



IOWA ADMINISTRATIVE BULLETIN

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Pages 123 to 194

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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"]; and agricultural credit corporation maximum loan rates [535.12].

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

STEPHANIE A. HOFF, Administrative Code Editor

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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 2B.5A, 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 2011

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 19, 2011	September 7, 2011
6	Wednesday, August 31, 2011	September 21, 2011
7	Friday, September 16, 2011	October 5, 2011

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*****

CREDIT UNION DIVISION[189]

Maintenance of allowance for loan losses account, amendments to ch 18 IAB 8/10/11 ARC 9672B	Division Conference Room, Suite 370 200 E. Grand Ave. Des Moines, Iowa	August 30, 2011 1 to 3 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

One-year teacher exchange license, 13.17(1) IAB 8/10/11 ARC 9661B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 31, 2011 1 p.m.
Mathematics endorsement, 13.28(12) IAB 8/10/11 ARC 9662B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 31, 2011 1 p.m.
Physics endorsement, 13.28(17) IAB 8/10/11 ARC 9663B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 31, 2011 1 p.m.
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External review, 76.1 to 76.9 IAB 7/27/11 ARC 9639B (See also ARC 9637B)	Division Offices 330 Maple St. Des Moines, Iowa	August 23, 2011 10 a.m.
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OSHA regulations—adoption by reference, 10.20, 26.1, 28.1 IAB 7/27/11 ARC 9640B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	August 17, 2011 9 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Boating—zoning of Harpers Slough, 40.27(1) IAB 8/10/11 ARC 9658B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 30, 2011 1 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Psychologists—licensure, discipline, amendments to chs 240, 242 IAB 8/10/11 ARC 9673B	Conference Room 415 Lucas State Office Bldg. Des Moines, Iowa	September 7, 2011 10 to 11 a.m.
Respiratory care practitioners—licensure, discipline, 261.8(1), 263.2(11) IAB 7/13/11 ARC 9595B	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	August 10, 2011 9 to 9:30 a.m.
Respiratory care practitioners—continuing education, 262.4 IAB 7/13/11 ARC 9594B	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	August 10, 2011 9 to 9:30 a.m.
Social workers—discipline, 283.2(11) IAB 7/13/11 ARC 9596B	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	August 10, 2011 9:30 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Licensure of plumbing and mechanical systems professionals—fees, 28.1, 28.2 IAB 7/13/11 ARC 9610B (See also ARC 9603B) (ICN Network)	Department of Public Health Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa Room Location: Sixth Floor	August 10, 2011 11 a.m. to 1 p.m.
	Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa Room Location: Louisa Room	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2500 Summer St. Burlington, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	Department of Human Services 417 E. Kanesville Blvd. Council Bluffs, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa Room Location: ICN Classroom	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 1659 Nelson Ave. Fort Dodge, Iowa Room Location: NE corner of building	August 10, 2011 11 a.m. to 1 p.m.
	University of Iowa – 1 At the end of North Madison St. Iowa City, Iowa Room Location: 103	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 1160 19th St., SW Mason City, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	Department of Human Services Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 10, 2011 11 a.m. to 1 p.m.
Plumbing and mechanical systems professionals—application, licensure, examination, 29.1, 29.2, 29.6, 29.7, 29.9 IAB 7/13/11 ARC 9612B (See also ARC 9604B) (ICN Network)	Department of Public Health Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa Room Location: Sixth Floor	August 10, 2011 11 a.m. to 1 p.m.
	Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa Room Location: Louisa Room	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2500 Summer St. Burlington, Iowa	August 10, 2011 11 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

(ICN Network)	Department of Human Services 417 E. Kaneshville Blvd. Council Bluffs, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa Room Location: ICN Classroom	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 1659 Nelson Ave. Fort Dodge, Iowa Room Location: NE corner of building	August 10, 2011 11 a.m. to 1 p.m.
	University of Iowa – 1 At the end of North Madison St. Iowa City, Iowa Room Location: 103	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 1160 19th St., SW Mason City, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	Department of Human Services Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 10, 2011 11 a.m. to 1 p.m.
Plumbing and mechanical systems professionals—continuing education, 30.2 to 30.4, 30.6(1) IAB 7/13/11 ARC 9613B (See also ARC 9605B) (ICN Network)	Department of Public Health Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa Room Location: Sixth Floor	August 10, 2011 11 a.m. to 1 p.m.
	Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa Room Location: Louisa Room	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2500 Summer St. Burlington, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	Department of Human Services 417 E. Kaneshville Blvd. Council Bluffs, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa Room Location: ICN Classroom	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 1659 Nelson Ave. Fort Dodge, Iowa Room Location: NE corner of building	August 10, 2011 11 a.m. to 1 p.m.
	University of Iowa – 1 At the end of North Madison St. Iowa City, Iowa Room Location: 103	August 10, 2011 11 a.m. to 1 p.m.

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(ICN Network)	National Guard Armory 1160 19th St., SW Mason City, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	August 10, 2011 11 a.m. to 1 p.m.
	Department of Human Services Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 10, 2011 11 a.m. to 1 p.m.
Local boards of health; district health departments, adopt ch 77; rescind ch 78 IAB 7/27/11 ARC 9632B	GoToMeeting online at: https://www1.gotomeeting.com/join/427922769 Toll-free: 1-877-568-4106 Access Code: 427-922-769	August 16, 2011 9 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire safety—adoption of National Electrical Code 2011 by reference, 201.3 IAB 7/27/11 ARC 9628B	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 18, 2011 10 a.m.
State building code—adoption of National Electrical Code 2011 by reference, 301.5 IAB 7/27/11 ARC 9629B	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 18, 2011 10 a.m.
Electrician licensure, 500.2, 502.1, 502.2 IAB 8/10/11 ARC 9652B	First Floor Public Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 15, 2011 10 a.m.
Electrical installations—adoption of National Electrical Code 2011 by reference, 504.1 IAB 7/27/11 ARC 9630B	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 18, 2011 10 a.m.

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The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 9669B

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 2011 Iowa Acts, Senate File 418, the Attorney General hereby gives Notice of Intended Action to adopt new Chapter 36, “Disclosure Statement of Repairs or Adjustments to, or Replacements of Parts with New Parts on, New Motor Vehicles,” Iowa Administrative Code.

The proposed rules set out the disclosure form that must be issued to buyers or lessees by licensed new motor vehicle dealers when selling or leasing a new motor vehicle which has incurred certain repairs or adjustments, or replacements of parts with new parts, pursuant to the requirements of 2011 Iowa Acts, Senate File 418.

Any interested person may make written suggestions or comments on these proposed rules prior to August 31, 2011. Such written materials should be directed to William L. Brauch, Director, Consumer Protection Division, Iowa Attorney General’s Office, 1305 E. Walnut Street, Des Moines, Iowa 50319; fax (515)281-6771; or via E-mail to Consumer@Iowa.gov. Persons who wish to convey their views orally should contact Mr. Brauch at (515)281-5926 or at the office of the Consumer Protection Division, Second Floor, Hoover State Office Building, Des Moines, Iowa.

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

These rules are intended to implement 2011 Iowa Acts, Senate File 418.

The following amendment is proposed.

Adopt the following **new** 61—Chapter 36:

CHAPTER 36

DISCLOSURE STATEMENT OF REPAIRS OR ADJUSTMENTS TO, OR REPLACEMENTS OF PARTS WITH NEW PARTS ON, NEW MOTOR VEHICLES

61—36.1(321) New motor vehicle repair or parts replacement disclosure requirement. A person licensed as a new motor vehicle dealer pursuant to Iowa Code chapter 322 is required to disclose to the buyer or lessee of a new motor vehicle that the vehicle has been subject to any repairs or adjustments, or replacements of parts with new parts, if the actual cost of any labor or parts charged to or performed by the dealer for any such repairs, adjustments, or parts exceeds 4 percent of the dealer’s adjusted cost.

61—36.2(321) Definitions.

“*Dealer’s adjusted cost*” means the amount paid by the dealer to the manufacturer or other source for the vehicle, including any freight charges, but excluding any sum paid by the manufacturer to the dealer as a holdback or other monetary incentive relating to the vehicle.

“*Electronic signature*” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

“*Motor vehicle*” means a vehicle which is self-propelled and not operated upon rails.

“*New motor vehicle*” means a motor vehicle subject to registration which has not been sold “at retail” as defined in Iowa Code chapter 322.

61—36.3(321) Form and format of required disclosure statement.

36.3(1) The disclosure statement required by this rule shall be made in writing, to a buyer or lessee, at or before the time of sale or lease to the buyer or lessee and shall include the following statement, in at least 14-point type:

ATTORNEY GENERAL[61](cont'd)

Iowa law requires new motor vehicle dealers to disclose to their customers when a new vehicle the dealer offers for sale or lease has been subject to prior repairs or adjustments, or has had parts replaced with new parts, when the cost of that repair, adjustment or replacement is more than 4% of the dealer's adjusted cost for the vehicle. This new vehicle has had repairs, or has had parts adjusted or replaced, as follows:

[Dealer: Check all that apply, and fully describe all repairs, adjustments or part replacements.]

Repair(s) to the following part(s): _____

Adjustment(s), as follows: _____

Replacement(s) of the following part(s): _____

36.3(2) The disclosure statement shall also include all of the following:

- a. The year, make, model and vehicle identification number of the vehicle;
- b. The signature of the buyer or lessee;
- c. The name and address of the dealership;
- d. The signature of a dealer representative authorized to legally bind the dealership;
- e. The dates on which the above signatures were affixed to the document.

36.3(3) The disclosure required pursuant to this rule shall be made clearly and conspicuously, shall include no writing except as required by this rule, and shall be made in either of the following ways:

- a. On a separate 8½" × 11" white piece of paper; or
- b. Via electronic means, with the electronic signatures of all parties required to sign the disclosure pursuant to this rule.

61—36.4(321) Buyer or lessee to be given opportunity to review disclosure statement. The dealer shall give the buyer or lessee an adequate opportunity to review the disclosure statement before asking the buyer or lessee to sign the disclosure statement.

61—36.5(321) Copy of disclosure statement to buyer or lessee. The dealer shall give a copy of the fully completed and signed disclosure statement to the buyer or lessee to retain at the time the statement is fully completed and signed. This requirement may be met by providing the buyer or lessee with a paper copy, including but not limited to a computer-generated printout, or by directing the disclosure statement in electronic form to an E-mail address of the buyer's or lessee's choosing and in a format that is accessible to the buyer or lessee. The manner in which a copy of the disclosure statement is to be provided to the buyer or lessee pursuant to this rule shall be at the discretion of the buyer or lessee.

61—36.6(321) Record retention requirement. A dealer shall retain a paper or electronic copy of each written disclosure issued pursuant to this chapter for five years from the date of issuance.

61—36.7(321) Substantially similar disclosure statements. Disclosure statements that are substantially similar to the statement required by this chapter will be permitted with the prior approval of the attorney general.

These rules are intended to implement 2011 Iowa Acts, Senate File 418.

ARC 9672B

CREDIT UNION DIVISION[189]**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 533.104, the Credit Union Division hereby gives Notice of Intended Action to amend Chapter 18, “Maintenance of Allowance for Loan Losses Account,” Iowa Administrative Code.

The proposed amendments serve to clarify the Division’s expectations regarding methodologies and support for the Allowance for Loan and Lease Losses (ALLL). The amendments are intended to provide the necessary parallel guidance issued in Interpretive Rulings & Policy Statements (IRPS) 02-3 by the National Credit Union Administration for all federally insured credit unions.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 30, 2011. Such written comments should be directed to Rebecca Behrens, Public Service Executive, Credit Union Division, 200 East Grand, Suite 350, Des Moines, Iowa 50319.

Also, a public hearing will be held on August 30, 2011, from 1 to 3 p.m. in the Credit Union Division Conference Room at 200 East Grand, Suite 370, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 533.

The following amendments are proposed.

ITEM 1. Amend **189—Chapter 18**, title, as follows:

MAINTENANCE OF ALLOWANCE FOR LOAN AND LEASE LOSSES ACCOUNT

ITEM 2. Amend rule **189—18.1(533)**, definitions of “Allowance for loan losses” and “Provision for loan losses,” as follows:

“Allowance for loan and lease losses” ~~means a valuation account of the general ledger that is established for the purpose of disclosing and recognizing probable loan losses and is reported as a reduction to the loan asset whenever the credit union’s financial statement is generated.~~ means an estimate of loan and lease losses in the entire loan portfolio, including estimated inherent losses, in conformity with generally accepted accounting principles and which meets regulatory requirements for full and fair disclosure of the financial statements.

“Provision for loan and lease losses” means an expense account of the general ledger to which debit or credit adjustments to the allowance for loan and lease losses ~~account~~ are charged.

ITEM 3. Rescind the definitions of “Contingency,” “Financial statement,” “General ledger,” “Loan classified as doubtful,” “Loan classified as loss” and “Loan classified as substandard” in rule **189—18.1(533)**.

ITEM 4. Amend rule 189—18.3(533) as follows:

189—18.3(533) Generally accepted accounting principles.

18.3(1) Credit union financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP), except for authorized intentional regulatory accounting practices (RAP) which may differ, and shall provide for the complete and accurate disclosure of all assets, liabilities, and equity, including any valuation allowance accounts as may be necessary to correctly present the financial position; and all income and expenses necessary to correctly present the results of operations for the period concerned. ~~The financial statement shall be prepared and made available within 15 days~~

CREDIT UNION DIVISION[189](cont'd)

after the end of each month showing the condition of the credit union as of the close of business on the last business day of the month.

~~18.3(2)~~ 18.3(2) The financial statement shall be prepared and made available within 15 days after the end of each month and shall show the condition of the credit union as of the close of business on the last business day of the month.

~~18.3(2)~~ 18.3(3) Complete and accurate disclosure shall be required of a credit union so as to provide for a level of disclosure to any person or entity in order to clearly and objectively inform them of the financial condition and the results of operations of the credit union.

~~18.3(3)~~ Valuation allowance accounts shall be required of a credit union to provide for the net presentation of loan amounts without actually writing off estimated losses or expenses.

ITEM 5. Amend rule 189—18.4(533) as follows:

189—18.4(533) Allowance for loan and lease losses.

~~18.4(1)~~ Loans outstanding should be recorded to reflect the outstanding balance due the credit union and adjusted by the establishment of an allowance for loan losses account through periodic charges to operating expenses. This credit balance account reflects the amount set aside by the credit union to provide a cushion to absorb losses on outstanding loans. The amount carried in this account shall represent possible losses which may be incurred in the normal payoff of outstanding loans, and shall be considered as a deduction from total loans shown on the financial statement in order that the asset reflects fair market value. an amount at least equal to reasonably foreseeable loan and lease losses. Each credit union is required to establish and maintain a methodology to determine the amount needed in the allowance for loan and lease losses account in accordance with generally accepted accounting principles (GAAP).

~~18.4(2)~~ A credit union may, at its option, establish separate allowance accounts for each of its various categories of loans, i.e., allowance for loan losses—consumer loans, allowance for loan losses—lines of credit, etc. The credit union's board of directors must adopt a policy ensuring that loans are charged off in a timely manner.

~~18.4(3)~~ Periodic adjustment of the allowance for loan losses account shall be required to provide for the disclosure of the credit union's best estimate of potential losses which will be sustained in the liquidation of current outstanding loans. As At a minimum, the account shall be adjusted at least quarterly or prior to the end of each dividend period, or more often as required. The amount of the periodic adjustments shall be determined by the credit union after all charge-offs and recoveries applicable to the period have been recorded. Periodic adjustments to the allowance for loan and lease losses account will be charged to the provision for loan and lease losses account.

~~18.4(4)~~ 18.4(4) The credit union shall maintain full and complete documentation of the determination of the balance in the allowance for loan and lease losses account.

~~18.4(4)~~ 18.4(5) The maintenance of an allowance for loan and lease losses account shall not eliminate the requirement for transferring the percentage of gross income before the payment of a dividend to the credit union's regular reserves as required by Iowa Code chapter 533.

~~18.4(5)~~ Credit unions shall be required to use an acceptable method of adjusting the allowance for loan losses account, such as, but not limited to, the "adjustment method" or "experience method." There is no one method that is preferable. The method used by a credit union shall be consistent, comprehensive, logical, and relevant to the credit union's circumstances, and the calculation shall be comprehensive, taking into account the risks inherent in the various types of lending.

ITEM 6. Amend rule 189—18.5(533), catchwords, as follows:

189—18.5(533) Allowance for loan and lease losses computation.

ITEM 7. Amend subrule 18.5(1) as follows:

~~18.5(1)~~ The credit union shall perform a review of all loans to determine potential losses which will be sustained in collection and to establish an adequate allowance for loan losses account. The estimate shall be based on the best judgment of the credit union officials and take all pertinent factors into

CREDIT UNION DIVISION[189](cont'd)

~~consideration including, but not limited to:~~ Credit unions are responsible for determining an adequate allowance for loan and lease losses account and adopting a reasonable methodology for doing so. In determining the appropriate allowance, each credit union shall:

- a. Separate the loan portfolio into homogenous loan pools based on common risk factors;
- b. Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method which includes consideration of: loan delinquency status of ~~two months or more~~; collection experience of the credit union; ~~unusual~~ economic conditions that may affect collectibility; availability of pledged shares; collateral, security, or endorsers; insured FHA or ~~educational loan coverage~~ guaranteed status; and the general credit reputation of the borrowers;
- c. Individually classify loans with unique characteristics;
- d. Add the resulting amounts to determine the amount needed in the allowance for loan and lease losses account.

ITEM 8. Rescind subrules **18.5(2)** to **18.5(4)**.

ITEM 9. Renumber subrule **18.5(5)** as **18.5(2)**.

ITEM 10. Amend renumbered subrule 18.5(2) as follows:

18.5(2) ~~The allowance for loan losses account should include estimated amounts to cover loan losses which may result from specifically identified troubled or classified loans, pools of classified loans, pools of loan types or credit instruments, and a general portion of all other loans and credit instruments for inherent losses. Credit unions are responsible for determining an adequate allowance for loan losses account, and adopting a reasonable methodology for doing so. If a credit union fails to determine an adequate and reasonable allowance for loan and lease losses account which will result in the fair presentation of its financial statement, the superintendent may require additional amounts to be set aside as provided by Iowa Code chapter 533.~~

ITEM 11. Amend rule 189—18.6(533) as follows:

189—18.6(533) Accounting treatment.

18.6(1) The allowance for loan and lease losses account shall be charged with the amount of the uncollectible loans which have been authorized for ~~write-off~~ charge-off by the board of directors or as directed by the superintendent. Likewise, recoveries on loans charged off shall be credited to this account.

18.6(2) Routine periodic adjustments to the allowance for loan and lease losses account, accomplished during an accounting or dividend period within the current fiscal year, shall be made by a charge to the provision for loan and lease losses account.

18.6(3) Prior period adjustments to the allowance for loan and lease losses account, within the current fiscal year, may be permitted only in relation to the correction of an error in a prior period financial statement. These corrections shall be accounted for and reported in the same manner as routine periodic adjustments, and shall be charged to the current period expenses through the provision for loan and lease losses ~~account~~.

18.6(4) Prior period adjustments to the allowance for loan and lease losses account, outside of the current fiscal year, may be permitted only in relation to the correction of an error in the previous fiscal year financial statement. These corrections shall be accounted for and reported as a charge to the undivided earnings account. If the result of this correction would create a deficit balance in the undivided earnings account, the deficiency so created may be transferred to other segregations of undivided earnings or to the legal reserve account, subject to the prior approval of the superintendent.

18.6(5) If a deficit is created in the legal reserve account, through the establishment or maintenance of the allowance for loan and lease losses account, the deficit shall be transferred first to undivided earnings and, if this shall cause a deficit in undivided earnings, then to other segregations of undivided earnings that may exist, exclusive of the special reserve account should it be required by the superintendent.

18.6(6) The superintendent may waive, in whole or in part, the requirement for the maintenance of the allowance for loan and lease losses account which is in excess of the statutory reserve requirements

CREDIT UNION DIVISION[189](cont'd)

of Iowa Code chapter 533 but is required under this chapter. Such waiver shall be as a result of written application from the directors of a credit union and shall set forth their justification for the requested waiver.

ARC 9661B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment addresses out-of-state applicants who cannot receive the license in a timely manner. This amendment permits the applicant a full year to produce the out-of-state license; however, verification that the license is being processed will be required before the Class A license is issued.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, August 31, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 2, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.17(1) as follows:

13.17(1) One-year teacher exchange license.

a. For an applicant applying under 13.3(2), a one-year nonrenewable exchange license may be issued to the applicant under the following conditions:

(1) The applicant has completed a state-approved, regionally accredited teacher education program; and

(2) The applicant has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

(3) The applicant holds and submits a copy of a valid regular and current certificate or license in the state in which the preparation was completed or in which the applicant is currently teaching, exclusive of a temporary, emergency or substitute license or certificate; ~~and~~

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

1. If the applicant's out-of-state license is expired, a one-year teacher exchange license may be issued and the lack of a valid and current out-of-state license will be listed as a deficiency.

2. If the applicant submits verification that the applicant has applied for and will receive the applicant's first teaching license and is waiting for the processing or printing of a valid and current out-of-state license, a regional exchange license may be issued and the lack of a valid and current out-of-state license will be listed as a deficiency; and

(4) If the applicant has fewer than three years of teaching experience or is being recommended for a K-6 elementary education endorsement, the applicant must verify successful completion of mandated tests in the state in which the applicant is currently licensed; and

(5) Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed or of the application and the credential evaluation report. The applicant must have completed at least 75 percent of the endorsement requirements through a two- or four-year institution in order for the endorsement to be included on the exchange license; and

(6) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(7) The applicant complies with all requirements with regard to application processes and payment of licensure fees.

b. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

c. If the lack of a valid and current out-of-state license was listed as a deficiency, the one-year teacher exchange license shall not be converted or extended until a valid and current out-of-state license is presented to remove the deficiency.

ARC 9662B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment allows a holder of the physics endorsement to easily add the mathematics endorsement. This amendment, suggested by an advisory committee, will offer applicants a different path to obtaining a mathematics endorsement and, potentially, will attract more applicants for hard-to-fill positions.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, August 31, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 2, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.28(12) as follows:

13.28(12) Mathematics.

a. K-8. Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, number theory, measurement, computer programming, and probability and statistics.

b. 5-12.

(1) Completion of 24 semester hours in mathematics to include a linear algebra or an abstract (modern) algebra course, a geometry course, a two-course sequence in calculus, a computer programming course, a probability and statistics course, and coursework in discrete mathematics.

(2) For holders of the physics 5-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

(3) For holders of the all science 9-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

ARC 9663B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment allows a holder of the mathematics or chemistry endorsement to easily add the physics endorsement. This amendment, suggested by an advisory committee, will offer applicants a different path to obtaining a physics endorsement and, potentially, will attract more applicants for hard-to-fill positions.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, August 31, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 2, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend paragraph **13.28(17)“g”** as follows:

g. Physics.

(1) 5-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

(2) For holders of the mathematics 5-12 endorsement, completion of:

1. 12 credits of physics to include coursework in mechanics, electricity, and magnetism; and

2. A methods class that includes inquiry-based instruction, resource management, and laboratory safety.

(3) For holders of the chemistry 5-12 endorsement, completion of 12 credits of physics to include coursework in mechanics, electricity, and magnetism.

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EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 22, “Authorizations,” Iowa Administrative Code.

This rule is proposed to meet the Board of Educational Examiners goal to provide flexibility in licensing. This rule provides a path for noneducators to receive authorization to teach.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, August 31, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 2, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Adopt the following new rule 282—22.5(272):

282—22.5(272) Preliminary professional career authorization.

22.5(1) Authorization. The preliminary professional career authorization is provided to noneducators entering the education profession to teach in one of the approved content areas in grades 9-12.

22.5(2) Application process. Any person interested in the preliminary professional career authorization shall submit an application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners, online at <http://www.boee.iowa.gov/>.

22.5(3) Requirements.

a. The applicant has completed a baccalaureate degree from a regionally accredited institution with a minimum cumulative grade point average of 2.5 on a 4.0 scale.

b. The applicant has at least five years of post-baccalaureate work experience in the content areas to be taught.

c. The applicant meets the subject matter coursework requirements for the secondary teaching endorsement of science, math, music or foreign language or is a native speaker of a foreign language.

d. The applicant must have successfully completed an Iowa division of criminal investigation background check. The background check fee will be assessed to the applicant.

e. The applicant must have successfully completed a national criminal history background check. The background check fee will be assessed to the applicant.

f. The applicant must have documentation from a school district administrator verifying that the school district wishes to hire the applicant. The school district administrator must verify a diligent search was completed to hire a fully licensed teacher for the position.

g. During the term of the authorization, the applicant must complete board-approved training in the following:

(1) Methods and techniques of teaching. Develop skills to use a variety of learning strategies that encourage students' development of critical thinking, problem solving, and performance skills. The methods course must include specific methods and techniques of teaching the content endorsement listed on the authorization.

(2) Curriculum development. Develop an understanding of how students differ in their approaches to learning and create learning opportunities that are equitable and adaptable to diverse learners.

(3) Measurement and evaluation of programs and students. Develop skills to use a variety of authentic assessments to measure student progress.

(4) Classroom management. Develop an understanding of individual and group motivation and behavior which creates a learning environment that encourages positive social interactions, active engagement in learning, and self-motivation.

(5) Code of ethics. Develop an understanding of how to foster relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development and demonstrate an awareness of the board's rules of Professional Practice and Code of Ethics.

(6) Diversity training for educators. Develop understanding and sensitivity of the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society including preparation that contributes to the education of individuals with disabilities and the gifted and talented.

h. The applicant must be assigned a mentor by the hiring school district. The mentor must have four years of teaching experience in a related subject area.

i. Approved content areas. The authorization is provided for teaching in the following approved areas:

(1) Foreign language. This area requires 24 semester hours of credit in the foreign language and proficiency in conversation and composition in the foreign language as demonstrated through the board-approved secondary content test for the foreign language in conversation and composition. The cut score may not be waived by the board.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(2) Foreign language—native speaker. If the applicant is a native speaker of a foreign language, the applicant must demonstrate proficiency in conversation and composition in the foreign language as demonstrated through the board-approved secondary content test for the foreign language in conversation and composition. The cut score may not be waived by the board.

(3) Mathematics. This area requires 24 semester hours in mathematics to include calculus and probability and statistics and proficiency in mathematics as demonstrated through the board-approved secondary content test for mathematics. The cut score may not be waived by the board.

(4) Chemistry. This area requires 30 semester hours in science to include 15 semester hours of credit in chemistry and proficiency in chemistry as demonstrated through the board-approved secondary content test for chemistry. The cut score may not be waived by the board.

(5) Physics. This area requires 30 semester hours in science to include 15 semester hours of credit in physics and proficiency in physics as demonstrated through the board-approved secondary content test for physics. The cut score may not be waived by the board.

(6) Biology. This area requires 30 semester hours in science to include 15 semester hours of credit in biology and proficiency in biology as demonstrated through the board-approved secondary content test for biology. The cut score may not be waived by the board.

(7) Music. This area requires 24 semester hours in music to include music theory and proficiency in music as demonstrated through the board-approved secondary content test for music. The cut score may not be waived by the board.

22.5(4) Validity. The preliminary professional career authorization is valid for three years. No Class B licenses may be issued to applicants holding the preliminary professional career authorization. No additional endorsement areas may be added unless the requirements in paragraphs 22.5(3) “b” and 22.5(3) “i” are met.

22.5(5) Renewal. The preliminary professional career authorization is nonrenewable.

22.5(6) Conversion. The preliminary professional career authorization may be converted to the professional career authorization. The applicant must provide official transcripts verifying the completion of the coursework required in paragraph 22.5(3) “g.”

22.5(7) Revocation and suspension. Criteria of professional practice and rules of the board shall be applicable to the holders of the preliminary professional career authorization. A complaint may be filed against the teacher and administrator of a school district that hires an applicant to teach without a valid authorization.

22.5(8) Approval of courses. Each institution of higher education, private college or university, community college or area education agency wishing to offer training for the preliminary professional career authorization must submit course descriptions for each offering to the board for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the board.

ARC 9648B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment implements changes to medical assistance eligibility under the Iowa Family Planning Network (IFPN) which are contingent on approval of a waiver request by the federal Centers for Medicare and Medicaid Services. These changes are mandated by 2010 Iowa Acts, chapter 1192 (House File 2526), section 11, subsection 24. The amendment:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Limits eligibility to people who are uninsured or have health insurance that does not include family planning services, who are not otherwise enrolled in Medicaid (other than IowaCare), and who are not enrolled in the Children's Health Insurance Program (HAWK-I).
- Expands IFPN eligibility by specifying an upper age limit of 55, increasing the income limit from 200 percent of the federal poverty level to 300 percent of the federal poverty level, and including men. A statutory change was made by 2011 Iowa Acts, Senate File 482, to remove the word "women" from the provision authorizing eligibility for family planning services and substitute "individuals."

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9647B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before August 30, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

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

This amendment is intended to implement 2010 Iowa Acts, chapter 1192, section 11, subsection 24, and Iowa Code section 249A.3 as amended by 2011 Iowa Acts, Senate File 482, section 16.

ARC 9658B

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 subsections 455A.5(6) and 462A.32(1), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

The proposed amendment is in response to a rule-making petition submitted by the City of Harpers Ferry. The City is requesting that the current 5-mile-per-hour zone on the Mississippi River be expanded 550 feet downstream from the current southernmost marker buoy. The request is being made due to boat navigation and safety issues along existing river access points including docks and boat ramps.

Any interested person may make written suggestions or comments on the proposed amendment on or before August 30, 2011. Such written materials should be directed to Susan Stocker, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-0122; or E-mail susan.stocker@dnr.iowa.gov. Persons who wish to convey their views orally should contact Susan Stocker at (515)281-0122.

There will be a public hearing on August 30, 2011, at 1 p.m. in the Fourth Floor West Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Persons attending the hearing 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 needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

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

NATURAL RESOURCE COMMISSION[571](cont'd)

This amendment is intended to implement Iowa Code section 462A.32.

The following amendment is proposed.

Rescind subrule 40.27(1) and adopt the following **new** subrule in lieu thereof:

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore and extending 550 feet downstream from a point known as Sandy Point Road Dead-End shall operate at a speed not greater than 5 miles per hour.

ARC 9671B

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Chapter 10, “Controlled Substances,” Chapter 21, “Electronic Data in Pharmacy Practice,” and Chapter 23, “Long-Term Care Pharmacy Practice,” Iowa Administrative Code.

The amendments were approved at the June 28, 2011, regular meeting of the Board of Pharmacy.

The proposed amendments clarify the required elements of a valid prescription regardless of the method used to generate or prepare the prescription or the means of transmission or delivery of the prescription to the dispensing pharmacy. The amendments identify the requirements for a written prescription, for an oral prescription, for a prescription transmitted to a pharmacy via facsimile, and for a prescription that is electronically prepared, signed, and transmitted to the pharmacy. Additional requirements are identified for prescriptions that are electronically prepared but subsequently printed or transmitted to the pharmacy via facsimile, and a clear distinction is made between “electronic transmission” and “facsimile transmission” by defining those terms. Other new and amended definitions in Chapter 21 establish the difference between an “electronically prepared prescription” and an “electronic prescription” and clarify the definition of “electronic signature.” The requirements for electronic prescribing of controlled substances, as established by the federal Drug Enforcement Administration (DEA), are addressed, and appropriate amendments are proposed to authorize the electronic prescribing of controlled substances pursuant to DEA requirements. Record-keeping requirements for electronically prepared prescriptions, electronic prescriptions, and prescriptions transmitted via facsimile are identified. The requirements for identification of the prescriber’s agent who completes the transmission of a prescription to a pharmacy are clarified to include the first and last names and the title of the prescriber’s agent.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on August 30, 2011. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 126.10, 126.11, 155A.13, 155A.27, and 155A.29.

The following amendments are proposed.

PHARMACY BOARD[657](cont'd)

ITEM 1. Amend rule 657—8.19(124,126,155A) as follows:

657—8.19(124,126,155A) Manner of issuance of a prescription drug or medication order. A prescription drug order or medication order may be transmitted from a prescriber to a pharmacy in written form, orally including telephone voice communication, by facsimile transmission as provided in rule 657—21.9(124,155A), or by electronic transmission in accordance with applicable federal and state laws, ~~and rules, and regulations.~~ Any prescription drug order or medication order provided to a patient in written or printed form shall include the original, handwritten signature of the prescriber except as provided in rule 657—21.7(124,155A).

8.19(1) Requirements for a prescription. A valid prescription drug order shall be based on a valid patient-prescriber relationship.

a. Written, electronic, or facsimile prescription. In addition to the electronic prescription application and pharmacy prescription application requirements of this rule, a written, electronic, or facsimile prescription shall include:

- (1) The date issued;
- (2) The name and address of the patient;
- (3) The name, strength, and quantity of the drug or device prescribed;
- (4) The name and address of the prescriber and, if the prescription is for a controlled substance, the prescriber's DEA registration number;
- (5) The written or electronic signature of the prescriber.

b. Written prescription. In addition to the requirements of paragraph 8.19(1)“a,” a written prescription shall be manually signed, with ink or indelible pencil, by the prescriber.

c. Facsimile prescription. In addition to the requirements of paragraph 8.19(1)“a,” a prescription transmitted via facsimile shall include:

- (1) The identification number of the facsimile machine used to transmit the prescription to the pharmacy.
- (2) The time and date of transmission of the prescription.
- (3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.
- (4) If the prescription is for a controlled substance and in compliance with DEA regulations, the prescription shall be manually signed by the prescriber.

d. Electronic prescription. In addition to the requirements of paragraph 8.19(1)“a,” an electronically prepared prescription for a controlled or noncontrolled prescription drug or device that is electronically transmitted to a pharmacy shall include the prescriber's electronic signature.

(1) An electronically prepared prescription for a controlled substance that is printed out or faxed by the prescriber or the prescriber's agent shall be manually signed by the prescriber.

(2) The prescriber shall ensure that the electronic prescription application used to prepare and transmit the electronic prescription complies with applicable state and federal laws, rules, and regulations regarding electronic prescriptions.

(3) The prescriber shall provide verbal verification of an electronic prescription upon the request of the pharmacy.

8.19(1) 8.19(2) Verification. The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order or medication order consistent with federal and state laws, ~~and rules, and regulations.~~ In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

8.19(2) 8.19(3) Transmitting agent. The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally, by facsimile transmission, or by electronic transmission provided that the ~~name~~ first and last names and title of the transmitting agent is are included in the order.

a. New order. A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber. If transmitted by the

PHARMACY BOARD[657](cont'd)

prescriber's agent, the ~~name~~ first and last names and title of the transmitting agent shall be included in the order. If the prescription is for a controlled substance and is written or printed from an electronic prescription application, the prescription shall be manually signed by the prescriber prior to delivery of the prescription to the patient or prior to facsimile transmission of the prescription to the pharmacy. An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to the electronic transmission. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

b. Refill order or renewal order. An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to a pharmacist through oral communication, in writing, by facsimile transmission, or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent and the ~~name~~ first and last names and title of the transmitting agent ~~is~~ are included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph 8.19(3) "a."

~~8.19(3)~~ **8.19(4)** *Receiving agent.* Regardless of the means of transmission to a pharmacy, only a pharmacist, a pharmacist-intern, or a certified pharmacy technician shall be authorized to receive a new prescription drug or medication order from a practitioner or the practitioner's agent. In addition to a pharmacist, a pharmacist-intern, and a certified pharmacy technician, a technician trainee or an uncertified pharmacy technician may receive a refill or renewal order from a practitioner or the practitioner's agent if the technician's supervising pharmacist has authorized that function.

~~8.19(4)~~ **8.19(5)** *Legitimate purpose.* The pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship.

~~8.19(5)~~ **8.19(6)** *Refills.* ~~A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.~~ A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

a. Noncontrolled prescription drug or device. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued.

b. Controlled substance. A prescription for a Schedule III, IV, or V controlled substance may authorize no more than 5 refills within 6 months following the date on which the prescription is issued.

ITEM 2. Amend rule 657—10.17(124) as follows:

657—10.17(124) Accountability of stock supply. An individual who administers a controlled substance from a non-patient-specific, stock supply in an institutional setting shall personally document on a separate readily retrievable record system each dose administered, wasted, or returned to the pharmacy. Such documentation shall not be delegated to another individual. Wastage documentation shall include the signature or unique electronic signature or identification of a witnessing licensed health care practitioner.

Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

1. to 7. No change.

PHARMACY BOARD[657](cont'd)

ITEM 3. Amend rule 657—10.21(124,126,155A) as follows:

657—10.21(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and ~~manually~~ signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled.

10.21(1) Form of prescription. All prescriptions shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions. A secretary or prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.21(2) Verification by pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

10.21(3) Intern, resident, foreign physician. An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.6(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the intern, resident, or foreign physician as well as the prescriber's signature.

10.21(4) and 10.21(5) No change.

ITEM 4. Amend subrule 10.22(1) as follows:

10.22(1) Emergency situation defined. For the purposes of authorizing an oral or ~~electronically transmitted~~ facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

a. and *b.* No change.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the ~~person dispensing the substance prior to~~ pharmacy before the dispensing pharmacy dispenses the controlled substance or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

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ITEM 5. Amend subrule 10.22(2) as follows:

10.22(2) Requirements of emergency prescription. In the case of an emergency situation as defined ~~herein~~ in subrule 10.22(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to ~~an electronic~~ a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. No change.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the ~~electronic~~ facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the ~~name~~ first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via ~~electronic~~ facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the ~~electronic~~ facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. No change.

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

ITEM 6. Amend rule 657—10.27(124,155A), introductory paragraph, as follows:

657—10.27(124,155A) Facsimile transmission of a controlled substance prescription. With the exception of an authorization for emergency dispensing as provided in rule 657—10.22(124), a prescription for a controlled substance may be transmitted via facsimile from a prescriber to a pharmacy as provided in rule 657—21.9(124,155A).

ITEM 7. Amend rule 657—21.1(124,155A) as follows:

657—21.1(124,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its servers.

"DEA" means the U.S. Department of Justice, Drug Enforcement Administration.

"Electronically prepared prescription" means a prescription that is generated utilizing an electronic prescription application.

"Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

"Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on a prescriber's computers and servers where access and records are controlled by the prescriber.

"Electronic signature" means a confidential personalized digital key, code, or number, or other method used for secure electronic data transmissions which identifies ~~and~~ a particular person as the source of the message, authenticates the signatory of the message, and indicates the person's approval of the information contained in the transmission.

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~~“Electronic transmission” means the transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment. “Electronic transmission” includes, but is not limited to, transmission by facsimile machine, transmission to a printer as provided in subrule 21.7(3), and transmission by computer link, modem, or other communication device of an electronic prescription, formatted as an electronic data file, from a prescriber’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.~~

~~“Facsimile transmission” or “fax transmission” means the transmission of a digital image of a prescription from the prescriber to the pharmacy. “Facsimile transmission” includes but is not limited to transmission of a written prescription between the prescriber’s fax machine and the pharmacy’s fax machine; transmission of an electronically prepared prescription from the prescriber’s electronic prescription application to the pharmacy’s fax machine, computer, or printer; or transmission of an electronically prepared prescription from the prescriber’s fax machine to the pharmacy’s fax machine, computer, or printer.~~

~~“Intermediary” means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.~~

~~“Pharmacy prescription application” means software that is used to process prescription information, is installed on a pharmacy’s computers or servers, and is controlled by the pharmacy.~~

~~“Prescription drug order” or “prescription” means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy, regardless of whether the communication is oral, electronic, facsimile, or in printed form.~~

~~“Readily retrievable” means that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.~~

~~“Written prescription” means a prescription that is created on paper, a prescription that is electronically prepared and printed, or a prescription that is electronically prepared and transmitted from the prescriber’s electronic device to a pharmacy via facsimile. A written prescription for a controlled substance shall be manually signed by the prescriber in compliance with federal and state laws, rules, and regulations.~~

ITEM 8. Amend rule 657—21.2(124,155A) as follows:

657—21.2(124,155A) System security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Once a drug or device has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist. A pharmacy prescription application used for the receipt and processing of electronic transmissions from a prescriber’s electronic prescription application shall comply with DEA requirements relating to electronic prescriptions and shall be certified compliant with DEA regulations.

ITEM 9. Amend rule 657—21.3(124,155A) as follows:

657—21.3(124,155A) Verifying authenticity of an electronically prepared or electronically or fax transmitted prescription. The pharmacist shall ensure the validity of the prescription as to its source of origin.

21.3(1) Authentication measures. Measures to be considered in authenticating prescription drug orders received via electronic transmission or fax transmission, or signed utilizing an electronic signature include but may not be limited to:

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- 1- a. Maintenance of a practitioner number reference or electronic signature file.
- 2- b. Verification of the telephone number of the originating facsimile equipment or oral communication device.
- 3- c. Telephone verification with the practitioner's office that the prescription was both issued by the practitioner and transmitted by the practitioner or the practitioner's authorized agent.
- 4- d. Use of authentication processes approved by the DEA for controlled substances prescriptions.
- e. Other efforts which, in the professional judgment of the pharmacist, may be necessary to ensure that the transmission was initiated by the prescriber.

21.3(2) Prescription originally electronically transmitted. When a pharmacist receives a written or oral prescription that indicates the prescription was originally electronically transmitted to a pharmacy, the pharmacist shall check with the pharmacy to which the prescription was originally electronically transmitted to determine whether the prescription was received and dispensed.

a. If the pharmacy that received the original electronic prescription dispensed the original prescription, the pharmacist receiving the written prescription shall mark the written prescription as void and shall not dispense the written prescription.

b. If the pharmacy that received the original electronic prescription has not dispensed the prescription, the pharmacy receiving the original electronic prescription shall mark the electronic prescription as void and shall not dispense the electronic prescription. The pharmacy that received the written or oral prescription shall dispense the prescription.

ITEM 10. Amend paragraph **21.4(1)“d”** as follows:

d. Date and quantity of each refill or partial fill, if applicable, and the total number of refills dispensed to date;

ITEM 11. Amend subrule 21.4(2) as follows:

21.4(2) Printout of prescription fill data. Any computerized system shall have the capability of producing a printout of any prescription fill data the user pharmacy is responsible for maintaining or producing under state and federal rules and regulations. This would include a refill-by-refill audit trail for any specified strength and dosage form of any prescription drug by brand or generic name or both. Records maintained or provided in electronic format shall be sortable by prescriber name, patient name, drug dispensed, and date filled. ~~In any~~ Any computerized system employed by a user pharmacy, ~~the central record-keeping location must shall~~ be capable of providing the printout ~~to~~ at the pharmacy ~~within 48 hours~~ a printout or electronic file of the records in a format that is readily understandable to the board or other authorized agents. A pharmacy may contract with an application service provider, or the pharmacy may maintain computer servers at a remote location, but all required records shall be readily retrievable at the pharmacy if requested by the board or other authorized agent. The printout or electronic record shall include the following:

a. to f. No change.

ITEM 12. Amend subrule 21.4(3) as follows:

21.4(3) Auxiliary procedure for system downtime. In the event that a pharmacy utilizing a computerized system experiences system downtime, the pharmacy shall have an auxiliary procedure that will be used for documentation of fills and refills of prescription orders. This auxiliary procedure shall ensure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for ~~on-line~~ online data entry when the computer system is again available for use. As soon as reasonably possible upon resuming use of the computerized system, entry of all appropriate data accumulated during the system downtime shall be completed.

ITEM 13. Adopt the following **new** subrule 21.4(4):

21.4(4) Prescription notations. When a pharmacist fills an electronic prescription that would require the pharmacist to make a notation on the prescription if the prescription were a written prescription, the

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pharmacist shall make the same notation electronically and shall retain the annotation electronically in the prescription record or in linked files.

ITEM 14. Adopt the following **new** subrule 21.4(5):

21.4(5) *Records for electronic prescriptions for controlled substances.* A pharmacy that processes electronic prescriptions for controlled substances shall use a pharmacy prescription application that complies with DEA requirements relating to electronic prescriptions and that has been certified compliant with DEA regulations. When a prescription is received electronically from a prescriber's electronic prescription application into the pharmacy prescription application, the prescription and all required annotations shall be retained electronically.

ITEM 15. Amend rule 657—21.5(124,155A) as follows:

657—21.5(124,155A) Pharmacist verification of controlled substance refills—daily printout or logbook. The individual pharmacist who makes use of the ~~system~~ pharmacy prescription application shall provide documentation of the fact that the refill information entered into ~~a computer~~ the pharmacy prescription application each time the pharmacist refills an original written, fax, or oral prescription order for a controlled substance is correct. If the ~~system~~ pharmacy prescription application provides a hard-copy printout of each day's controlled substance prescription order refill data, that printout shall be verified, dated, and signed by each individual pharmacist who refilled a controlled substance prescription order. Each individual pharmacist must verify that the data indicated is correct and sign this document in the same manner as the pharmacist would sign a check or legal document (e.g., J. H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be generated by and available at each pharmacy using a computerized ~~system~~ pharmacy prescription application within 48 hours of the date on which the refill was dispensed. The printout shall be verified and signed by each pharmacist involved with such dispensing.

In lieu of preparing and maintaining printouts as provided above, the pharmacy may maintain a bound logbook or separate file. The logbook or file shall include a statement signed each day by each individual pharmacist involved in each day's dispensing that attests to the fact that the refill information entered into the ~~computer~~ pharmacy prescription application that day has been reviewed by the pharmacist and is correct as shown. Pharmacist statements shall be signed in the manner previously described. The ~~log book~~ logbook or file shall be maintained at the pharmacy for a period of two years after the date of dispensing the appropriately authorized refill.

ITEM 16. Amend subrule 21.7(1) as follows:

21.7(1) *Controlled substances.* A prescription for a controlled substance prepared pursuant to this rule may be transmitted to a pharmacy via facsimile transmission as provided by rule 657—21.9(124,155A) or rules 657—21.12(124,155A) through 657—21.16(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature. A prescription for a controlled substance may be transmitted by a prescriber to a pharmacy via electronic transmission pursuant to DEA requirements for electronic prescribing of controlled substances. Both the prescriber's electronic prescription application and the pharmacy prescription application shall be certified compliant with DEA regulations for electronic prescriptions. An electronically prepared prescription shall not be electronically transmitted to the pharmacy if the prescription has been printed prior to the electronic transmission. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy only, not valid for dispensing.

ITEM 17. Amend subrule 21.7(2) as follows:

21.7(2) *Noncontrolled prescription drugs.* A prescription for a noncontrolled prescription drug prepared pursuant to this rule may be transmitted to a pharmacy via ~~computer to computer~~ electronic transmission as provided in rule 657—21.8(124,155A) or via facsimile transmission as provided in rule 657—21.9(124,155A). The transmitted prescription shall include the prescriber's original signature or electronic signature.

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ITEM 18. Amend subrule 21.7(3) as follows:

21.7(3) Printed (hard-copy) prescriptions. A prescription prepared pursuant to this rule may be printed by the prescriber or prescriber's agent for delivery to a pharmacy. An electronically prepared and electronically transmitted prescription that is printed following the electronic transmission shall be clearly labeled as a copy, not valid for dispensing.

a. No change.

b. If the prescriber authenticates a prescription for a noncontrolled prescription drug utilizing an electronic signature, the printed prescription shall be printed on security paper that is designed to prevent photocopying or other duplication of the printed prescription by prominently disclosing the word "void" or "copy" on the duplication or by including a watermark or background that will not appear on duplication. If a watermark or background is used, the prescription shall include a statement that unless the watermark or background appears, the prescription is not valid. Security paper that complies with the security requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, shall be deemed to comply with the security requirements of this paragraph.

c. No change.

ITEM 19. Amend rule 657—21.8(124,155A) as follows:

657—21.8(124,155A) Computer-to-computer Electronic transmission of a prescription. Prescription drug orders, ~~excluding orders for controlled substances,~~ may be communicated directly from a prescriber's computer or other electronic device utilizing an electronic prescription application to a ~~pharmacy's computer prescription processing system~~ pharmacy prescription application by electronic transmission. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). The authenticity of a prescription transmitted via electronic transmission between a DEA-certified electronic prescription application and a DEA-certified electronic pharmacy prescription application shall be deemed verified by virtue of the security processes included in those applications.

21.8(1) Secure transmission and patient's choice. Orders shall be sent only to the pharmacy of the patient's choice, and no ~~unauthorized intervening person or other entity~~ intermediary shall change the content of the prescription drug order or compromise its confidentiality during the transmission process. The electronic format of the prescription drug order may be changed by the intermediary to facilitate the transmission between electronic applications as long as the content of the prescription drug order remains unchanged. This subrule does not prohibit the receiving pharmacist from amending or adding to the content of a prescription as necessary in compliance with federal and state laws, rules, or regulations.

21.8(2) Information required. ~~The~~ In addition to the information requirements for a prescription, an electronically transmitted prescription drug order shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state laws, rules, or regulations.

21.8(3) Who may transmit. Orders shall be initiated and authorized only by ~~an authorized~~ a prescriber licensed and authorized under state law to prescribe the drug or device identified in the prescription and shall include the prescriber's electronic signature. An order for a controlled substance shall include the prescriber's DEA registration number. Orders may be transmitted by the prescriber or the prescriber's agent. An order transmitted by the prescriber's agent shall include the agent's first and last names and title.

21.8(4) Original prescription. The electronic transmission shall be deemed the original prescription drug order provided it meets the requirements of this rule. The electronic transmission of a prescription drug order for a controlled substance shall meet all requirements of the DEA for electronic prescribing. An electronically prepared and transmitted prescription shall be maintained electronically in the prescriber's electronic prescription application and the pharmacy prescription application for a minimum period of two years following the date of last activity on that prescription record. Once a prescription is created and transmitted electronically, the prescription record shall not be printed and retained as a hard-copy record.

PHARMACY BOARD[657](cont'd)

21.8(5) Failure of electronic transmission. If the transmission of an electronic prescription fails, the intermediary shall notify the prescriber of that transmission failure and the prescriber may print the prescription, manually sign the printed prescription, and deliver the prescription to the pharmacy via facsimile transmission. The faxed prescription shall indicate that it was originally transmitted to the named pharmacy, the date and time of the original electronic transmission, and the fact that the original transmission failed.

ITEM 20. Amend rule 657—21.9(124,155A) as follows:

657—21.9(124,155A) Facsimile transmission (fax) of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. A pharmacist may dispense a Schedule II controlled substance to fill an emergency prescription authorization pursuant to the requirements of rule 657—10.22(124). The means of transmission via facsimile shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. The faxed prescription drug order, if transmitted by the practitioner's agent, shall identify the transmitting agent by ~~name~~ first and last names and title and shall include the prescriber's signature or electronic signature. A prescription for a controlled substance shall include the prescriber's manual signature. If the controlled substance prescription is not manually signed by the prescriber, the pharmacist shall orally verify the authenticity and the content of the prescription by contacting the prescriber via telephone. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). This rule shall not apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph "d."

ITEM 21. Amend rule 657—21.12(124,155A) as follows:

657—21.12(124,155A) Prescription drug orders for Schedule II controlled substances. A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of an electronically prepared prescription if both the prescriber's electronic prescription application and the pharmacy prescription application have been certified to comply with DEA requirements for electronic prescribing of controlled substances. Records of electronically prepared and transmitted prescriptions shall be maintained electronically. A pharmacist may dispense Schedule II controlled substances pursuant to ~~an electronic~~ facsimile transmission to the pharmacy of a written, signed prescription from the prescribing practitioner provided that the original written, signed prescription is received by the pharmacist prior to the actual dispensing of the controlled substance. ~~If the~~ An emergency authorization is transmitted to the pharmacy by the practitioner's agent, ~~the transmission~~ shall include the ~~name~~ first and last names and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The original prescription shall be verified against the transmission at the time the substance is actually dispensed, shall be properly annotated, and shall be retained with the electronic transmission for filing.

ITEM 22. Amend rule 657—21.13(124,155A) as follows:

657—21.13(124,155A) ~~Prescription drug orders~~ Facsimile transmission of a prescription for Schedule II controlled substances—emergency situations. A pharmacist may in an emergency situation as defined in 657—subrule 10.22(1) dispense Schedule II controlled substances pursuant to ~~an electronic~~ a facsimile transmission to the pharmacy of a written, signed prescription from the prescribing

PHARMACY BOARD[657](cont'd)

practitioner pursuant to the requirements of 657—10.22(124). The facsimile or a print of the ~~electronic facsimile~~ transmission shall serve as the temporary written record required by 657—subrule 10.22(2).

ITEM 23. Amend rule 657—21.14(124,155A) as follows:

657—21.14(124,155A) Facsimile transmission of a prescription for Schedule II narcotic substances—parenteral. A prescription for a nonoral dosage unit of a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the pharmacy via facsimile. If the prescription is transmitted by the practitioner's agent, the transmission shall include the ~~name~~ first and last names and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The facsimile serves as the original written prescription.

ITEM 24. Amend rule 657—21.15(124,155A), introductory paragraph, as follows:

657—21.15(124,155A) Facsimile transmission of Schedule II controlled substances—long-term care facility patients. A prescription for any Schedule II controlled substance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy via facsimile. If the prescription is transmitted by the practitioner's agent, the transmission shall include the ~~name~~ first and last names and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

ITEM 25. Amend rule 657—21.16(124,155A), introductory paragraph, as follows:

657—21.16(124,155A) Facsimile transmission of Schedule II controlled substances—hospice patients. A prescription for a Schedule II controlled substance for a patient enrolled in a hospice care program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the practitioner or the practitioner's agent to the dispensing pharmacy. If the prescription is transmitted by the practitioner's agent, the transmission shall include the ~~name~~ first and last names and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

ITEM 26. Amend subrule 23.9(3) as follows:

23.9(3) Who may transmit medication orders. An authorized prescriber or prescriber's agent or any person who is employed by a long-term care facility and who is authorized by the facility's policies and procedures may transmit to the long-term care pharmacy a medication order lawfully ordered by a practitioner authorized to prescribe drugs and devices. An order transmitted by the prescriber's agent shall include the agent's first and last names and title.

ITEM 27. Amend rule 657—23.18(124,155A) as follows:

657—23.18(124,155A) Schedule II orders. This rule shall not apply to Schedule II controlled substances orders in facilities that utilize a floor stock distribution system as provided in subrule 23.11(4). Schedule II controlled substances in all other facilities shall be dispensed only upon receipt of an electronic prescription prepared, transmitted, and received in compliance with DEA regulations for electronic prescriptions or an original written order signed by the prescribing individual practitioner or upon receipt of a facsimile transmission of an original written order signed by the prescribing individual practitioner pursuant to rule 657—21.15(124,155A). In emergency situations as defined in 657—subrule 10.22(1), Schedule II controlled substances may be dispensed in compliance with the requirements of rule 657—10.22(124) or rule 657—21.13(124,155A), as applicable. In all cases, any order for a Schedule II controlled substance shall specify the total quantity authorized by the prescriber.

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ITEM 28. Amend rule 657—23.20(124,155A), introductory paragraph, as follows:

657—23.20(124,155A) Partial filling of Schedule II controlled substances. A medication order for a Schedule II controlled substance ~~written~~ for a resident in a long-term care facility (LTCF) may be filled in partial quantities to include individual dosage units. The pharmacist shall record on the ~~written or electronic~~ medication order that the patient is an “LTCF patient.” A medication order that is partially filled and does not contain the notation “LTCF patient” shall be deemed to have been filled in violation of the controlled substances Act.

ARC 9673B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology hereby gives Notice of Intended Action to amend Chapter 240, “Licensure of Psychologists,” and Chapter 242, “Discipline for Psychologists,” Iowa Administrative Code.

These proposed amendments clarify the requirements for supervisors; clarify the requirements for and increase flexibility in the supervised professional experience; allow applicants who were matriculated in a doctoral program of psychology as of January 12, 2005, to be considered for licensure if the Board determines that the doctoral program is equivalent to programs meeting specified criteria in subrule 240.3(3); remove a title designation that is duplicative of the health service training program requirements and remove supervision of unlicensed persons who are licensed in other states; clarify the organized health service training program requirements and revise the total number of hours to be consistent with the Association of Psychology Postdoctoral and Internship Centers (APPIC); clarify that the Board accepts the passing score established by the Association of State and Provincial Psychology Boards (ASPPB) for the examination; remove the requirement that the Board send a renewal notice by regular mail to licensees to be consistent with Iowa law; and rescind the requirements for mental, physical, or clinical competency examinations, as these requirements are now stated in Chapter 4 of the rules for the Professional Licensure Division.

Any interested person may make written comments on the proposed amendments no later than September 13, 2011, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail sdozier@idph.state.ia.us.

A public hearing will be held on September 7, 2011, from 10 to 11 a.m. in Conference Room 415, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code chapters 21, 147, 154B and 272C.

The following amendments are proposed.

ITEM 1. Amend rule **645—240.1(154B)**, definition of “Supervisor,” as follows:

“Supervisor” means a licensed psychologist who meets the qualifications stated in these rules, during the time in which supervision is provided, is actively licensed in the jurisdiction where the supervision occurs.

ITEM 2. Amend subrule 240.3(3), introductory paragraph, as follows:

240.3(3) ~~At~~ Unless otherwise stated in this rule, at the time of an applicant’s graduation:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Renumber subrule **240.3(4)** as **240.3(5)**.

ITEM 4. Adopt the following **new** subrule 240.3(4):

240.3(4) Applicants who were matriculated prior to January 12, 2005, in a doctoral program of psychology that the board determines is equivalent to programs meeting one of the criteria in subrule 240.3(3) shall be deemed to have met the educational requirement. This provision does not apply to applicants who are foreign-trained.

ITEM 5. Amend rule 645—240.5(154B) as follows:

645—240.5(154B) Title designations.

240.5(1) Applicants for licensure who have met educational requirements but have not yet passed the EPPP may be designated “psychology associate” or “associate in psychology.” The title “psychology associate” or “associate in psychology” shall not be used except in the person’s employment and supervision that meet the requirements of ~~subrule~~ subrules 240.6(1) and 240.6(2).

240.5(2) Applicants for licensure who have passed the EPPP and who are fulfilling the experience requirements specified herein for licensure may be designated “psychology resident” or “resident in psychology.” The designation of “resident” shall not be used except in the employment and supervised experience that meet the requirements of ~~subrule~~ subrules 240.6(1) and 240.6(2).

240.5(3) Applicants for licensure who are engaged in organized health service training programs as specified in rule 645—240.7(154B) shall use one of the titles specified in paragraph 240.7(2)“i.”

240.5(4) ~~Persons licensed in another state who are in the process of seeking licensure in Iowa and who are being supervised until obtaining an Iowa license may use the designation “Licensed Psychologist, (name of state)” for a period of up to one year from the date of application.~~

ITEM 6. Amend subrule 240.6(1) as follows:

240.6(1) The supervised professional experience shall:

- a. Be at least one year or a minimum of 1500 hours of supervised professional experience;
- b. Apply the principles of psychology;
- c. Be supervised by a licensed psychologist ~~as specified in accordance with~~ subrule 240.6(2) ~~or~~ and rule 645—240.9(154B);
- d. Be performed competently as attested to by the supervisor;
- e. Have the fees and receipt of payment schedule remain the sole domain of the employing agency or supervising psychologist.

ITEM 7. Amend subrule 240.6(2) as follows:

240.6(2) Requirements.

- a. To meet the requirements of the supervised professional experience, the supervisee must:
 - (1) ~~Meet a minimum of one hour per week, face to face and individually with the supervisor during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;~~
 - (2) Have training that is appropriate to the functions to be performed;
 - (3) Work in the same physical setting as the supervisor unless ~~otherwise~~ a completed off-site supervision form is submitted to and approved by the board;
 - (4) Offer work in the name of the supervising psychologist;
 - (5) Begin the experience after all academic requirements for the doctoral degree are met and when all degree requirements are verified in writing;
 - (6) Not apply professional employment that occurs prior to meeting the doctoral academic requirements to the supervised professional experience; and
 - ~~(7) Compute part-time employment on a prorated basis for the supervised professional experience;~~
 - ~~and~~
 - ~~(8)~~ (7) Have the background, training, and experience that is appropriate to the functions performed.
- b. To meet the requirements of the supervised professional experience, the supervisor must:
 - (1) Be a licensed psychologist as specified in rule 240.2(154B) ~~or 240.9(154B)~~ 645—240.1(154B);

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (2) Complete the supervision form provided by the board;
- (3) Meet ~~a minimum of one hour per week~~, face to face and individually with the supervisee during each week in which experience hours are accrued, for no less than a total of 45 hours during the period of supervised professional experience;
- (4) Provide training that is appropriate to the functions to be performed;
- (5) Work in the same physical setting as the supervisee unless ~~otherwise~~ a completed off-site supervision form is submitted to and approved by the board;
- (6) Have work offered in the name of the supervising psychologist;
- (7) Have no more than three full-time persons associated with the supervisor as listed on the supervisor report form obtained from the board;
- (8) Not provide group supervision as part of ~~this experience~~ the 45 hours required for individual supervision;
- (9) Not supervise any psychological practice or permit the supervisor's supervisee to engage in any psychological practice which the supervisor cannot perform competently; and
- (10) Be responsible for determining competency of the work performed by the supervisee and the designation of the title of the supervisee.

ITEM 8. Rescind subrule **240.6(5)**.

ITEM 9. Amend paragraph **240.7(1)“a”** as follows:

a. Verify at least two years of clinical experience in a recognized health service setting or meet the standards of the National Register of Health Service Providers in Psychology. Two years of clinical experience means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in ~~subrule 240.7(2)~~ these rules and one year is ~~postdoctoral~~ in a recognized health service setting as defined in these rules that meets the requirements for supervised professional experience stated in subrules 240.6(1) and 240.6(2).

ITEM 10. Rescind subrule 240.7(2) and adopt the following **new** subrule in lieu thereof:

240.7(2) Requirements of the organized health service training program. Internship programs in professional psychology that are accredited by the Commission on Accreditation of the American Psychological Association (APA) or that hold membership in the Association of Psychology Postdoctoral and Internship Centers (APPIC) are deemed approved. Applicants completing an organized health service training program that is not APA-approved or AAPIC-designated at the time the applicant completes the training shall cause documentation to be sent from the program to establish that the program:

- a.* Provides the intern with a planned, programmed sequence of training experiences.
- b.* Has a clearly designated doctoral-level staff psychologist who is responsible for the integrity and quality of the training program and is actively licensed by the board of psychology in the jurisdiction in which the program exists.
- c.* Has two or more doctoral-level psychologists on the staff who serve as primary supervisors and are actively licensed by the board of psychology in the jurisdiction in which the program exists.
- d.* Has supervision that is provided by staff members of the organized health service training program or by an affiliate of the organized health service training program who carry clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more doctoral-level psychologists.
- e.* Provides training in a range of psychological assessment and treatment activities conducted directly with recipients of psychological services.
- f.* Ensures that trainees have a minimum of 375 hours of direct patient contact.
- g.* Includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two years) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved, seminars dealing with clinical issues, cotherapy with a staff person including discussion, group supervision, and additional individual supervision.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- h.* Has training that is at the postclerkship, postpracticum, and postexternship level.
- i.* Has a minimum of two interns at the internship level of training during any period of training.
- j.* Designates for internship-level trainees titles such as “intern,” “resident,” “fellow,” or other designation of trainee status.
- k.* Has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainees’ work and is made available to prospective interns.
- l.* Provides a minimum of 1500 hours of training experience that shall be completed in no less than 12 months within a 24-consecutive-month period.

ITEM 11. Amend subrule 240.10(3) as follows:

240.10(3) Provides one of the following: the official EPPP score sent directly to the board from the Association of State and Provincial Psychology Boards, or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score is established by the Association of State and Provincial Psychology Boards shall be considered passing.

ITEM 12. Amend subrule 240.12(1) as follows:

240.12(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 13. Rescind and reserve rule **645—242.5(154B)**.

ARC 9652B

PUBLIC SAFETY DEPARTMENT[661]

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 103.6, the Electrical Examining Board hereby gives Notice of Intended Action to amend Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration,” and Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” Iowa Administrative Code.

Iowa Code chapter 103 establishes the Electrical Examining Board and assigns it responsibility to establish and operate the statewide electrician and electrical contractor licensing program and to adopt administrative rules for the program. The amendments proposed herein are intended to simplify for many electricians the process of achieving licensure as journeyman electricians, by providing alternative pathways to attaining eligibility for such licensure. The amendments are also intended to clarify that apprentice electricians and unclassified persons may work under the supervision of residential electricians on residential jobs and that residential master electricians may provide required general supervision of journeyman electricians on residential jobs. Finally, an amendment is proposed to permit issuance of a license without examination to a person who holds an equivalent license in a state which has entered into a reciprocal license agreement with the Iowa Electrical Examining Board.

Any interested person may comment on these proposed amendments via E-mail to admrule@dps.state.ia.us, by fax to the Agency Rules Administrator at (515)725-6195, or by regular mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Comments should be submitted no later than 4:30 p.m. on September 14, 2011, or may be submitted at the public hearing.

A public hearing to receive comments regarding these proposed amendments will be held during the meeting of the Electrical Examining Board at 10 a.m. on September 15, 2011, in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa.

The amendments proposed herein are subject to the waiver provisions in rule 661—501.5(17A) which apply generally to rules of the Electrical Examining Board.

Any fiscal impact of these proposed amendments is anticipated to be less than \$100,000 annually.

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

These amendments are intended to implement Iowa Code chapter 103.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Special residential electrician” in rule **661—500.2(103)**:

“*Special residential electrician*” means a person who holds a current special electrician license with a residential endorsement.

ITEM 2. Adopt the following **new** subrules 502.1(4) and 502.1(5):

502.1(4) An apprentice electrician or an unclassified person, while performing electrical work, shall be directly supervised at all times by a master electrician or a journeyman electrician or, while performing residential electrical work only, by a residential master electrician, a residential electrician, or a special residential electrician. A master electrician, a journeyman electrician, a residential master electrician, a residential electrician, or a special residential electrician shall at no time directly supervise more than three apprentice electricians and unclassified persons at once. For purposes of this subrule, “unclassified person” includes a person who is working as an unclassified person and holds either an “unclassified person” license or another license issued by the board.

502.1(5) A journeyman electrician or a residential electrician shall work under the general direction of a master electrician or, while performing residential electrical work only, under the general direction of a residential master electrician. A special residential electrician may perform residential work without supervision or direction.

ITEM 3. Amend subrule 502.2(6) as follows:

502.2(6) A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has successfully completed a registered apprenticeship program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has completed four years of experience as an apprentice electrician; ~~or~~

~~*b.* As of December 31, 2007, held a current valid license as a journeyman electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and has completed a registered apprenticeship program and four years of experience as an apprentice electrician; or~~

~~*e. b.* Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher.~~

~~*c.* EXCEPTION: An electrician currently licensed~~ Holds a current electrician license in another state may satisfy and satisfies the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

~~1. (1) Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.~~

~~2. (2) Completion of 18 hours of continuing education units approved by the board.~~

~~3. (3) Completion of 1,000 hours of work in Iowa as an unclassified person.~~

~~*d.* Holds a current license issued by the board, excluding a special electrician license other than special residential electrician license; has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher; has completed 54 hours of continuing~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician other than a special residential electrician, as verified by a master electrician licensed by the board. The 16,000 hours must include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours must have been completed by the applicant within the five years immediately preceding the submission date of the application.

EXCEPTION: On or before December 31, 2019, a maximum of 10,000 of the required 16,000 hours of verified work experience may have been completed between January 1, 2000, and December 31, 2007, without licensure from the board or from any political subdivision.

e. Holds a current license issued by the board as a residential electrician or residential master electrician, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has completed 4,000 hours of work on commercial or industrial electrical installations while licensed by the board, as verified by a master electrician licensed by the board. The 4,000 hours must include at least the following minimum numbers of hours in the categories indicated: 100 hours of preliminary work, 500 hours of rough-in work, 500 hours of finish work, 500 hours of lighting and service work, 100 hours of troubleshooting, and 100 hours of motor control work.

f. Holds a current license issued by the board, has satisfactorily completed an approved postsecondary electrical education program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and, subsequent to beginning the postsecondary electrical education program, has completed at least 6,000 hours of electrical work while licensed by the board, as verified by a master electrician licensed by the board.

ITEM 4. Amend paragraph **502.2(9)“b”** by adding the following **new** paragraphs at the end thereof:

NOTE: An individual who holds any of the following licenses issued by the plumbing and mechanical systems board established pursuant to Iowa Code section 105.3 is not required to hold a license issued by the electrical examining board in order to perform disconnection and reconnection of existing air conditioning and refrigeration systems:

1. Master HVAC.
2. Journeyman HVAC.
3. Master refrigeration.
4. Journeyman refrigeration.

ITEM 5. Adopt the following **new** subrule 502.2(14):

502.2(14) Reciprocal licensing. A license may be issued, without examination, to a person who holds a license from another state provided that the board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the license issued by the other state and the Iowa license to be issued. The person applying for an Iowa license based on this subrule shall provide a copy of the license from the other state, a completed application for an Iowa license, and the applicable license fee. The board may require additional evidence that the person's license is current.

ARC 9675B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 423.25, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” and Chapter 26, “Sales and Use Tax on Services,” and to adopt new Chapter 224, “Telecommunication Services,” Iowa Administrative Code.

Item 1 proposes to amend rule 701—18.20(422,423) to cross reference new 701—Chapter 224.

Item 2 proposes to strike language referencing “one-way paging service” in rule 701—26.43(422).

Item 3 proposes new 701—Chapter 224 to contain the rules explaining a specific subset of the taxable services, communications and telecommunications, identified in Iowa Code section 423.2. The new chapter is based upon current rule 701—18.20(422,423) with two differences. First, the Department has added clarifying language required for compliance with the Streamlined Sales Tax Governing Board Agreement. This change reflects clarification made in 2011 Iowa Acts, Senate File 515, section 5.

Second, the rules implement Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. The Streamlined Sales and Use Tax Act was adopted to enable Iowa’s participation in the Streamlined Sales Tax Governing Board. The Streamlined Sales Tax project is a compact of states and businesses working together to simplify and standardize laws and rules relating to sales tax. The ultimate goal of the project is to facilitate and enable remote collection of sales tax. As part of the Department’s revision of the telecommunication service rules to reflect the Streamlined Sales Tax, obsolete references and provisions have been omitted. The new rules use the term “telecommunication service” rather than “communication service.”

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these proposed amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has 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 September 12, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 30, 2011. Such written comments should be directed to the Policy Section, Policy and Communications 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, Policy and Communications 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 August 30, 2011.

After analysis and review of this rule making, no impact on jobs has been found. However, the Department has determined that these proposed amendments may have a positive impact on small

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business. In fact, the revised rules should be simpler and easier for businesses to understand and complete, reducing red tape and overly burdensome processes.

These amendments are intended to implement Iowa Code chapter 423 as amended by 2011 Iowa Acts, Senate File 515.

The following amendments are proposed.

ITEM 1. Amend rule 701—18.20(422,423), introductory paragraph, as follows:

701—18.20(422,423) Communication services. This rule applies to sales of communication services billed prior to [insert effective date of these amendments]. For communication service, telecommunication service, ancillary service and other related communication service billed on or after [insert effective date of these amendments], refer to 701—Chapter 224, Iowa Administrative Code. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

ITEM 2. Amend rule 701—26.43(422) as follows:

701—26.43(422,423) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

~~A one-way paging service is not a taxable enumerated service in Iowa because a one-way pager only receives information and is not capable of transmitting information.~~

This rule is intended to implement Iowa Code section 422.43(11).

ITEM 3. Adopt the following **new** 701—Chapter 224:

CHAPTER 224
TELECOMMUNICATION SERVICES

701—224.1(423) Taxable telecommunication service and ancillary service. The gross receipts from the sale of all telecommunication service and ancillary service are subject to the sales or use tax. This chapter applies to telecommunication service and ancillary service that are billed on or after [insert effective date of these rules]. For telecommunication service and ancillary service billed prior to [insert effective date of these rules], refer to rule 701—18.20(422,423), Iowa Administrative Code.

701—224.2(423) Definitions.

“800 service” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

“Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunication service for hire to subscribers in aircraft.

“Ancillary services” means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

“Call-by-call basis” means any method of charging for telecommunication services in which the price is measured by individual calls.

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“*Communications channel*” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

“*Conference bridging service*” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

“*Customer*” means the person or entity that contracts with the seller of telecommunication services. If the end user of telecommunication services is not the contracting party, the end user of the telecommunication service is the customer of the telecommunication service. For purposes of sourcing sales of telecommunication service, the end user of the telecommunication service is the customer of the telecommunication service when the end user is not also the contracting party. “Customer” does not include a reseller of telecommunication service or for mobile telecommunication service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

“*Customer channel termination point*” means the location where the customer either inputs or receives the communications.

“*Detailed telecommunication billing service*” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“*Directory assistance*” means an ancillary service of providing telephone number information and address information.

“*End user*” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

“*Fixed wireless service*” means a telecommunication service that provides radio communication between fixed points.

“*Gross receipts from the sale of telecommunication service*” or “*gross receipts*” means all charges to any person which are necessary for the end user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 224.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state even though payment of the charge may also be necessary to secure other services.

“*Home service provider*” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“*International*” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“*Interstate*” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

“*In this state*” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“*Intrastate*” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“*Mobile telecommunication service*” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. § 124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. Refer also to Iowa Code section 423.2(9) as amended by 2011 Iowa Acts, Senate File 515, section 5.

“*Mobile wireless service*” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the

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transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

"Paging service" means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

"Pay telephone service" means a telecommunication service provided through any pay telephone. "Pay telephone service" also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

"Place of primary use" means the street address representative of where the customer's use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunication service, the place of primary use must be within the licensed service area of the home service provider.

"Postpaid calling service" means the telecommunication service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A postpaid calling service includes a telecommunication service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

"Prepaid calling service" means the right to access exclusively telecommunication services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, that are sold in predetermined units or dollars of which the number declines with use in a known amount.

"Prepaid wireless calling service" means a telecommunication service that provides the right to utilize mobile wireless service as well as other non-telecommunication services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Residential telecommunication service" means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

"Service address" means:

1. The location of the telecommunication equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph "1" is not known, "service address" means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs "1" and "2" are not known, the service address means the location of the customer's place of primary use.

"Telecommunication service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. "Telecommunication service" does not include the following:

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1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer's premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by a commercial mobile radio service provider, as defined in 47 CFR 20.3;
8. Ancillary services;
9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

"Value-added non-voice data service" means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

"Vertical service" means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

"Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

701—224.3(423) Imposition of tax.

224.3(1) *Taxable telecommunication service and ancillary service.* The gross receipts from the sale of telecommunication service and ancillary service are subject to the sales or use tax. The following is a nonexclusive list of telecommunication services subject to the Iowa sales and use tax:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

224.3(2) *Other taxable services and circumstances.* The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, "end user intrastate access charges," are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Gross receipts from services performed by another company.* Gross receipts collected by a company (selling company) from the end users of telecommunication services and ancillary services

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performed in this state by another company (providing company) are considered to be the taxable gross receipts of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. Directory assistance. Charges for directory assistance service rendered in this state are subject to tax.

d. Electrical installation and repair. The gross receipts from the installation or repair of any inside wire that provides electrical current that allows an electronic device to function are subject to tax. These gross receipts are from the enumerated service of electrical repair or installation. The gross receipts from “inside wire maintenance charges” for services performed under a service or warranty contract are also subject to tax. Depending upon the circumstances, these gross receipts are for the enumerated service of “electrical repair” or are incurred under an “optional service or warranty contract” for an enumerated service. In either event, the receipts are subject to tax.

e. Electrical installation or repair: billing methodology. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, are subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. Nonitemized taxes and charges. Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. Rental of tangible personal property. The gross receipts from the rental of any device for home or office use or to provide a telecommunication service to others are taxable as the rental of tangible personal property. The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer’s premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. See Iowa Code section 423.3. Other exemptions may be applicable as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of gross receipts.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. See subrule 224.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state is subject to sales tax.

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via Klear Kopy’s fax machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communication service on Klear Kopy’s dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

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EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30." The \$30 is not gross receipts for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

701—224.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

224.4(1) Detailed communications billing service.

224.4(2) Internet access fees or charges.

224.4(3) Value-added non-voice data service.

224.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

a. Fees and charges for securing only interstate telecommunication services.

b. Federal taxes.

c. Fees and charges for only interstate directory assistance.

224.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

224.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

224.4(7) Enhanced 911 surcharge. An enhanced 911 emergency telephone service surcharge is a surcharge for a service which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for enhanced 911 emergency telephone service is not subject to sales tax if:

a. The amount is no more than \$1 per month per telephone access line; and

b. The surcharge is separately identified and separately billed.

224.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

224.4(9) Resale exemption. Services or facilities furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualify for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

224.4(10) On-line services. Any contracted on-line service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

224.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of

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a building or structure is exempt from Iowa tax. For more information about the exemptions for new construction, see 701—Chapter 219.

701—224.5(423) Bundled transactions in telecommunication service.

224.5(1) A “bundled transaction” is the retail sale of two or more products where:

- a. The products are otherwise distinct and identifiable; and
- b. The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction.

224.5(2) In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

224.5(3) The provisions of this rule apply unless otherwise provided by federal law.

701—224.6(423) Sourcing telecommunication service.

224.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services unless the service falls under one of the exceptions set forth in subrule 224.6(2).

224.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

b. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer’s place of primary use.

e. The sale of an ancillary service is sourced to the customer’s place of primary use.

f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either (1) the seller’s telecommunication system or (2) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

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g. The sale of telecommunication service sold on a call-by-call basis is sourced to (1) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

701—224.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

224.7(1) Retailers liable for collecting and remitting tax. Retailers that sell taxable telecommunication service and ancillary service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

224.7(2) Billing date and tax period. Companies that bill their subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in their gross receipts. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

224.7(3) Permitting business offices. All companies must have a permit for each business office that provides telecommunication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of those offices.

224.7(4) Credit. A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

224.7(5) Direct pay permit not applicable to telecommunication services. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

224.7(6) Guaranteed amounts for coin-operated telephones. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable gross receipts collected.

These rules are intended to implement Iowa Code chapter 423 as amended by 2011 Iowa Acts, Senate File 515.

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:

USURY(cont'd)

August 1, 2010 — August 31, 2010	5.25%
September 1, 2010 — September 30, 2010	5.00%
October 1, 2010 — October 31, 2010	4.75%
November 1, 2010 — November 30, 2010	4.75%
December 1, 2010 — December 31, 2010	4.50%
January 1, 2011 — January 31, 2011	4.75%
February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%
April 1, 2011 — April 30, 2011	5.50%
May 1, 2011 — May 31, 2011	5.50%
June 1, 2011 — June 30, 2011	5.50%
July 1, 2011 — July 31, 2011	5.25%
August 1, 2011 — August 31, 2011	5.00%

ARC 9676B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 1, "Definitions," Iowa Administrative Code.

This rule making rescinds the amendment which was Adopted and Filed Emergency as **ARC 9483B** and simultaneously proposed under Notice of Intended Action as **ARC 9484B** in the May 4, 2011, Iowa Administrative Bulletin and which added a new paragraph "5" to the definition of "attest" in rule 193A—1.1(542).

As part of the Auditing Standards Board's Clarity Project, guidance on the examination of financial controls at a service organization previously contained in Statement on Auditing Standard (SAS) No. 70 was replaced by Statement on Standards for Attestation Engagements (SSAE) No. 16. SSAE No. 16 was released in April 2010 and was effective for service auditors' reports for periods ending on or after June 15, 2011. The Auditing Standards Board has characterized the change as a carefully considered step in reorganizing standards for clarity and convergence with international standards and utility.

In Iowa, this change by the Auditing Standards Board had the unintended effect of reclassifying service audits (of such entities as investment advisors and data centers) from "attest" services that must be performed by a CPA within a CPA firm to nonattest services that may be performed by anyone. Service audits are crucial services and should be performed by licensed professionals guided by the highest standards of professional ethics and competence. Public protection could have been substantially weakened in Iowa if the Accountancy Examining Board did not take steps to ensure that service audits, including the reporting on internal controls of service organizations, continue to be treated as attest services.

2011 Iowa Acts, House File 646, section 50, amends Iowa Code section 542.3(1)"a"(3) in a manner that makes unnecessary the rule making that was Adopted and Filed Emergency as **ARC 9483B**.

Pursuant to Iowa Code section 17A.4(3), the Accountancy Examining Board finds that notice and public participation are unnecessary because **ARC 9483B** had the unintended effect of lessening public protection and endangering mobility by omitting certain important services related to auditing from the definition of "attest" as defined by Iowa's state law.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Accountancy Examining Board further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective upon filing on July 22, 2011. As the previous amendment was effective for service auditors' reports for periods ending on or after June 15, 2011, it is necessary for this amendment to be effective as soon as possible.

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

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

This amendment became effective July 22, 2011.

The following amendment is adopted.

Amend rule **193A—1.1(542)**, definition of "Attest," as follows:

"Attest" or "attest service" means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.
2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.
3. An examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the PCAOB.
5. ~~Any audit or other engagement regarding service organizations and service audits that as of April 7, 2011, would be performed in accordance with the statement on auditing standards and, in particular, SAS No. 70, shall continue to be performed in accordance with the statements on auditing~~

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

~~standards in effect on April 7, 2011, and shall not be guided by the statements on standards for attestation engagements and in particular SSAE No. 16.~~

The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the AICPA, the PCAOB, or other recognized national accountancy organization.

[Filed Emergency 7/22/11, effective 7/22/11]

[Published 8/10/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9664B

CITY DEVELOPMENT BOARD[263]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 368.10, the City Development Board hereby amends Chapter 7, “Voluntary Annexation,” and Chapter 8, “Petitions for Involuntary City Development Action,” Iowa Administrative Code.

The rules in Chapters 7 and 8 outline documentation requirements for annexation applications.

These amendments rescind prior amendments adopted by the Board on May 11, 2011, and published as **ARC 9546B** in the June 1, 2011, Iowa Administrative Bulletin.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation are impracticable and contrary to public interest because of the level of unanticipated controversy that resulted from the amendments adopted on May 11, 2011, and because of the need to obtain additional input from stakeholders before further amendment of the rules.

The Board further finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing. The Board’s finding is based upon the fact that the amendments will confer a benefit upon the public by providing opportunities for additional discussion before these rules are amended further.

The City Development Board adopted these amendments on July 13, 2011.

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

These amendments are intended to implement Iowa Code chapter 368.

These amendments became effective July 20, 2011.

The following amendments are adopted.

ITEM 1. Rescind and reserve paragraph **7.2(2)“j.”**

ITEM 2. Amend subrule 8.3(9) as follows:

8.3(9) Residential and commercial development regulation and projections. The petition shall include a description of current and proposed zoning regulations that apply to the annexation territory. Projected development and land use patterns shall be described under the assumption of continuation of existing land use regulations and under the assumption of land use regulations that would be applied after the annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

In the case of annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided. ~~Petitions for annexation shall include a statement indicating whether the city has applied smart planning principles to the territory and, if applicable, a description of how the city has applied, or intends to apply, smart planning principles.~~

[Filed Emergency 7/20/11, effective 7/20/11]

[Published 8/10/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9647B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

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

This amendment implements changes to medical assistance eligibility under the Iowa Family Planning Network (IFPN) which are contingent on approval of a waiver request by the federal Centers for Medicare and Medicaid Services. These changes are mandated by 2010 Iowa Acts, chapter 1192 (House File 2526), section 11, subsection 24. The amendment:

- Limits eligibility to people who are uninsured or have health insurance that does not include family planning services, who are not otherwise enrolled in Medicaid (other than IowaCare), and who are not enrolled in the Children’s Health Insurance Program (HAWK-I).

- Expands IFPN eligibility by specifying an upper age limit of 55, increasing the income limit from 200 percent of the federal poverty level to 300 percent of the federal poverty level, and including men. A statutory change was made by 2011 Iowa Acts, Senate File 482, to remove the word “women” from the provision authorizing eligibility for family planning services and substitute “individuals.”

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

The Council on Human Services adopted this amendment on July 13, 2011.

The Department finds that notice and public participation are unnecessary because this amendment is mandated by legislation and are impracticable because that legislation directs the Department to make these changes effective on July 1, 2011. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department finds that this amendment confers a benefit on applicants for family planning services by expanding eligibility. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 9648B** to allow for public comment.

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

This amendment is intended to implement 2010 Iowa Acts, chapter 1192, section 11, subsection 24, and Iowa Code section 249A.3 as amended by 2011 Iowa Acts, Senate File 482, section 16.

This amendment became effective August 1, 2011.

The following amendment is adopted.

Amend subrule 75.1(41) as follows:

75.1(41) *Women Persons eligible for family planning services under demonstration waiver.* Medical assistance for family planning services only shall be available to ~~women~~ as provided in this subrule.

a. Eligibility. The following are eligible for assistance under this coverage group if they are uninsured or have health insurance that does not include family planning services, are not otherwise enrolled in Medicaid (other than IowaCare), and are not enrolled in the Children’s Health Insurance Program (HAWK-I):

(1) No change.

(2) Women who are ~~of~~ have reached childbearing age, are under 55 years of age, are capable of bearing children but are not pregnant, and have income that does not exceed 200 300 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”

(3) Men who are under 55 years of age, who are capable of fathering children, and who have income that does not exceed 300 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”

b. Application.

(1) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) ~~Women~~ A person requesting assistance based on subparagraph 75.1(41)“a”(2) or 75.1(41)“a”(3) shall file an application as required in rule 441—76.1(249A).

c. Determining income eligibility. The department shall determine the countable income of a ~~woman~~ an applicant applying under subparagraph 75.1(41)“a”(2) or 75.1(41)“a”(3) as follows:

(1) to (4) No change.

(5) Disregard of changes. A ~~woman~~ person found to be income-eligible upon application or annual redetermination of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

d. No change.

[Filed Emergency 7/13/11, effective 8/1/11]

[Published 8/10/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9649B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, Senate File 233, section 1(3), the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments allow licensed mental health counselors and certified alcohol and drug counselors to enroll as Medicaid providers of behavioral health services, as mandated by 2011 Iowa Acts, Senate File 233. Providers’ services must be within the scope of practice granted by their license or certification.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9538B**. The Department received comments from two providers requesting clarification on the scope of the rules.

Response: Providers will still bill Magellan Behavioral Health, the Iowa Plan contractor, for the majority of behavioral health services. These amendments allow a provider that serves a Medicaid member who is not Iowa-Plan-eligible to enroll as a Medicaid provider and to bill the Iowa Medicaid Enterprise for services to that member. These amendments provide for continuity of care across the fee-for-service and managed care platforms when a member moves from one group to another.

The Department also received a comment from UnitedHealthcare requesting changes in the rules to make sanctioning information from the Iowa Board of Substance Abuse Certification more widely available to health care contractors and to the public.

Response: All drug and alcohol abuse counselors will have to provide verification of their certification to the Iowa Medicaid Enterprise on a routine basis. The Iowa Medicaid Enterprise will regularly compare the list of enrolled providers to the list of providers published by the Iowa Board of Substance Abuse Certification to determine if any of the providers have been sanctioned.

The Council on Human Services adopted these amendments on July 13, 2011. These amendments are identical to those published in the Notice of Intended Action.

The Department finds that these amendments confer a benefit on Medicaid members and providers by providing another payment source for behavioral health services. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments do not provide for waivers in specified situations because these provisions are set by statute.

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

These amendments are intended to implement Iowa Code section 249A.15A as amended by 2011 Iowa Acts, Senate File 233.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments became effective on August 1, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.26(249A) as follows:

441—77.26(249A) Behavioral health services. The following persons are eligible to participate in the Medicaid program as providers of behavioral health services.

77.26(1) to 77.26(3) No change.

77.26(4) Licensed mental health counselors (LMC). Any person licensed by the board of behavioral science as a mental health counselor pursuant to Iowa Code chapter 154D and 645—Chapter 31 is eligible to participate. A mental health counselor in another state is eligible to participate when duly licensed to practice in that state.

77.26(5) Certified alcohol and drug counselors. Any person certified by the nongovernmental Iowa board of substance abuse certification as an alcohol and drug counselor is eligible to participate.

This rule is intended to implement Iowa Code chapter 249A as amended by ~~2008~~ 2011 Iowa Acts, Senate File ~~2425~~, ~~section 123~~ 233.

ITEM 2. Amend rule 441—78.29(249A), introductory paragraph, as follows:

441—78.29(249A) Behavioral health services. Payment shall be made for medically necessary behavioral health services provided by a participating marital and family therapist, independent social worker, ~~or master social worker~~, mental health counselor, or certified alcohol and drug counselor within the practitioner's scope of practice pursuant to state law and subject to the limitations and exclusions set forth in this rule.

[Filed Emergency After Notice 7/13/11, effective 8/1/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9674B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 481A.38, 481A.39, 481A.48 as amended by 2011 Iowa Acts, Senate File 464, and 455A.5(6), the Natural Resource Commission hereby amends Chapter 97, "Common Snipe, Virginia Rail and Sora, Woodcock and Ruffed Grouse Hunting Seasons," Iowa Administrative Code.

The amendments add mourning doves and Eurasian collared-doves to the species covered in Chapter 97 and set the season dates, bag and possession limits, shooting hours, and areas open to hunting doves. The amendments also require the use of nontoxic shot while hunting doves.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 4, 2011, as **ARC 9495B**. A public hearing was held on May 24, 2011. Numerous comments were received in support of and in opposition to the proposed amendments. The season dates, bag and possession limits follow those allowed by the United States Fish and Wildlife Service (USFWS). Since publication of the Notice, the Eurasian collared-dove was added to the list of species that can be taken based upon recommendations from the USFWS enforcement personnel. The collared-dove is not a migratory species, yet most states include the collared-dove as a legal species during the season since it is similar in appearance to the mourning dove. Additionally, the requirement for nontoxic shot was added by the Natural Resource Commission at its July meeting pursuant to its authority in Iowa Code section 481A.38(1) to regulate the method and means of hunting and in response to public comment.

The Department maintains that the new dove season will have a positive impact on jobs in Iowa. The USFWS conducted a National Hunting and Fishing Survey in Iowa in 2006 and found that, on average, Iowa hunters spent \$104/day hunting upland game. Surveys conducted by Southwick & Associates in

NATURAL RESOURCE COMMISSION[571](cont'd)

surrounding states show a range of 15,000 to 20,000 dove hunters, each of whom hunts doves an average of 3.3 days a year. These data, when transferred to Iowa, would show a potential economic impact of \$5.1 to \$6.8 million. Additionally, Southwick & Associates' 2006 survey from surrounding states shows a trend of 1 job created for every 733 days of hunting. Again, these figures when transferred to Iowa would show a potential for 67.5 to 90 new jobs.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective August 17, 2011, as the amendments confer a benefit by establishing a September 1 start date to the dove hunting season.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.39 and section 481A.48 as amended by 2011 Iowa Acts, Senate File 464.

These amendments will become effective August 17, 2011.

The following amendments are adopted.

ITEM 1. Amend **571—Chapter 97**, title, as follows:

COMMON SNIPE, VIRGINIA RAIL AND SORA, WOODCOCK,
~~AND RUFFED GROUSE, AND DOVE HUNTING SEASONS~~

ITEM 2. Adopt the following new rule 571—97.6(481A):

571—97.6(481A) Dove season. Open season for hunting mourning doves and Eurasian collared-doves shall begin on September 1 and continue for 70 consecutive days. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit is 15; possession limit is 30. The entire state is open. No person shall take a mourning dove or Eurasian collared-dove on any land or water of the state of Iowa while having in one's possession any shot other than nontoxic approved by the United States Fish and Wildlife Service.

[Filed Emergency After Notice 7/22/11, effective 8/17/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9670B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 162.16, the Department of Agriculture and Land Stewardship hereby amends Chapter 67, “Animal Welfare,” Iowa Administrative Code.

The amendment updates provisions related to the Department’s ability to regulate federal animal facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9525B** on June 1, 2011.

A public hearing was held on June 23, 2011. It was suggested at the hearing that the term “federal permit” be changed to “federal license,” and that change has been made. No other changes have been made to the Noticed amendment.

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

This amendment is intended to implement Iowa Code sections 162.10A, 162.10B and 162.10C.

This amendment will become effective September 14, 2011.

The following amendment is adopted.

Rescind rule 21—67.8(162) and adopt the following **new** rule in lieu thereof:

21—67.8(162) Applicability to commercial establishments with federal licenses. In addition to obtaining the permit from the department, any person who operates a commercial establishment under a current and valid federal license shall provide care ensuring adequate feed, water, and housing facilities and appropriate sanitary control, grooming practices and veterinary care. The department has the authority to inspect the premises and the required records.

This rule is intended to implement Iowa Code sections 162.10A, 162.10B and 162.10C.

[Filed 7/21/11, effective 9/14/11]

[Published 8/10/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9668B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 27, “Neighborhood Stabilization Program,” Iowa Administrative Code.

The Neighborhood Stabilization Program is a 100 percent federally funded program whose intent is to address the economic housing crisis. The initial funding was created by the Housing and Economic Recovery Act in 2008. The State of Iowa received \$21,607,197 from the first allocation. The primary goal of the Neighborhood Stabilization Program is to put foreclosed or abandoned residential properties back into productive use. The program also allows for demolition of blighted properties that are no longer productive or safe.

These amendments address changes made to the Neighborhood Stabilization Program in the third allocation of funding (NSP3). The State of Iowa will be receiving \$5 million from the third allocation. The State of Iowa has amended the application pool of eligible subrecipients based upon the aggressive expenditure deadlines mandated for NSP3 and the new eligibility requirements provided by the U.S. Department of Housing and Urban Development (HUD). Also, the NSP3 Notice of Funds Availability redefined some eligible activities and implemented activity expenditure limits.

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

Notice of Intended Action for these amendments was published in the May 18, 2011, Iowa Administrative Bulletin as **ARC 9503B**. These amendments were also Adopted and Filed Emergency and were published simultaneously as **ARC 9504B**. The Department held a public hearing on June 7, 2011. The Department received no comments. No changes have been made to the amendments as published under Notice of Intended Action and Adopted and Filed Emergency.

As required under Executive Order Number 71, the jobs impact statement for this rule making is as follows:

- There will be no cost incurred for entities implementing and complying with this rule making.
- The rule making will positively impact job creation in the private sector. The primary activities include acquisition, rehabilitation, demolition and redevelopment. Throughout Iowa these activities are primarily performed on an open bid process. Any cleared contractor may bid on the projects.
- The categories of jobs and employment opportunities as a result of this rule making will be to the real estate, construction, development, suppliers, skilled trades and finance/insurance fields. An estimated 60-70 residential units will be assisted with NSP3, which could result in the service or supplies of over 200 individuals/companies. Eligible communities for NSP3 funding: Des Moines, Waterloo, Sioux City, Council Bluffs, Davenport, Burlington, Perry, Cedar Rapids, Boone, Guthrie Center and Shenandoah.

- The rule making is unlikely to incur additional costs to the employer on a per-employee basis.

These amendments are intended to implement Iowa Code chapter 15.

These amendments will become effective September 14, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “Entitlement community” and “Non-entitlement community” in rule **261—27.2(15)**.

ITEM 2. Amend subrule 27.3(1) as follows:

27.3(1) Eligible applicants. Eligible applicants are those communities within the state with the greatest need, as determined by IDEED using the methodology specified by HUD, which would include the following factors: areas with the greatest number and percentage of home foreclosures, areas with the highest number and percentage of homes financed by a subprime mortgage-related loan, and areas likely to face a significant rise in the rate of home foreclosures with the highest number and percentage of homes in default or delinquency.

ITEM 3. Amend rule 261—27.4(15) as follows:

~~**261—27.4(15) Allocation of funding.** IDEED will allocate the available federal funding between the large entitlement communities and the smaller non-entitlement communities based on measurable statistics relating to the three factors required by federal law relating to the determination of need as described in 27.3(1). After that division of funding has been determined, IDEED will determine an amount to be allocated to each of the entitlement communities based upon the need factors for each of the respective communities. If allocation results in an amount of funding to a community or communities that is too small to result in an effective program, IDEED may reallocate those funds to the other entitlement communities according to the percentages calculated based on the need factors. The funding available to the smaller non-entitlement communities will be distributed on a competitive basis, upon receipt and review of applications from each community. The maximum award to a non-entitlement community will be \$1 million.~~

ITEM 4. Amend rule 261—27.5(15) as follows:

261—27.5(15) Application procedures.

~~**27.5(1) Application procedures for entitlement communities.** Eligible entitlement communities shall submit to IDEED a neighborhood stabilization plan that provides details on their proposed activities, includes a project budget, and demonstrates compliance with federal rules and regulations governing the program.~~

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

~~27.5(2) Application procedures for non-entitlement communities.~~ Non-entitlement communities Communities requesting funds must complete and submit an application similar in content to the plan submitted by the entitlement communities.

~~27.5(3) Application/plan contents.~~ The plan submitted by the entitlement communities, and the application submitted by the non-entitlement communities, which shall include at least the following information:

- a. 1. General project description;
- b. 2. Budget for all activities;
- c. 3. Projected start and end dates;
- d. 4. Demonstration of how the project will meet all federal requirements, including the requirements to benefit households with incomes of less than 120 percent of area median income and that at least 25 percent of the funding will benefit households with incomes of less than 50 percent of area median income;
- e. 5. Targeted geographical area of the community for the proposed activities;
- f. 6. Additional detail on each of the separate proposed activities.

ITEM 5. Amend rule 261—27.6(15) as follows:

261—27.6(15) Plan and application review process.

~~27.6(1) Entitlement communities.~~ IDED will review each plan from an entitlement community eligible applicants to ensure that the proposed activities are eligible activities and that the plan as proposed is in conformance with federal law and regulations. Plans that meet both tests will be approved. Applications will be reviewed on a competitive basis. Each application will be reviewed, rated, and ranked by an IDED review committee on the following factors:

- 1. Need for assistance;
- 2. Impact of the proposed activities;
- 3. Degree of targeting of the activities within the community;
- 4. Timeliness of the proposed project;
- 5. Degree to which green development concepts are incorporated into the proposal.

~~27.6(2) Non-entitlement communities.~~ Applications from non-entitlement communities will be reviewed on a competitive basis. Each application will be reviewed, rated, and ranked by an IDED review committee on the following factors:

- ~~a. Need for assistance;~~
- ~~b. Impact of the proposed activities;~~
- ~~c. Degree of targeting of the activities within the community;~~
- ~~d. Timeliness of the proposed project;~~
- ~~e. Degree to which green development concepts are incorporated into the proposal.~~

ITEM 6. Amend rule 261—27.7(15) as follows:

261—27.7(15) Award process. Upon award decisions, each community that submitted ~~a plan or~~ an application will be notified in writing of the department's decision. Successful applicants will be required to execute a contract with IDED, which will include the proposed activities and budget, the terms of fund disbursement, the reporting requirements, and the federal and state compliance requirements.

ITEM 7. Amend subrule 27.8(6) as follows:

27.8(6) Compliance with federal, state and local laws and regulations. Recipients shall comply with all applicable laws and rules, including the applicable federal CDBG₂ and HERA and Frank-Dodd

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

regulations, any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

[Filed 7/21/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9659B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

This amendment gives the Executive Director discretion in the approval of an application when an applicant is under investigation and probable cause has been determined by the Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 6, 2011, as **ARC 9450B**. A public hearing on the amendment was held on Wednesday, April 27, 2011. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective September 14, 2011.

The following amendment is adopted.

Adopt the following new rule 282—11.39(272):

282—11.39(272) Denial of application during a pending professional practices case. The executive director may deny an application for a Class B license if the applicant is currently under investigation and probable cause has been determined by the board.

[Filed 7/19/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9646B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 229A.15B, the Department of Human Services adopts new Chapter 31, "Civil Commitment Unit," Iowa Administrative Code.

Pursuant to Iowa Code chapter 229A, the Sexually Violent Predator Act, the Department has established a civil commitment unit for sexual offenders which is housed on the campus of the Cherokee Mental Health Institute. Chapter 31 sets policies for this facility regarding visits, grievances, photographing and recording of individuals committed to the facility, release of information, communications with individuals committed to the facility, use of the buildings and grounds, gifts and bequests to the facility, and recovery of the cost of an individual's care from the individual or a responsible party.

Notice of Intended Action on these rules was published in the Iowa Administrative Bulletin on May 4, 2011, as **ARC 9481B**. The Department received no comments on the Notice of Intended Action. These rules are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these rules on July 13, 2011.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These rules allow the facility administrator to waive requirements for approval of visitors when an individual is hospitalized. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These rules are intended to implement Iowa Code chapter 229A.

These rules shall become effective on October 1, 2011.

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 31] is being omitted. These rules are identical to those published under Notice as **ARC 9481B**, IAB 5/4/11.

[Filed 7/13/11, effective 10/1/11]

[Published 8/10/11]

[For replacement pages for IAC, see IAC Supplement 8/10/11.]

ARC 9650B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

The amendments update rules for the Medicaid home- and community-based services (HCBS) intellectual disability waiver to implement legislative directives and corrective actions from the Centers for Medicare and Medicaid Services (CMS) as follows:

- As directed by 2010 Iowa Acts, chapter 1031 (Senate File 2088), section 405, the amendments allow providers of supported community living services to include transportation costs to and from work and day services as reimbursable costs. Currently, these costs must be billed through a separate transportation service. This change may decrease administrative costs and increase the ability of providers to meet members' transportation needs.

- As directed by 2010 Iowa Acts, chapter 1031, section 404, the amendments change the frequency of psychological evaluations and re-evaluations of a member to determine eligibility for the waiver. For persons who have a diagnosis of moderate, severe or profound mental retardation, only one diagnosis made after the member reaches 18 years of age will be required as a condition of eligibility for waiver services after age 21. For persons with a diagnosis of mild or unspecified mental retardation, the frequency of redeterminations after age 21 will be extended to every six years (from the current five years).

- As directed by 2010 Iowa Acts, chapter 1192 (House File 2526), section 70, the amendments set the criteria and process for implementation of one statewide waiting list to ensure that all applicants have equal access to payment slots. Currently, separate waiting lists are maintained by each entity that funds the nonfederal share of waiver services (by counties for their adult residents and by the state for applicants who do not have a county of legal settlement and for children). Each funding entity determines the need for a waiting list based on the entity's financial situation. Applicants receive a payment slot on a first-come, first-served basis as financial resources permit.

As part of the recertification of the intellectual disability waiver in 2009, CMS identified that persons applying for the waiver did not have equal access to a payment slot statewide. Applicants from one county may access services immediately, while applicants from another county may be on a waiting list for months or years. The Department agreed to correct this practice as a condition of renewal of the waiver. The amendments provide for a statewide waiting list that is prioritized based on each applicant's need for waiver services. Criteria are specified for emergency needs and urgent needs. An applicant with an emergency or urgent need would have priority for a payment slot, regardless of where the applicant lived or the financial resources allocated by the county or state.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments also make technical changes to:

- Replace the previous waiver name, “mental retardation waiver” or “MR waiver,” with the current name, “intellectual disability waiver.”
- Remove the term “mental disability equivalent to mental retardation” from the diagnostic eligibility requirements of the intellectual disability waiver.
- Specify that only children in residential-based supported community living placement may have a diagnosis of a “related condition” and define that term.
- Update form names and numbers.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 4, 2011, as **ARC 9497B**. Nine people submitted written comments on the Notice of Intended Action. The majority of comments were on the inadequacy of the 39-cent mileage payment and the \$1570 ceiling on costs for transportation and equipment repair. The Department reimburses providers at 39 cents per mile for transportation when provided as part of the supported community living service or any other waiver service that offers transportation. This is also the rate that state employees are reimbursed for using their personal vehicles for work-related transportation. To increase the per-mile reimbursement rate would add additional cost to the Medicaid program for which no funding is available.

The Department has removed the word “permanently” from and added the phrase “and no alternative housing options are available” to new numbered paragraph 83.61(4)“b”(1)“3” in response to comments. The paragraph now reads as follows: “3. The applicant is living in a homeless shelter and no alternative housing options are available.”

The Council on Human Services adopted these amendments on July 13, 2011.

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

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

These amendments are intended to implement Iowa Code section 249A.4; 2010 Iowa Acts, chapter 1031, sections 404 and 405; and 2010 Iowa Acts, chapter 1192, section 70.

These amendments shall become effective on October 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 78, 83] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9497B**, IAB 5/4/11.

[Filed 7/13/11, effective 10/1/11]

[Published 8/10/11]

[For replacement pages for IAC, see IAC Supplement 8/10/11.]

ARC 9651B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, “Child Care Services,” Iowa Administrative Code.

These amendments make changes to the rules for child care assistance (CCA) as follows:

- Add AmeriCorps payments, cash payments, casino profits, railroad retirement, permanent disability insurance and strike pay to the types of income considered.
- Clarify how income is projected.
- Exclude from countable income emergency and major disaster assistance.
- Clarify that, for two-parent homes, assistance will be approved only for the parents’ coinciding hours of participation in any approved activity (employment, training, or job search).
- Clarify that assistance will be paid for actual travel time between the location of the child care and the training facility or place of employment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Prohibit payment of child care for education in a field in which the parent will not be able to be employed because of known criminal convictions or founded child or dependent adult abuse.
- Add a definition for “on-line or distance learning” and clarify that on-line or distance learning is not approvable when it is completed in the parent’s home and there are no specified times for attendance.
- Clarify that in order to qualify for assistance based on medical incapacity, the parent must already have been determined eligible for assistance based on either the employment or training need for service.
- Clarify that assistance during a job search is limited to 30 consecutive days.
- Clarify that FIP families who need child care for employment do not need to meet the 28-hour weekly employment requirement.
- Clarify that only general (nonfinancial) eligibility requirements are reviewed for PROMISE JOBS families and families receiving assistance for protective needs.
- Clarify that a review form is not required for PROMISE JOBS participants, protective cases and families receiving assistance during a 30-day job search.
- Clarify that the Department can pay for no more than the number of units authorized on the Department’s notice of decision regarding the family’s eligibility.
- Clarify that the Department may deny or cancel a provider agreement when a provider does not meet the criteria to be an eligible provider under subrule 170.4(3).
- Remove obsolete forms, references, and requirements.

These changes are intended to ensure that the rules comply with federal Child Care Development Block Grant regulations, are congruent with rules for related programs such as PROMISE JOBS and the Family Investment Program, and reflect current procedures.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 18, 2011, as **ARC 9518B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on July 13, 2011.

These amendments do not provide for waivers in specified situations because, to the extent that the amendments change current practice, the changes are beneficial to applicants and recipients. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 237A.13.

These amendments shall become effective on October 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [170.1 to 170.4, 170.5(1), 170.9(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 9518B**, IAB 5/18/11.

[Filed 7/13/11, effective 10/1/11]

[Published 8/10/11]

[For replacement pages for IAC, see IAC Supplement 8/10/11.]

ARC 9657B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 52, “Wildlife Refuges,” Iowa Administrative Code.

Chapter 52 gives the regulations for establishing wildlife refuges or sanctuaries for the purpose of preserving the biological balance pursuant to the provisions of Iowa Code section 481A.39 and to effect sound wildlife management.

NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments are proposed to reclassify some existing refuges for the purposes of improving public use and safety and reducing the time required to post refuges each fall. No new refuges are being established.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9524B**. A public hearing was held on June 21, 2011. No comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39.

These amendments shall become effective September 14, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [52.1(2) to 52.1(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 9524B**, IAB 6/1/11.

[Filed 7/18/11, effective 9/14/11]

[Published 8/10/11]

[For replacement pages for IAC, see IAC Supplement 8/10/11.]

ARC 9656B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules stipulate the regulations for hunting wild turkeys during the spring and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements.

The amendments lengthen the youth season from three to nine days and change the starting date for the regular turkey season from the Monday closest to April 13 to the Monday closest to April 15. This provides more time for youth hunters to hunt during the youth season and moves the regular turkey seasons back an average of three days. The amendments also provide that the cost of the preference point for a nonresident who was unsuccessful in the draw be refunded if the hunter buys a license that was left over after the drawing in a different zone or season.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 18, 2011, as **ARC 9507B**. A public hearing was held on June 7, 2011. Most comments received were in support of the change, although some expressed concern about shifting the regular seasons to a slightly later date. Research indicates that the slightly later date will not affect the productivity of wild turkeys or the hunting opportunity for Iowa's hunters. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24.

These amendments shall become effective September 14, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule 98.2(4) as follows:

98.2(4) Seasons. Seasons will be established in accordance with the type of license issued.

a. *Combination shotgun-or-archery licenses.* Consecutive seasons are 4, 5, 7, and 19 days, respectively, with the first season beginning on the Monday closest to April ~~13~~ 15. These seasons shall be designated as seasons 1, 2, 3 and 4, respectively.

NATURAL RESOURCE COMMISSION[571](cont'd)

b. Archery-only licenses. The season shall be 35 days beginning on the Monday closest to April 13 15.

ITEM 2. Amend subrule 98.6(2) as follows:

98.6(2) Youth season dates. The youth turkey hunting license shall be valid during the ~~Friday, Saturday and Sunday~~ nine days immediately before the first turkey season.

ITEM 3. Amend rule ~~571—98.13(483A)~~, first unnumbered paragraph, as follows:

Each individual applicant who is unsuccessful in the drawing will be assigned one preference point for each year in which the individual applies and is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license within four weeks, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Once an applicant receives a license, all preference points will be erased. Preference points will apply to any zone or season for which a hunter applies. The first license drawing each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

[Filed 7/18/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9655B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

These rules stipulate the regulations for hunting rabbits and squirrels and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

The amendment closes the jackrabbit season statewide. Jackrabbits have not been counted on the August roadside survey during two of the last three years, and counts on the spring spotlight survey have also declined. The decline of the jackrabbit population is related to the decline of suitable habitat. Weather patterns since 2007 also may have contributed to the jackrabbit decline. White-tailed jackrabbits are considered extirpated in Missouri, and Nebraska closed its season from Grand Island to the Iowa border in 2006. Minnesota still has a season, although jackrabbit numbers there are also in long-term decline.

Studies in Iowa indicate that the few small jackrabbit populations that remain are not connected by suitable habitat. Thus, although hunting is not the cause for the statewide decline, additional mortality due to hunting may cause isolated populations to disappear.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9543B**. A public hearing was held on June 21, 2011. No comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

This amendment shall become effective September 14, 2011.

The following amendment is adopted.

NATURAL RESOURCE COMMISSION[571](cont'd)

Amend rule 571—107.2(481A) as follows:

~~571—107.2(481A) Jackrabbit season. Open season for hunting jackrabbits shall be from the last Saturday in October through December 1 of each year. Bag limit shall be 1 per day; possession limit 2. Legal hunting hours shall be from sunrise to sunset. Entire state open. Continuous closed season.~~

[Filed 7/18/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9654B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

These rules stipulate the season dates, bag limits, possession limits and areas open to hunting or trapping furbearers. These amendments:

1. Change the closing date for beavers from April 1 to April 15, increase the quota for bobcats from 250 to 350 and increase the quota for river otters from 500 to 650. Both populations appear capable of sustaining the increased harvest.

2. Increase the seasonal bag limit for river otters from 2 to 3. This change will reduce the number of otters trapped and turned over to the DNR.

3. Change the grace period for taking a bobcat or river otter from 48 hours to a period that ends at midnight of the day after the quota fills and the closed season is announced.

4. Increase the amount of time allowed to get a CITES tag for a bobcat or river otter from 48 hours to seven days. The taking of bobcat or river otter must still be reported within 24 hours of capture so that an accurate count can be maintained. The trapper is also required to bring the skin and the carcass when the trapper picks up the CITES tag so that biological samples may be obtained from the carcass. An exception is made if the bobcat or river otter is going to be taken to a taxidermist to be mounted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9544B**. A public hearing was held on June 21, 2011. No comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

These amendments shall become effective September 14, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 571—108.4(481A) as follows:

571—108.4(481A) Beaver. Open season for the taking of beaver shall be from 8 a.m. on the first Saturday in November through April ~~1~~ 15 of succeeding year. No bag or possession limit.

ITEM 2. Amend subrule 108.7(3) as follows:

108.7(3) Quotas and seasonal bag limit.

a. *Seasonal bag limit.* The seasonal bag limit is ~~2~~ 3 river otters and 1 bobcat per person.

b. *Quotas.* The quota for the number of river otters that may be taken is ~~500~~ 650 statewide. The quota for the number of bobcats that may be taken is ~~250~~ 350 in the open area. The season shall end for river otters when the number of river otters trapped, as determined by the harvest reporting system, reaches ~~500~~ the quota. The season shall end for bobcats when the number of bobcats taken, as determined

NATURAL RESOURCE COMMISSION[571](cont'd)

by the harvest reporting system, reaches ~~250~~ the quota. Trappers shall be allowed a ~~48-hour~~ grace period that ends on midnight of the day after the quota is reached to clear their traps of river otters or bobcats. River otters or bobcats found in traps during the grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper's personal bag limit. River otters or bobcats trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

ITEM 3. Amend paragraph **108.7(5)“a”** as follows:

a. Anyone, including a landowner or tenant not required to have a fur harvester license, who takes a river otter or bobcat must report the harvest to a DNR conservation officer or designated DNR employee within 24 hours. The fur harvester must arrange to receive a CITES tag from the officer or designated DNR employee within ~~48 hours~~ seven days of the time the harvest is reported ~~or before the river otter or bobcat is skinned, whichever occurs first.~~ The river otter or bobcat shall be skinned and the carcass turned over to the DNR conservation officer or designated DNR employee at the time the CITES tag is issued. If the specimen is to be kept whole for taxidermy purposes, a cut shall be made by the trapper between the gum line and eye so the CITES tag can be attached to the skin. It shall be the responsibility of the taxidermist to have the carcass turned over to a DNR conservation officer or designated DNR employee once that animal has been skinned for taxidermy purposes.

[Filed 7/18/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9653B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 109, “Groundhog Season,” Iowa Administrative Code.

These rules stipulate the regulations for taking groundhogs. This amendment provides for a continuous open season for groundhogs to allow people to manage nuisance animals at any time.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9545B**. A public hearing was held on June 21, 2011. No comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code chapter 481A.

This amendment shall become effective September 14, 2011.

The following amendment is adopted.

Amend rule 571—109.1(481A) as follows:

571—109.1(481A) Groundhog. ~~Open season for groundhog (woodechuck) shall be from June 15 through October 31 of each year.~~ Continuous open season. Entire state open. No daily bag or possession limit.

This rule is intended to implement Iowa Code chapter 481A.

[Filed 7/18/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9665B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants hereby amends Chapter 326, "Licensure of Physician Assistants," Iowa Administrative Code.

This amendment removes the requirement for the Board to send a renewal notice to the licensee. This change is being made to make licensure requirements consistent with Code of Iowa changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9549B**. A public hearing was held on June 23, 2011, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice.

This amendment was adopted by the Board of Physician Assistants on July 20, 2011.

This amendment will become effective September 14, 2011.

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

This amendment is intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendment is adopted.

Amend subrule 326.9(1) as follows:

326.9(1) The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30 two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the notice~~ from the board does not relieve the licensee of the responsibility for renewing the license.

[Filed 7/21/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9666B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants hereby amends Chapter 329, "Discipline for Physician Assistants," Iowa Administrative Code.

This amendment clarifies that conviction of a crime includes when the judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9548B**. A public hearing was held on June 23, 2011, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice.

This amendment was adopted by the Board of Physician Assistants on July 20, 2011.

This amendment will become effective September 14, 2011.

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

This amendment is intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendment is adopted.

Amend subrule 329.2(11) as follows:

329.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 7/21/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9645B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.24, the Department of Public Health hereby amends Chapter 88, "Volunteer Health Care Provider Program," Iowa Administrative Code.

These amendments relate to the addition of health care profession students at the protected clinics. These amendments will allow for additional volunteers in protected clinics by permitting students to volunteer at the protected clinics.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9537B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 9536B**.

Comments were received from the Medical Board regarding the scope of practice for medical students. No changes were made at this time, but the Department will continue to work with the Medical Board regarding the comments received. Upon further internal review, staff found a conflict in Item 5, paragraph 88.4(4)"a"; it incorrectly had a sponsor entity and a health care provider limited to VHCPP approved services. Changes were made to clarify who and what entities were limited in the services that they provide under VHCPP protection.

The State Board of Health adopted these amendments on July 13, 2011.

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

These amendments are intended to implement Iowa Code section 135.24.

These amendments shall become effective on September 14, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Adopt the following new definition of "Health care provider" in rule **641—88.2(135)**:

"*Health care provider*" means an emergency medical care provider certified pursuant to Iowa Code chapter 147A; a physician licensed pursuant to Iowa Code chapter 148; a physical therapist licensed pursuant to Iowa Code chapter 148A; an occupational therapist licensed pursuant to Iowa Code chapter 148B; a physician assistant licensed pursuant to Iowa Code chapter 148C and practicing under the supervision of a physician; a podiatrist licensed pursuant to Iowa Code chapter 149; a chiropractor licensed pursuant to Iowa Code chapter 151; a respiratory therapist licensed pursuant to Iowa Code chapter 152B; an advanced registered nurse practitioner, a licensed practical nurse or a registered nurse licensed pursuant to Iowa Code chapter 152 or 152E; a dentist, dental assistant, or dental hygienist licensed or registered pursuant to Iowa Code chapter 153; an optometrist licensed pursuant to Iowa Code chapter 154; a psychologist licensed pursuant to Iowa Code chapter 154B; a bachelor social worker, a master social worker, or an independent social worker licensed pursuant to Iowa Code chapter 154C; a marital and family therapist or mental health counselor licensed pursuant to Iowa Code chapter 154D; a speech pathologist or audiologist licensed pursuant to Iowa Code chapter 154F; or a pharmacist licensed pursuant to Iowa Code chapter 155A.

ITEM 2. Amend rule **641—88.2(135)**, definitions of "Health care services" and "Protection agreement," as follows:

"*Health care services*" means services received from ~~an individual volunteer~~ a health care provider at a protected clinic or sponsor entity, as provided in Iowa Code section 135.24 and these rules, and

PUBLIC HEALTH DEPARTMENT[641](cont'd)

approved in a protection agreement or sponsor entity agreement. The agreement covers “health care services” that are volunteer, uncompensated services. For those services to qualify as volunteer, uncompensated services under this chapter, the individual volunteer health care provider, health care provider, protected clinic, or sponsor entity must receive no compensation for any services provided under the agreement and must not bill or accept compensation from the person, or any public or private third-party payor, for the specific services provided by ~~the individual volunteer health care provider covered by the agreement.~~

“*Protection agreement*” means a signed contract providing for defense and indemnification between an individual volunteer health care provider or protected clinic and the volunteer health care provider program (VHCPP). This agreement shall allow the individual health care provider or protected clinic to deliver health care services to uninsured and underinsured persons as an agent of the state. The agreement covers “health care services” that are volunteer, uncompensated services. For those services to qualify as volunteer, uncompensated services under this chapter, the individual volunteer health care provider, health care provider, and protected clinic must receive no compensation for any services provided under the agreement and must not bill or accept compensation from the person, or any public or private third-party payor, for the specific services provided by the individual volunteer health care provider covered by the agreement.

ITEM 3. Amend paragraphs **88.3(2)“b”** and “c” as follows:

b. The protected clinic shall ~~provide~~ have provided to the department a list of all ~~individual volunteer~~ health care providers who provide health care services at the protected clinic.

c. The protected clinic shall ~~submit proof~~ have submitted proof to the department that each ~~individual volunteer~~ health care provider providing health care services at the protected clinic either:

(1) and (2) No change.

ITEM 4. Adopt the following new paragraph **88.3(2)“f”**:

f. A protected clinic may allow health care profession students to volunteer at the protected clinic provided that the following conditions are satisfied:

(1) The college, university, or other health care profession educational institution provides professional liability insurance which covers the students; and

(2) The protected clinic or the health care profession institution provides general liability and professional liability insurance which covers the students; and

(3) The students provide only those services or activities as are authorized by the education agreement, and such services and activities are provided under the on-site supervision of a health care provider.

ITEM 5. Amend paragraph **88.4(4)“a”** as follows:

a. Provide that the individual volunteer health care provider or health care provider within a ~~sponsor entity or~~ protected clinic and the individual volunteer health care provider within a sponsor entity shall perform only those health care services identified and approved by the VHCPP;

ITEM 6. Amend subrule 88.6(4) as follows:

88.6(4) The individual volunteer health care provider, health care provider, protected clinic, or sponsor entity clinic that provided the health care services receives no direct monetary compensation of any kind and no promise to pay compensation for the health care services which allegedly resulted in medical injury.

ITEM 7. Amend rule 641—88.9(135) as follows:

641—88.9(135) Revocation of agreement. The VHCPP may deny, suspend, revoke, or condition the protection agreement of an individual volunteer health care provider, protected clinic or sponsor entity for cause, including but not limited to:

1. to 4. No change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

5. Reasonable grounds to believe that the individual volunteer health care provider or health care provider may have provided incompetent or inadequate care to a patient under the VHCPP or is likely to do so.

6. and 7. No change.

[Filed 7/13/11, effective 9/14/11]

[Published 8/10/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.

ARC 9667B

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 12, "Fees," Iowa Administrative Code.

The adopted amendments increase the National Registry Fee that the Board collects and transmits to the Federal Financial Institution Examination Council.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 15, 2011, as **ARC 9558B**. No public comment was received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Board on July 21, 2011.

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

These amendments are intended to implement Iowa Code section 543D.6.

These amendments shall become effective September 14, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 193F—12.1(543D) as follows:

193F—12.1(543D) Required fees. The following fee schedule applies to certified general, certified residential and associate appraisers.

Initial examination application fee	\$100
Examination fee (and reexamination fee)	\$145
Biennial registration fee for active status:	
Certified general real property appraiser	\$360 <u>\$390</u>
Certified residential real property appraiser	\$360 <u>\$390</u>
Associate real property appraiser	\$250
Biennial registration fee for inactive status:	
Certified general real property appraiser	\$100 <u>\$130</u>
Certified residential real property appraiser	\$100 <u>\$130</u>
Associate real property appraiser	\$50
Temporary practice permit fee (each request)	\$150
Reciprocal application fee (one time only)	\$50
Reciprocal registration fee (biennial)	\$360 <u>\$390</u>
Fee to reinstate a lapsed license	\$150 (plus the registration fee)
Fee to reinstate an inactive license to active status	\$50
Reissuance or replacement of a lost, destroyed, or stolen certificate or registration	\$50

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

Work product review fees:

Original submission, certified residential	\$300
Original submission, certified general	\$650
Additional residential reports as requested by the board	\$150 per report
Additional nonresidential reports as requested by the board	\$250 per report
Voluntary submission of residential reports for review	\$150 per report
Voluntary submission of nonresidential reports for review	\$250 per report

ITEM 2. Amend rule 193F—12.3(543D) as follows:

193F—12.3(543D) Federal registry fee. The board shall collect and transmit to the Federal Financial Institutions Examination Council, on an annual basis, a roster of individuals who have received certification or registration as real property appraisers and a registry fee of ~~\$25~~ \$40 for each individual listed on the roster. The registry fee is included in the registration fee.

[Filed 7/21/11, effective 9/14/11]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/10/11.