15(135) Adverse actions and the appeal process.

22.15(1) The department may deny an application for a permit, may order that a tattoo establishment not be operated, or may refer the case to the office of the county attorney or attorney general for possible criminal penalties when the department finds that an establishment is not operated in accordance with these rules or that a permitted person or a person who is not permitted has committed any of the following acts:

- a.* Any material misstatement in the application or in any supplementary statement.
- b.* Any material misstatement in the renewal application or in any supplementary statement received upon renewal.
- c.* Failure to pay the required renewal fee or late fee.
- d.* Failure to submit a complete, legible, and accurate renewal application form before the end of the renewal period.
- e.* Any condition revealed by an inspection of the applicant, the application, or supplementary statement received upon renewal.
- f.* Falsification of approval records, qualifications, or other information or documentation related to permitting approval.
- g.* Any violation or failure to observe any of the applicable terms or provisions of permitting, public health law, or any other applicable rule, ordinance, regulation, code or order.
- h.* Failure to correct any violation of department rules that was found during an inspection or any violation found on an initial inspection which, as determined by the department, jeopardizes the safety of the public.
- i.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:
 - (1) Verbally or physically abusing a patron.
 - (2) Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patron.
 - (3) Betrayal of a professional confidence.
 - (4) Engaging in a professional conflict of interest.
 - (5) Falsification of records.
- j.* Engaging in any conduct that subverts or attempts to subvert a department investigation.
- k.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.
- l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- m.* Knowingly aiding, assisting or advising a person to unlawfully practice tattooing.

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- n.* Representing oneself as a tattoo artist when one's permit has been denied, suspended or revoked, or when one's permit is lapsed or has been placed on inactive status.
- o.* Permitting the use of a permit by a nonpermitted person for any purpose.
- p.* Mental or physical inability reasonably related to and adversely affecting the tattoo artist's ability to practice in a safe and competent manner.
- q.* Being adjudged mentally incompetent by a court of competent jurisdiction.
- r.* Sexually harassing a patron. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- s.* Habitual intoxication or addiction to drugs.
 - (1) The inability of a tattoo artist to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.
 - (2) The excessive use of drugs which may impair a tattoo artist's ability to practice with reasonable skill or safety.
 - (3) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
- t.* Fraud in representation as to skill, ability, or certification.
- u.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the provision of tattooing, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- v.* Having certification or permit to practice tattooing suspended or revoked, or having other disciplinary action taken by a licensing, certifying, or permitting authority of this state or another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.
- w.* Acceptance of any fee by fraud or misrepresentation.
- x.* Failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
- y.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

22.15(2) Notice of issuance of a denial or order to cease operations shall be served by certified mail, return receipt requested, or by personal service.

22.15(3) Upon receipt of the order, the aggrieved party may request an appeal. The appeal shall be made in writing to the department within 20 days from the date of the aggrieved party's receipt of the department's order. The appeal shall be addressed to Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the order upon satisfaction that the reason for the order has been or will be removed. After the hearing, or upon default of the aggrieved party, the administrative law judge shall affirm, modify or set aside the order. If no request for appeal is received within the 20-day time period, the department's order shall become the department's final agency action.

22.15(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

22.15(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

22.15(6) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and

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order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 22.15(7).

22.15(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

22.15(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

22.15(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

22.15(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of the action pursuant to Iowa Code chapter 17A.

22.15(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The copy shall be directed to Iowa Department of Public Health, Division of Environmental Health, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

22.15(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

These rules are intended to implement Iowa Code section 135.37.

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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 135.11, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 37, "Breast and Cervical Cancer Early Detection Program," Iowa Administrative Code.

Recognizing the value of screening and early detection, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990. The Iowa Breast and Cervical Cancer Early Detection Program (IA BCCEDP) is funded through a cooperative agreement with the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) under the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) established under Title XV of the Public Health Service Act. Iowa first received CDC funding in 1993 and began providing early detection services in 1995. The purpose of the IA BCCEDP is to provide, within available financial resources, breast

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and cervical cancer screening and diagnostic services to underserved women, to provide public and professional development, and to support community partnerships to enhance statewide cancer control activities.

These proposed rules cover agencies designated by contracting county boards of health to provide community-based IA BCCEDP services and to receive funds from the Department for that purpose. The designated agencies facilitate the essential screening and diagnostic services consistent with CDC and IA BCCEDP guidelines.

Any interested person may make written suggestions or comments on these proposed rules on or before February 17, 2009. Such written materials should be directed to the Bureau of Chronic Disease Prevention and Management, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; fax (515)281-6475.

These rules are intended to implement Iowa Code chapter 135.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 37:

CHAPTER 37
BREAST AND CERVICAL CANCER
EARLY DETECTION PROGRAM

641—37.1(135) Definitions. For purposes of this chapter, the following definitions apply:

“Abnormal screen” means a suspicion of breast or cervical cancer.

1. A suspicion of breast cancer includes clinical breast exam findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of breast imaging reporting and data systems (BI-RADS) category 4 (suspicious abnormality suggesting need for biopsy) or category 5 (highly suggestive of malignancy) (ICD-9 793.8), breast biopsy result of ductal cancer in situ, lobular cancer in situ (ICD-9 233.0), or breast or lymph node (or other) biopsy result of breast cancer.

2. Suspicion of cervical cancer is a Pap test result of atypical squamous cells cannot exclude high-grade squamous intraepithelial lesions (ASC-H) (ICD-9 795.02), atypical glandular cells (AGC) (ICD-9 795.00), low-grade squamous intraepithelial lesions (LSIL) (ICD-9 622.11 or 795.03), or high-grade squamous intraepithelial lesions (HSIL) (ICD-9 622.12 or 795.04), leukoplakia of the cervix (ICD-9 622.2), or cervical biopsy result of cervical intraepithelial neoplasia II or III (ICD-9 622.10, 622.11, 622.12, 795.03, or 795.04), or cancer in situ (ICD-9 233.1).

“Advanced registered nurse practitioner” means an individual licensed to practice under 655 Iowa Administrative Code Chapter 7.

“American College of Radiology” or *“ACR”* means one of the Food and Drug Administration-recognized accreditation bodies for minimum quality standards for personnel, equipment, and record keeping in facilities that provide mammography.

“Benign” means a noncancerous condition that does not spread to other parts of the body.

“Bethesda system” or *“TBS”* means a system that was developed to provide uniform diagnostic terminology for reporting cervical or vaginal cytologic findings to facilitate communication between the laboratory and the clinician.

“Biopsy” means the removal of a sample or an entire abnormality for microscopic examination to diagnose a problem. Examples of a sampling would be a core biopsy or incisional biopsy; an example of entire removal would be an excisional biopsy.

“Breast image reporting and data systems” or *“BI-RADS”* means a standardized reporting system for mammography reports.

“Breast ultrasound” means the use of high-energy sound waves that are bounced off internal tissues and make echoes to produce a pictorial representation of the internal structure of the breast.

“Cancer” means a malignant tumor of potentially unlimited growth of new cells that expand locally by invasion and systemically by metastasis.

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“*Carcinoma in situ*” means cell changes in which malignant cells are localized and may press against adjoining tissue but have not penetrated or spread beyond their site of origin.

“*Case management*” means the IA BCCEDP component that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all women enrolled in the program.

“*Clinical breast examination*” or “*CBE*” means complete examination of a woman’s breast and axilla with palpation, including examination of the breast in both the upright and supine positions by a health care provider.

“*Clinical Laboratory Improvement Act of 1988*” or “*CLIA*” means the law which established minimum quality standards for personnel and quality assurance methods that monitor patient test management and assess quality control, proficiency testing, and personnel handling of laboratory and pathology specimens.

“*Colposcopy*” means a procedure that allows close examination of the surface of the cervix with a high-powered microscope.

“*Cooperative agreement*” means a signed contract between the department and another party, for example, a health care provider. This contract allows the department to pay the health care provider for providing services to IA BCCEDP participants.

“*Creditable coverage*” means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage as described by the Health Insurance Portability and Accountability Act of 1996 includes, but is not limited to, group health plans or health insurance coverage consisting of medical care under any hospital or medical service policy, health maintenance organization, Medicare Part A or B, Medicaid, armed forces insurance, or state health risk pool. A woman who has creditable coverage shall not be eligible for the Medicaid coverage option of breast and cervical cancer treatment.

“*Creditable coverage circumstances*” means those instances in which a woman has creditable coverage but is not actually covered for treatment of breast or cervical cancer.

1. When there is a preexisting-condition exclusion or when the annual or lifetime limit on benefits has been exhausted, a woman is not considered to have creditable coverage for this treatment.

2. If the woman has limited coverage, such as a high deductible, limited drug coverage, or limits on the number of outpatient visits, the woman is still considered to have creditable coverage and is not eligible for coverage under the breast and cervical cancer treatment (BCCT) option of Medicaid.

3. If the woman has a policy with a limited scope of coverage, such as only dental, vision, or long-term care, or has a policy that covers only a specific disease or illness, she is not considered to have creditable coverage, unless the policy provides coverage for breast and cervical cancer treatment.

4. For the purposes of this program, eligibility for Indian Health Services or tribal health care is not considered creditable coverage (according to United States Senate File 1741 – Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001).

“*Cytology*” means the scientific study of cells.

“*Cytopathology*” means the scientific study of cells in disease.

“*Cytotechnologist*” means a medical technician trained in the identification of cells and cellular abnormalities.

“*Department*” means the Iowa department of public health.

“*Diagnostic mammography*” means a radiological examination performed for appropriate clinical indications such as breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes), or special cases, such as a history of breast cancer with breast conservation or augmented breasts.

“*Follow-up*” means the IA BCCEDP component that involves a system for seeking information about or reviewing an abnormal condition, rescreening, or recall for annual visits.

“*Food and Drug Administration*” or “*FDA*” means the federal governmental body which certifies that a mammography facility meets minimum quality standards for personnel, equipment, and record keeping.

“*Gynecologist*” means a physician who specializes in diseases of the reproductive organs in women.

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“Health care provider” means any physician, advanced registered nurse practitioner, or physician assistant who is licensed by the state of Iowa and provides care to IA BCCEDP-enrolled women.

“Infrastructure” means the basic framework of sufficient staff and adequate support systems to plan, implement, and evaluate the components of the IA BCCEDP.

“In need of treatment” means that a medical or surgical intervention is required because of an abnormal finding of breast or cervical cancer or precancer that was determined as a result of a screening or diagnostic procedure for breast or cervical cancer/precancer under the NBCCEDP.

“International Classification of Disease, 9th edition” or *“ICD-9”* means a standardized classification of diseases, injuries, and reasons of death, by cause and anatomic localization and systematically put into a number of up to six digits, which allows clinicians, statisticians, politicians, health planners and others to speak a common language, both in the United States and internationally.

“Iowa breast and cervical cancer early detection program” or *“IA BCCEDP”* means a comprehensive breast and cervical cancer screening program established and funded under Title XV of the federal Public Health Service Act and administered by the Iowa department of public health, with the delegated responsibility of implementation and evaluation from the Centers for Disease Control and Prevention, Division of Cancer Prevention and Control.

“Medicaid” means the program of medical aid designed for those unable to afford regular medical service, financed by federal and state payment sources, and authorized by Title XIX of the Social Security Act.

“Medical advisory task force” or *“MATF”* means an advisory board utilized by the IA BCCEDP to offer knowledge and experience as related to the fields of expertise of the members of the task force. Duties of the MATF may include, but are not limited to, the following:

1. Review and make recommendations for clinical service expansion.
2. Review of program-developed clinical protocols.
3. Provision of recommendations related to other clinical and client-related issues.
4. Input related to quality assurance issues.
5. Review of program screening and diagnostic data.

“Medicare” means the program of federal payment source for health benefits, especially for the aged, that is authorized by Title XVIII of the Social Security Act.

“Minimum data elements” or *“MDEs”* means a set of standardized data elements used to collect demographic and clinical information on women whose screening or diagnosis was paid for with NBCCEDP funds. MDEs were developed by the Centers for Disease Control and Prevention, Division of Cancer Prevention and Control, to ensure that consistent and complete information is collected on women whose screening or diagnosis was paid for with NBCCEDP funding.

“National breast and cervical cancer early detection program” or *“NBCCEDP”* means a program established with the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101-354). The law authorizes the Centers for Disease Control and Prevention to establish a program of grants to states, tribes, and territories for the purpose of increasing the early detection of breast and cervical cancer, particularly among low-income, uninsured, and underserved women.

“Oncologist” means a physician who is a specialist who treats or studies the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

“Outreach” means the IA BCCEDP component that involves recruiting targeted populations or persons who never or rarely utilize preventive health services.

“Pap test” means a screening test that collects cells from the cervix for examination under a microscope. The Pap test can detect abnormal cells or precancerous cells before cancer develops.

“Pathologist” means a physician who is a specialist in identifying diseases by studying cells and tissues under a microscope.

“Physician” means an individual licensed to practice under Iowa Code chapter 148.

“Physician assistant” means an individual licensed to practice under Iowa Code chapter 148C.

“Precancerous” means a condition that may become or is likely to become cancer.

“Program and fiscal management” means the IA BCCEDP component that conducts planning, organizing, directing, coordinating, managing, budgeting, and evaluating program activities.

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“*Radiologist*” means a physician who specializes in creating and interpreting pictures of areas inside the body. The pictures are produced with X-rays, sound waves, or other types of energy.

“*Rarely been screened*” means, as defined for the NBCCEDP, that a woman has not had cervical cancer screening within the last five years.

“*Recruitment*” means the IA BCCEDP component that involves enrolling targeted populations or persons who never or rarely utilize preventive health services.

“*Referral*” means the IA BCCEDP component that involves directing women with abnormal screening results to appropriate resources for follow-up action.

“*Screening mammography*” means the use of X-ray of the breasts of asymptomatic women in an attempt to detect abnormal lesions of the breast when they are small, nonpalpable, and confined to the breast.

“*Service delivery*” means providing, either directly or through contractual arrangements, comprehensive breast and cervical cancer screening, diagnosis, and treatment services through tracking of screening intervals, timeliness of diagnosis, and timeliness of treatment of clients.

“*Surgeon*” means a physician who treats disease, injury, or deformity by physical operation or manipulation.

“*Surveillance*” means the IA BCCEDP component that involves the systematic collection, analysis, and interpretation of health data.

“*Susan G. Komen for the Cure*” means an international organization with a network of volunteers working through local affiliates and Komen Race for the Cure® events to eradicate breast cancer as a life-threatening disease by advancing research, education, screening, and treatment.

641—37.2(135) Components of the IA BCCEDP. The IA BCCEDP shall include the following key components:

37.2(1) Program and fiscal management shall be conducted by ensuring strategic planning, implementation, coordination, integration, and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight mechanisms to aid in these processes. Program management shall ensure that infrastructure adequately supports service delivery.

37.2(2) Service delivery of specific and appropriate clinical procedures to detect breast and cervical abnormalities for women enrolled in the IA BCCEDP shall be directly provided or provided through contractual arrangements.

a. IA BCCEDP shall cover services including, but not limited to, the following when those services are provided by a participating health care provider who has a signed cooperative agreement with IA BCCEDP. Payment shall be based on Medicare Part B rates (Title XIX).

(1) Physical examinations, which must include one or more of the following screening services: CBE, pelvic exam, or Pap test;

(2) Mammography (screening and diagnostic);

(3) Breast ultrasound, when used as an adjunct to mammography;

(4) Fine-needle aspiration of breast cysts;

(5) Breast biopsies, excisional and nonexcisional (physician charges only; hospital charges are not covered);

(6) Colposcopy of the cervix, with or without biopsy;

(7) Surgical consultations for diagnosis of breast and cervical cancer;

(8) Pathology charges for breast and cervical biopsies;

(9) Anesthesia for breast biopsies (health care provider charges only; hospital charges and supplies are not covered).

b. Services not covered by IA BCCEDP include, but are not limited to, the following:

(1) Services not related to breast or cervical cancer screening or diagnosis;

(2) Treatment procedures and services;

(3) Services provided by nonparticipating providers;

(4) Hospital charges for breast biopsies and anesthesia;

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(5) Inpatient services.

c. A health care provider who has a signed cooperative agreement with the IA BCCEDP shall be subject to the following:

(1) The health care provider agrees that reimbursement of procedures and services provided shall not exceed the amount that would be paid under Medicare Part B rates of Title XVIII of the Social Security Act;

(2) A mammography health care provider shall ensure that the provider's facility has current FDA certification and ACR or state of Iowa accreditation and is a Medicare and Medicaid-approved facility utilizing BI-RADS and following ACR guidelines for mammography report content;

(3) A board-certified radiologist must be immediately available to determine selection of views and readings when a diagnostic mammogram is performed;

(4) The health care provider shall submit cytology and pathology specimens obtained to a CLIA-certified laboratory for processing. The laboratory shall provide cytological reading and analysis of cervical and vaginal Pap tests by certified/registered cytotechnologists. Cytology (Pap) tests shall be reported using current TBS. The laboratory shall provide board-certified pathologists or experienced certified cytotechnologists to rescreen all analyses and readings of cervical and breast biopsies;

(5) The health care provider shall practice according to the current standards of medical care for breast and cervical cancer early detection, diagnosis, and treatment;

(6) Service delivery may be provided in a variety of settings. Service delivery must, however, include:

1. Providing screening services for specific geographic areas;
2. Providing a point of contact for scheduling appointments;
3. Providing age and income eligibility screening;
4. Providing comprehensive breast and cervical cancer screening to eligible women;
5. Providing referral and follow-up for women with abnormal screening results;
6. Providing the required reporting system for screening and follow-up activities;
7. Providing population-based education, outreach, and recruitment activities;

(7) The health care provider shall ensure compliance with this chapter and other terms and conditions included in the signed cooperative agreement.

37.2(3) Referral, tracking, and follow-up utilizing a data system to monitor each enrolled woman's receipt of screening/rescreening, diagnostic, and treatment procedures shall be conducted by IA BCCEDP and contracted county board of health designated agency staff.

a. The enrolled woman shall be notified by contracted county board of health designated agency staff of the results of the service, whether the results are normal, benign, or abnormal.

b. The data system shall provide tracking of appropriate and timely clinical services following an abnormal test result or diagnosis of cancer.

c. If the enrolled woman has an abnormal Pap test or breast screening, the health care provider shall provide to the woman a comprehensive referral directing her to appropriate additional diagnostic or treatment services.

d. The comprehensive referral shall be written. Follow-up shall be conducted to determine whether services were timely, completed, or met.

37.2(4) IA BCCEDP and contracted county board of health designated agency staff shall provide case management and assist clients diagnosed with cancer through the program to obtain needed treatment services.

37.2(5) IA BCCEDP staff shall use quality assurance and improvement techniques including use of established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the program and its components.

a. Quality assurance tools shall include utilizing FDA and ACR minimum standards for mammography facilities and CLIA minimum standards for cytopathology and pathology laboratories.

b. Quality assurance measures shall contribute to the identification of corrective actions to be taken to remedy problems found as a result of investigating quality of care.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

37.2(6) Professional development shall be provided by IA BCCEDP and contracted county board of health designated agency staff through a variety of channels and activities that enable professionals to perform their jobs competently, identify needs and resources, and contribute to ensuring that health care delivery systems provide positive clinical outcomes.

37.2(7) IA BCCEDP and contracted county board of health designated agency staff shall provide population-based education and recruitment that involve the systematic design and delivery of clear and consistent messages about breast and cervical cancer and the benefits of early detection, using a variety of methods and strategies to reach priority populations. Outreach activities should focus on women who have never or rarely been screened and should work toward the removal of barriers to care (i.e., the need for child care, respite care, interpreter services and transportation) through collaborative activities with other community organizations.

37.2(8) IA BCCEDP may develop coalitions and partnerships to bring together groups and individuals that establish a reciprocal agreement for sharing resources and responsibilities to achieve the common goal of reducing breast and cervical cancer mortality.

37.2(9) IA BCCEDP shall conduct surveillance utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of breast and cervical cancer screening behaviors and incidence, prevalence, survival, and mortality rates. Epidemiological studies shall be conducted utilizing minimum data elements and other data sources to establish trends of disease, diagnosis, treatment, and research needs. Program planning, implementation, and evaluation shall be based on the epidemiological evidence.

37.2(10) Evaluation of the program shall be conducted through systematic documentation of the operations and outcomes of the program, compared to a set of explicit or implicit standards or objectives.

- a. MATF shall review the service delivery contractual agreements as to their outcomes.
- b. MATF shall make recommendations based on the evaluation in its annual report.

641—37.3(135) Client eligibility criteria. An applicant for IA BCCEDP must satisfy the criteria outlined in this rule. If a woman does not meet these criteria, she shall be provided information by contracted county board of health designated agency staff regarding IowaCare, free care, or sliding-fee clinics available in the area in which she lives.

37.3(1) Age. An applicant for IA BCCEDP must satisfy only one of these criteria.

- a. Women 50 through 64 years of age shall be the priority population to receive annual breast and cervical (if appropriate) cancer screening.
- b. Women 40 through 49 years of age shall receive annual breast and cervical (if appropriate) cancer screening.
- c. If symptomatic for breast cancer, women under 40 years of age shall receive services.
- d. Women 65 years of age and older shall be eligible to receive annual breast and cervical (if appropriate) cancer screening if they do not have Medicare Part B coverage.

37.3(2) Income.

a. IA BCCEDP income guidelines are based upon 250 percent of the federal poverty level, which is set annually by the Centers for Medicare and Medicaid Services (CMS). New IA BCCEDP income guidelines will be adjusted following any change in CMS guidelines.

b. Self-declaration of income may be accepted.

c. Eligibility shall be based on net income for the household.

d. Assets shall not affect income status and shall not be counted when eligibility under the IA BCCEDP is determined.

37.3(3) Insurance.

a. IA BCCEDP shall determine a woman to be uninsured if the woman does not have health insurance coverage.

b. IA BCCEDP shall determine a woman to be underinsured if the woman has health insurance with unreasonably high copayments, deductibles, or coinsurance or the insurance does not cover IA BCCEDP-covered services.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. Women who have Medicaid or Medicare Part B are not eligible. EXCEPTIONS: IowaCare, Medicaid with spenddown, Iowa Family Planning Network.

37.3(4) Residency.

a. A woman must be a resident of Iowa or of a state that shall enroll a woman in the BCCT option of Medicaid if screened or diagnosed by the IA BCCEDP.

b. A woman who is a resident of a state that does not accept women into the BCCT option of Medicaid and who chooses to continue to receive services in the IA BCCEDP must be informed that she may not be able to have her treatment paid for by the BCCT option of Medicaid if she does not receive services in her state of residence.

c. Proof and length of residency in Iowa is not required.

37.3(5) Ineligible. IA BCCEDP does not provide coverage for:

a. Men.

b. Women with Medicare Part B coverage.

c. Women 39 years of age and younger unless they have symptoms of breast cancer.

641—37.4(135) Client application procedures for IA BCCEDP services.**37.4(1) Enrollment.** After a woman is determined eligible for services:

a. The woman must complete, sign, and return a consent and release form to IA BCCEDP. The date on the signed form shall be the client's enrollment date.

b. Upon enrollment, the client must select an IA BCCEDP health care provider and is eligible for services for 12 months from the enrollment date, subject to restrictions in program coverage as provided in rule 641—37.5(135).

c. If a client is unable to access a particular health care provider due to unavailability of appointments or if a client requests to change to another health care provider, designated agency staff shall assist the client in choosing another IA BCCEDP health care provider who is available in the client's area.

37.4(2) Reenrollment.

a. A client's continued eligibility for program coverage shall be determined annually.

b. No more than 45 days prior to the end of the 12-month coverage period, IA BCCEDP shall contact the client to see if she wishes to reenroll in the program.

c. If a client wishes to reenroll, she must complete, sign and return a consent and release form before receiving any further services.

37.4(3) Termination of enrollment. IA BCCEDP shall terminate a client's enrollment if the client:

a. Requests termination from the program;

b. No longer meets the criteria set forth in rule 641—37.3(135);

c. Does not return a signed IA BCCEDP consent and release form; or

d. Refuses to receive screening and diagnostic services through an IA BCCEDP health care provider.

641—37.5(135) Priority for program expenditures.

37.5(1) In the event the IA BCCEDP program director certifies that there are inadequate funds to meet clients' needs, either attributable to a reduction in federal funding from the CDC or to a projected enrollment of women in excess of anticipated enrollment, the program director may restrict new applicants' participation in IA BCCEDP as follows:

a. First priority shall be given to women 50 through 64 years of age.

b. Second priority shall be given to women 40 through 49 years of age who are symptomatic.

c. Third priority shall be given to women 40 through 49 years of age who are asymptomatic.

d. Fourth priority shall be given to women 65 years of age and older if they do not have Medicare Part B coverage.

37.5(2) In the event that the financial demand abates, the program director shall withdraw the financial shortfall certification, at which time women shall be eligible for program services in accordance with rule 641—37.3(135).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—37.6(135) Right to appeal. If an individual disagrees with or is dissatisfied with program eligibility, the covered-service determination, or the decision of the program, the individual has the right to appeal the decision or action.

37.6(1) The appeal shall be in writing and shall be submitted to the designated agency personnel with whom the individual has been working, within ten working days of the decision or action.

37.6(2) The designated agency staff shall contact a state IA BCCEDP staff person with the information regarding the appeal.

37.6(3) State IA BCCEDP staff shall confer with the bureau chief of the department and provide a decision to the designated agency staff within five business days. A decision made by state IA BCCEDP staff shall be delivered by telephone, if possible, to the individual making the appeal and shall be followed by a written notification of the decision. The decision of state IA BCCEDP staff shall be considered a final agency decision in accordance with Iowa Code chapter 17A.

641—37.7(135) Verification for breast or cervical cancer treatment (BCCT) option of Medicaid. The Iowa department of public health and the department of human services have coordinated to develop procedures for women to access Medicaid coverage for treatment of breast or cervical cancer.

37.7(1) Before referring a woman to her county of residence's local office of the department of human services, a contracted county board of health designated agency staff member shall document the following regarding the woman:

a. The woman is currently enrolled in the IA BCCEDP. To be considered enrolled in the program, the woman must meet program age guidelines, have at least one of the basic screening services (Pap test, screening mammogram, or CBE) or diagnostic procedures paid by the IA BCCEDP or with Susan G. Komen for the Cure funds, and be in need of treatment for breast or cervical cancer or precancerous conditions; or

b. The woman was enrolled in NBCCEDP and has moved to Iowa. To be considered enrolled in NBCCEDP, the woman must meet the Iowa program age guidelines, have at least one of the basic screening services (Pap test, screening mammogram, or CBE) or a diagnostic procedure paid by the NBCCEDP or with Susan G. Komen for the Cure funds, and be in need of treatment for breast or cervical cancer or precancerous conditions; and

c. The woman has credit coverage circumstances or has no creditable health insurance for breast or cervical cancer treatment.

37.7(2) The BCCT option of Medicaid is administered by the Iowa department of human services under 441 Iowa Administrative Code Chapter 75, "Conditions of Eligibility."

These rules are intended to implement Iowa Code chapter 135.

ARC 7540B**PUBLIC HEALTH DEPARTMENT[641]****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 2008 Iowa Acts, chapter 1172, division II, section 14, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 194, "Nonpayment of State Debt," Iowa Administrative Code.

These proposed rules describe the action the Department needs to take upon receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue. The rules specify

PUBLIC HEALTH DEPARTMENT[641](cont'd)

the procedures for denial of issuance or renewal of a license or the suspension or revocation of a license issued by the Department.

Any interested person may make written comments or suggestions on the proposed rules on or before February 17, 2009. Such written comments should be directed to Barb Nervig, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4958 or by E-mail to bnervig@idph.state.ia.us.

These rules are intended to implement 2008 Iowa Acts, chapter 1172, division II.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 194:

CHAPTER 194
NONPAYMENT OF STATE DEBT

641—194.1(272D) Definitions. For the purpose of this chapter, the following definitions shall apply.

“*Act*” means 2008 Iowa Acts, chapter 1172, division II.

“*Applicant*” means an individual who is seeking the issuance of a license.

“*Centralized collection unit*” means the centralized collection unit of the Iowa department of revenue.

“*Certificate of noncompliance*” means a document provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

“*Denial notice*” means a licensing authority notification denying an application for the issuance or renewal of a license as required by the Act.

“*Department*” means the department of public health.

“*License*” means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the granting of authority to engage in a profession, occupation, or business.

“*Licensing authority*” means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

“*Revocation or suspension notice*” means a licensing authority notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

“*Withdrawal certificate*” means a document provided by the centralized collection unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of a license.

641—194.2(272D) Issuance or renewal of a license—denial. The licensing authority shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit. This rule shall apply in addition to the procedures set forth in the Act.

194.2(1) Service of denial notice. Notice shall be served upon the applicant or licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

194.2(2) Effective date of denial. The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the applicant or licensee.

194.2(3) Preparation and service of denial notice. The licensing authority is authorized to prepare and serve the denial notice upon the applicant or licensee.

194.2(4) Licensees and applicants responsible to inform licensing authority. Licensees and applicants shall keep the licensing authority informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the licensing authority copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawals of certificates issued by the centralized collection unit.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

194.2(5) *Reinstatement following license denial.* All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the licensing authority has denied the issuance or renewal of a license pursuant to the Act.

194.2(6) *Effect of filing in district court.* In the event an applicant or a licensee files a timely district court action following service of a denial notice by a licensing authority, the licensing authority shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

194.2(7) *Final notification.* The licensing authority shall notify the applicant or licensee in writing through regular first-class mail, or by such other means as the licensing authority determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the licensing authority's receipt of a withdrawal certificate.

641—194.3(272D) *Suspension or revocation of a license.* The licensing authority shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit in accordance with the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

194.3(1) *Service of revocation or suspension notice.* A revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

194.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

194.3(3) *Preparation and service of revocation or suspension notice.* The licensing authority is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event that the license is on suspension, the licensing authority shall notify the licensee of the licensing authority's intention to revoke the license.

194.3(4) *Licensee responsible to inform licensing authority.* The licensee shall keep the licensing authority informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees shall also provide the licensing authority copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the centralized collection unit.

194.3(5) *Reinstatement following license suspension or revocation.* A licensee shall pay all licensing authority fees required for license renewal or license reinstatement before a license will be reinstated after the licensing authority has suspended or revoked a license pursuant to the Act.

194.3(6) *Effect of filing in district court.* In the event a licensee files a timely district court action pursuant to the Act, and following service of a revocation or suspension notice, the licensing authority shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the license suspension or revocation, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

194.3(7) *Final notification.* The licensing authority shall notify the licensee in writing through regular first-class mail, or by such other means as the licensing authority determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the licensing authority's receipt of a withdrawal certificate.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—194.4(272D) Sharing of information. Notwithstanding any statutory confidentiality provision, the department or licensing authority may share information with the centralized collection unit of the department of revenue through automated means for the sole purpose of identifying applicants or licensees subject to enforcement pursuant to 2008 Iowa Acts, chapter 1172, division II.

These rules are intended to implement 2008 Iowa Acts, chapter 1172, division II.

ARC 7531B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to adopt new Chapter 239, "Local Option Sales Tax Urban Renewal Projects," Iowa Administrative Code.

New Chapter 239 is proposed as a result of 2008 Iowa Acts, chapter 1191, sections 65 through 68, which authorizes an eligible city with a local option sales and services tax to establish, by ordinance, a sales tax increment financing district for the purpose of funding urban renewal projects without an election.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 2, 2009, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 17, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 20, 2009.

This amendment is intended to implement Iowa Code chapter 423B as amended by 2008 Iowa Acts, chapter 1191, sections 65 to 68.

The following amendment is proposed.

REVENUE DEPARTMENT[701](cont'd)

Adopt the following **new** 701—Chapter 239:

CHAPTER 239
LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

701—239.1(423B) Urban renewal project. An eligible city may by ordinance of the city council provide for the use of a designated amount of the increased local sales and services tax revenues collected under this chapter which are attributable to retail establishments in an urban renewal area to fund urban renewal projects located in the urban renewal area. The designated amount may be all or a portion of such increased revenues.

701—239.2(423B) Definitions. For purposes of this chapter, unless the context otherwise requires, the following definitions shall apply:

“*Base year*” means the fiscal year during which the ordinance is adopted that provides for funding of an urban renewal project by a designated amount of the increased sales and services tax revenues, as referenced in 239.1(423B).

“*Eligible city*” means:

1. A city in which a local sales and services tax imposed by the county applies; or
2. A city whose corporate boundaries include areas of two counties that may impose by ordinance of their city councils a local sales and services tax if all of the following apply:
 - At least 85 percent of the residents of the city live in one county.
 - The county in which at least 85 percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.
 - The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located, and in which an urban renewal area has been designated.

“*Local sales and services tax*” means the local tax imposed by a jurisdiction pursuant to an election authorized by Iowa Code section 423B.1.

“*Retail establishment*” means a business required to obtain a sales tax permit as required by Iowa Code section 423.36.

“*Retail properties*” means an area of property in which more than one retail establishment is located.

“*Urban renewal area*” means a slum area, blighted area, economic development area, or a combination of such areas, which the local governing body designates as appropriate for an urban renewal project as allowed under Iowa Code chapter 403.

“*Urban renewal project*” may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, may include the designation and development of an economic development area in an urban renewal area, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program as allowed under Iowa Code chapter 403.

701—239.3(423B) Establishing sales and revenue growth. For purposes of establishing the sales amount in the base year and the revenue growth in subsequent fiscal years, the department will calculate sales made by retail establishments located within the urban renewal area.

701—239.4(423B) Requirements for cities adopting an ordinance.

239.4(1) At least 90 days following the adoption of an ordinance, an eligible city must notify the director of the department of revenue of its intent to pursue funding for an urban renewal project based upon the increase in local sales and services tax revenue. The notification must include the following information:

- a. A copy of the urban renewal plan and the resolution adopting the city’s urban renewal plan;

REVENUE DEPARTMENT[701](cont'd)

- b.* A copy of the adopted ordinance, including:
- (1) The current and original, if applicable, purpose or purposes for which the local option sales and services tax was enacted; and
 - (2) The amount and proportion of revenue that will be redistributed from each current revenue purpose to fund urban renewal within the urban renewal area;
- c.* The legal description of the urban renewal area covered by the ordinance;
- d.* A map showing the geographic boundaries of the urban renewal area; and
- e.* A geographic information system boundary file, if available, showing the geographic boundaries of the urban renewal area.

239.4(2) Each urban renewal area must have its own separate ordinance, and the department shall be notified separately for each urban renewal area.

239.4(3) Notification shall be mailed or otherwise submitted to: Director, Iowa Department of Revenue, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319.

701—239.5(423B) Identification of retail establishments. The eligible city shall assist the department of revenue in identifying retail establishments in the urban renewal area that are collecting the local sales and services tax. The department of revenue will identify sales tax permit holders within the urban renewal area using the geographic information system boundary file, if available, provided to the department. If no boundary file is provided, the department will rely upon the map submitted by the eligible city. If any of the urban renewal area boundaries submitted are street centerlines, the information provided to the department shall indicate whether only retail establishments within the bounded area should be considered part of the urban renewal area, or if in addition to the retail establishments within the bounded area, retail establishments immediately adjacent to the bounded area should also be included.

701—239.6(423B) Calculation of base year taxable sales amount. The base year taxable sales and services amount will be the total taxable sales and services subject to the local sales and services tax that are made by retail establishments within the urban renewal area during the base year.

701—239.7(423B) Determination of tax growth increment amount. The local sales and services tax growth increment amount for the urban renewal area will be computed for each fiscal year following the base year. The annual local option sales and services tax growth increment amount is equal to the current year taxable sales and services subject to the local sales and services tax that are made by retail establishments located in the urban renewal area minus the corresponding base year taxable sales and services amount for the urban renewal area multiplied by the current local sales and services tax rate applicable to the jurisdiction.

701—239.8(423B) Distribution of tax base and growth increment amounts. The revenues from the local sales and services tax growth amount for urban renewal areas in jurisdictions that have enacted ordinances pursuant to 2008 Iowa Acts, chapter 1191, section 68, shall be determined annually and shall be distributed to the city within 120 days following the end of the fiscal year in which they are collected.

701—239.9(423B) Example. City A has an urban renewal area that covers a large portion of its downtown. City A also has in place a 1 percent local sales and services tax. On October 30, 2008, City A's City Council enacts an ordinance that establishes the urban renewal area as a local sales and services tax increment district. The ordinance also designates 100 percent of the tax growth increment amount to the special city account.

The base year taxable sales amount for the urban renewal area will equal the amount of taxable sales made by retail establishments in the urban renewal area for the fiscal year in which the ordinance was adopted. Assume City A's urban renewal area has \$10,050,000 in taxable sales during the 2008-2009 fiscal year.

At the end of the fiscal year following the fiscal year in which the ordinance was adopted (June 30, 2010, in this example), City A's urban renewal area has taxable sales of \$25,000,000. To determine the tax growth increment amount, the department subtracts the base year taxable sales amount from fiscal

REVENUE DEPARTMENT[701](cont'd)

year two's taxable sales amount then multiplies the remainder by the local sales and services tax rate of 1 percent as follows:

$$\begin{aligned}
 & \$25,000,000 - \$10,050,000 = \$14,950,000 \\
 & \$14,950,000 \times .01 = \$149,500
 \end{aligned}$$

The result is a tax growth increment amount of \$149,500. The department of revenue will deposit \$149,500 into the city's special account no later than November 10 following the end of the fiscal year.

701—239.10(423B) Ordinance term. An ordinance under this chapter is repealed when the plan for the urban renewal area expires or terminates or 20 years after adoption of the ordinance, whichever is the earlier.

These rules are intended to implement Iowa Code chapter 423B as amended by 2008 Iowa Acts, chapter 1191, sections 65 to 68.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions 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 January is 5.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective January 13, 2009, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.40%
32-89 days	Minimum 0.65%
90-179 days	Minimum 0.65%
180-364 days	Minimum 0.95%
One year to 397 days	Minimum 1.35%
More than 397 days	Minimum 1.60%

TREASURER OF STATE(cont'd)

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.

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:

February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%
July 1, 2008 — July 31, 2008	6.00%
August 1, 2008 — August 31, 2008	6.00%
September 1, 2008 — September 30, 2008	6.00%
October 1, 2008 — October 31, 2008	6.00%
November 1, 2008 — November 30, 2008	5.75%
December 1, 2008 — December 31, 2008	5.75%
January 1, 2009 — January 31, 2009	5.50%
February 1, 2009 — February 28, 2009	4.50%

ARC 7532B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment was requested by the City of Burlington in Des Moines County to establish a five-mile-per-hour speed zone on the Mississippi River by placement of regulatory buoys in such a way as to define the speed zone area that will be located between the north city docks/boat ramp and the south city docks/boat ramp. The marker buoys will be placed no farther than 150 feet from the shoreline and approximately 150 feet from the west edge of the barge channel. The City of Burlington held a public meeting regarding the amendment on November 3, 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7309B**. A public hearing was held at the Wallace State Office Building on November 25, 2008. No comments were received at the public hearing, and no changes were made to the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 462A.17 and 462A.26.

This amendment will become effective March 6, 2009.

The following amendment is adopted.

Adopt the following new rule 571—40.56(462A):

571—40.56(462A) Zoning of Mississippi River, Des Moines County, city of Burlington. All vessels shall be operated at a speed no greater than five miles per hour within the area designated by marker buoys or other approved uniform waterway markers beginning at the north city boat ramp and public dock and extending downstream to the south city boat ramp and public dock. The zoned area shall extend no farther than 150 feet from the shore and approximately 150 feet west of the west edge of the barge channel. The city of Burlington shall designate the five-mile-per-hour speed zone with buoys approved by the natural resource commission.

[Filed 1/9/09, effective 3/6/09]

[Published 1/28/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/28/09.

ARC 7529B**PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 321.4, the Department of Public Safety hereby amends Chapter 157, "Devices and Methods to Test Body Fluids for Alcohol or Drugs," Iowa Administrative Code.

Iowa Code chapter 321J requires that various devices used to measure concentrations of alcohol or other drugs, including evidentiary breath testing devices, be approved for use by the Commissioner of Public Safety. The technology available for evidentiary testing of breath for the presence and concentration of alcohol is an evolving area. From time to time, technological improvements require approval of new devices or new models of devices previously approved for use in Iowa. The amendment adopted herein provides that approvals of new devices as well as withdrawals of prior approvals will be announced through the publication of revised lists of approved evidentiary breath testing devices when the list of approvals changes. The current list will be available upon request to the Division of Criminal Investigation Criminalistics Laboratory and will also be available on the Web site of the Department of Public Safety.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7020B** on July 30, 2008. A public hearing on the proposed amendment was held on September 9, 2008. No comments on the proposed amendment were received either at the public hearing or otherwise. One nonsubstantive change has been made to the amendment. The language in existing subrule 157.2(2) now appears as subrule 157.2(1), and the subsequent subrules have been renumbered.

This amendment is intended to implement Iowa Code chapter 321J.

This amendment will become effective April 1, 2009.

The following amendment is adopted.

Amend rule 661—157.2(321J) as follows:

661—157.2(321J) ~~Breath~~ Evidentiary breath testing.

157.2(1) A breath testing device is a device designed and constructed to measure a subject's breath alcohol concentration by utilizing a sample of the subject's breath.

157.2(2) A peace officer desiring to perform testing of a subject's breath for the purpose of determining the alcohol concentration shall employ, or cause to be used, a breath testing device of a type meeting the minimum performance requirements established in Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol, Federal Register, Volume 58, No. 179 (September 17, 1993), pp. 48705-48708. All devices so used must be certified to be in proper working order within a period of one year immediately preceding use according to procedures specified for that device.

157.2(3) The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner of public safety for collection of breath samples for evidentiary purposes. The current list shall be available upon request to the Division of Criminal Investigation Criminalistics Laboratory Procedures for certification or recertification of the Datamaster edm are contained in the document Certification or Recertification of the Datamaster edm, published by the division of criminal investigation criminalistics laboratory. A copy of the current version of this document may be obtained by contacting the division of criminal investigation criminalistics laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or at on the Web site of the department of public safety.

NOTE: The current address for information on ~~the Datamaster edm approved evidentiary breath testing equipment~~ from the criminalistics laboratory is: <http://www.dps.state.ia.us/DCI/Crime Lab/Evidential Breath Testing/index.shtml>.

157.2(4) The operator of an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device, and shall proceed in accordance with the instructions included in an operating manual furnished by the division of criminal investigation criminalistics laboratory. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or from the department's Web site.

NOTE: ~~The operating manual for the Datamaster edm is titled "Operating the Datamaster edm."~~ The current location of ~~information regarding the Datamaster edm operating manuals for approved evidentiary breath testing devices~~ on the department's Web site is: <http://www.dps.state.ia.us/DCI/Crime Lab/Evidential Breath Testing/index.shtml>.

157.2(5) All certifications of evidentiary breath testing devices shall be made by the division of criminal investigation criminalistics laboratory. All certifications of operators shall be made by the division of criminal investigation criminalistics laboratory or a designee. A designee shall be a person trained and certified by the division of criminal investigation criminalistics laboratory.

~~**157.2(2)** A breath testing device is a device designed and constructed to measure a subject's breath alcohol concentration by utilizing a sample of the subject's breath.~~

~~**157.2(3)** Although any breath testing device that meets the minimum performance requirements established by the National Highway Traffic Safety Administration, and cited in subrule 157.2(1), is~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~authorized by the commissioner to be employed or to be caused to be used to determine the alcohol concentration, the following evidentiary device is being used in Iowa and meets the standards:~~

- ~~a. —Datamaster edm, National Patents Analytical Systems, Inc.~~
- ~~b. —Reserved.~~

[Filed 1/8/09, effective 4/1/09]

[Published 1/28/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/28/09.

ARC 7527B

TREASURER OF STATE[781]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 12.101 and 12.102, the Treasurer of State hereby adopts new Chapter 20, "Fairgrounds Infrastructure Grant Program," Iowa Administrative Code.

This new chapter establishes criteria for awarding infrastructure grants to qualified fairs that are members of the Association of Iowa Fairs. This grant program will allow fairs to make improvements to the permanent infrastructure of fairgrounds, including the construction, major renovation, or major repair of buildings, appurtenant structures, or utilities. The grant program is the result of legislation, 2008 Iowa Acts, Senate File 2432, sections 43 and 44, that dedicates \$530,000 from the Rebuild Iowa Infrastructure Fund of the state to this program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 3, 2008, as **ARC 7405B**. A public hearing was held on December 23, 2008. No one attended the public hearing, and no written comments were received. These rules are identical to those published under Notice.

These rules will become effective on March 4, 2009.

These rules are intended to implement Iowa Code sections 12.101 and 12.102.

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 20] is being omitted. These rules are identical to those published under Notice as **ARC 7405B**, IAB 12/3/08.

[Filed 1/7/09, effective 3/4/09]

[Published 1/28/09]

[For replacement pages for IAC, see IAC Supplement 1/28/09.]