



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
 KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157 (515)281-4424

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

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

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

Schedule for Rule Making 2004

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
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 8, 2004	October 27, 2004
10	Friday, October 22, 2004	November 10, 2004
11	Friday, November 5, 2004	November 24, 2004

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*****

PUBLICATION PROCEDURES

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 12, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Cross references updated, amendments to chs 4 to 9, 25, 26, 40, 50 to 54, 59 to 61,
63, 64, 71, 100, 106, 107, 114, 116, Notice **ARC 3659B** 9/15/04

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Farm deer—hunting; monitoring for CWD; registration of premises,
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76.15, Notice **ARC 3533B** Terminated **ARC 3677B** 9/29/04

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PUBLIC HEALTH DEPARTMENT[641]

- AIDS drug assistance program, 11.84 to 11.91, Filed **ARC 3696B** 9/29/04
- Vital records—fees, 96.4, Filed **ARC 3695B** 9/29/04

PUBLIC SAFETY DEPARTMENT[661]

- Fire safety standards—facilities in which agencies provide foster care to fewer than six children,
5.615, Notice **ARC 3684B** 9/29/04
- Iowa sex offender registry, 8.301 to 8.305, adopt ch 83, Notice **ARC 3686B** 9/29/04
- Fire fighter training and certification, rescind ch 54; adopt ch 251, Filed **ARC 3685B** 9/29/04

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

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11.5(2), 11.9(1), Filed **ARC 3679B** 9/29/04
- Rescission of limitation on location and number of racetracks and excursion gambling boats, 1.6,
Filed **ARC 3680B** 9/29/04

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Trust accounts and closings, 13.1(3), 13.1(7), 13.1(11), Filed **ARC 3633B** 9/15/04

REVENUE DEPARTMENT[701]

- Cigarettes—tax, penalties, record keeping; motor fuel refund, 10.1(1), 10.5, 10.76 to 10.79,
68.8(8), 81.1, 81.3, 81.4, 82.6(5), Notice **ARC 3673B** 9/15/04
- Individual income tax; corporation tax; fiduciary income tax; penalty and interest, 10.40 to 10.43, 10.50,
10.56 to 10.58, 10.66, 38.15"5," 38.17(3), 39.1(1) to 39.1(3), 39.1(7), 39.2(2), 39.2(3), 39.5(2),
39.5(8), 39.5(9), 39.6(1), 39.6(2), 39.6(3)"a"(2), 40.2(1)"a," 40.4, 40.10, 40.11, 40.25, 40.26,
40.33, 40.41, 41.5(2), 41.5(6), 41.13, 42.1, 42.2, 42.2(1) to 42.2(5), 42.6, 42.7(2), 42.9, 42.23,
43.3(13), 43.6, 43.7, ch 44, 46.5, ch 47, 49.1(1), 49.6(3), 51.2(2), 52.4(3), 52.5(1), 52.5(3),
52.6, 52.11(7) to 52.11(9), 52.11(11), 52.11(13), 53.8(1), 53.13, 55.3(4), 55.3(7), 57.2(2),
58.4(3), 58.5(1), 58.5(3), 58.6(7), 58.6(8), 58.6(10), 58.6(12), 58.6(14), 59.17, 60.3(4),
60.3(7), 89.4(7), 89.4(9)"h," 89.5(3), 89.9, Notice **ARC 3700B** 9/29/04
- Contributions to endowment fund of Iowa educational saving plan trust;
franchise tax—credits, allocation of revenues, computation of tax;
property rehabilitation tax credit, 40.53(4), 40.58, 42.12, 42.15(3), 52.18(3), 53.21,
58.7, 59.21, 59.22, Notice **ARC 3671B** 9/15/04
- Optional designation of funds by taxpayer, 43.4(1)"a" and "b," 43.4(2)"a" to "c,"
43.4(3) to 43.4(7), Filed **ARC 3672B** 9/15/04
- Property tax, 70.1, 70.2, 70.6(1)"b," 70.15, 71.5(2)"h," 80.13, Filed **ARC 3699B** 9/29/04

SECRETARY OF STATE[721]

- Absentee ballot couriers, 21.361(8), 21.370 to 21.376, Filed Emergency After Notice **ARC 3662B** 9/15/04
- Counting votes, adopt ch 26, Filed **ARC 3665B** 9/15/04
- Help America Vote Act grants, adopt ch 27, Notice **ARC 3635B**, also Filed Emergency **ARC 3636B** 9/15/04
- Registration of postsecondary schools, adopt ch 31, Filed **ARC 3664B** 9/15/04
- Revised nonprofit corporation Act fees, 40.7, Filed **ARC 3663B** 9/15/04

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Electric energy adjustment clause, 20.9, 20.9(2)"a,"
20.9(2)"b"(5), Notice **ARC 3135B Terminated** **ARC 3667B** 9/15/04
- Lifeline and link-up programs, 39.1, 39.3(3), 39.3(4), Filed Emergency **ARC 3666B** 9/15/04

WORKERS' COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Contested cases, 4.17 to 4.20, 4.23, 4.35, 4.36, Filed **ARC 3657B** 9/15/04
Contested cases, 4.25, 4.27, 4.28, Notice **ARC 3658B** 9/15/04

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
3458 Daniels Street
Dubuque, Iowa 52002

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator Mary Lundby
P.O. Box 648
Marion, Iowa 52302-0648

Senator Paul McKinley
21884 483rd Lane
Chariton, Iowa 50049

Senator Donald Redfern
415 Clay Street
Cedar Falls, Iowa 50613

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-5995

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative George Eichhorn
P.O. Box 140
Stratford, Iowa 50249

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

Brian Gentry
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CORRECTIONS DEPARTMENT[201]		
Sex offender registry information, 38.2, 38.3 IAB 9/15/04 ARC 3651B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Probation services—case auditing system, 42.1(4) IAB 9/15/04 ARC 3652B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Residential facilities—case auditing system, 43.1 IAB 9/15/04 ARC 3653B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Work release—case auditing system, 44.1, 44.6(4), 44.9 IAB 9/15/04 ARC 3654B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
Parole—case auditing system, 45.1, 45.7 IAB 9/15/04 ARC 3655B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
OWI programs—change in terminology, 47.1 to 47.4 IAB 9/15/04 ARC 3656B	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 5, 2004 11 a.m. to 1 p.m.
CREDIT UNION DIVISION[189]		
Investment and deposit activities for credit unions, ch 17 IAB 9/15/04 ARC 3643B	Division Conference Room, Suite 370 200 E. Grand Ave. Des Moines, Iowa	October 11, 2004 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Emergency shelter grants program, 24.2, 24.6, 24.10(6), 24.12(3) IAB 9/15/04 ARC 3631B	Second Floor Northeast Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	October 5, 2004 1:30 p.m.
Homeless shelter operation grants program, 29.2, 29.6(5), 29.10, 29.11(3) IAB 9/15/04 ARC 3632B	Second Floor Northeast Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	October 5, 2004 2:30 p.m.
ELDER AFFAIRS DEPARTMENT[321]		
Assisted living programs—provider/ housing partnerships, 25.1 to 25.45 IAB 9/29/04 ARC 3705B (ICN Network)	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	October 19, 2004 10 a.m.
	Room 115, Industrial Technologies Bldg. Northeast Iowa Community College 1625 Hwy 150 South Calmar, Iowa	October 19, 2004 10 a.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)
(ICN Network)

	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	October 19, 2004 10 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 19, 2004 10 a.m.
	Room 107, North Hall University of Iowa End of N. Madison St. Iowa City, Iowa	October 19, 2004 10 a.m.
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	October 19, 2004 10 a.m.
Assisted living programs—technical changes to rules, 25.1, 25.2, 25.22(3), 25.29(1) IAB 9/29/04 ARC 3703B (ICN Network)	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	October 19, 2004 10 a.m.
	Room 115, Industrial Technologies Bldg. Northeast Iowa Community College 1625 Hwy 150 South Calmar, Iowa	October 19, 2004 10 a.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	October 19, 2004 10 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 19, 2004 10 a.m.
	Room 107, North Hall University of Iowa End of N. Madison St. Iowa City, Iowa	October 19, 2004 10 a.m.
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	October 19, 2004 10 a.m.

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

Iowa hazard mitigation plan and disaster recovery plan, 9.1 to 9.4 IAB 9/29/04 ARC 3697B (See also ARC 3698B herein)	Division Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa	October 19, 2004 9 a.m.
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Transfer of rules and implementation of 2004 Iowa Acts, House File 2262, amend 495—ch 4; adopt 495—chs 7 to 16, 20 and 21; rescind 581—ch 21 IAB 9/15/04 ARC 3670B	7401 Register Dr. Des Moines, Iowa	October 5, 2004 9 a.m.
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MEDICAL EXAMINERS BOARD[653]

Administrative and regulatory authority, 1.2, 1.3, 1.10 IAB 9/29/04 ARC 3689B	Suite C 400 SW Eighth St. Des Moines, Iowa	October 19, 2004 3:15 p.m.
Iowa physician health program open to applicants for licensure and licensees, 14.2, 14.3, 14.6, 14.7, 14.9, 14.11, 17.1 IAB 9/29/04 ARC 3690B	Suite C 400 SW Eighth St. Des Moines, Iowa	October 19, 2004 3 p.m.

NATURAL RESOURCE COMMISSION[571]

Lands and waters conservation fund program, 27.4 to 27.7, 27.11, 27.13 IAB 9/29/04 ARC 3706B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 19, 2004 1 p.m.
State parks and recreation areas, 61.2, 61.3(5), 61.4(1) IAB 9/29/04 ARC 3708B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 19, 2004 1 p.m.
Use of metal detectors in state areas, 64.1 to 64.9 IAB 9/29/04 ARC 3707B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 20, 2004 10 a.m.
Fish stocking procedures and fees for private waters, ch 79 IAB 9/29/04 ARC 3709B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 22, 2004 1 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Fire safety standards—facilities in which foster care is provided, 5.615 IAB 9/29/04 ARC 3684B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2004 9:30 a.m.
Sex offender registry, 8.301 to 8.305, adopt ch 83 IAB 9/29/04 ARC 3686B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2004 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
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 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
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 Alcoholic Beverages Division[185]
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 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
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 CORRECTIONS DEPARTMENT[201]
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 CULTURAL AFFAIRS DEPARTMENT[221]
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 Iowa Finance Authority[265]
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 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
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 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
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 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
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 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
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 Medical Examiners Board[653]
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 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3677B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 189A.13 and Iowa Code Supplement section 170.3, the Department of Agriculture and Land Stewardship terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3533B**, rescinding Chapter 57, "Whitetail Deer Hunting Preserves," and amending Chapter 64, "Infectious and Contagious Diseases," Chapter 65, "Livestock Importation," Chapter 66, "Livestock Movement," and Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The Notice proposed to make several changes relating to the termination of farm deer programs for whitetail deer hunting preserves and Chronic Wasting Disease. The Notice also proposed eliminating a number of fees designed to support these programs.

The Department is terminating the rule making commenced in **ARC 3533B** because, simultaneously with its filing, identical amendments were also Adopted and Filed Emergency as **ARC 3534B**. Those amendments are currently in effect. Since the publication of **ARCs 3533B** and **3534B**, the Department has made two additional filings. These filings, published herein as Notice of Intended Action, **ARC 3678B**, and Adopted and Filed Emergency, **ARC 3676B**, modify the existing rules to reinstate the Chronic Wasting Disease program and some related animal health requirements for farm deer. As a result of these filings, it is not necessary to pursue the rule making commenced in **ARC 3533B**.

ARC 3678B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1 and Iowa Code Supplement section 170.3, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," and Chapter 66, "Livestock Movement," Iowa Administrative Code.

The purpose of these amendments is to reinstate rules governing the monitoring of farm deer for chronic wasting disease that were previously rescinded in **ARC 3534B** published in the July 21, 2004, Iowa Administrative Bulletin, due to a lack of financial resources available to continue implementation of a voluntary chronic wasting disease monitoring program for farm deer. However, recently the Department was successful in getting one-time federal funding which will permit reinstatement of the program for one year.

These amendments do not reinstate the whitetail deer hunting preserve program for farmed whitetail deer. They also do not reinstate the fee schedule that had previously been in place to support these programs. The proposed amendments reinstating the chronic wasting disease program will terminate on August 17, 2005, when the federal funding for the chronic wasting disease program ends.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on October 19, 2004. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

These proposed amendments are also Adopted and Filed Emergency and are published herein as **ARC 3676B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to these proposed amendments.

These amendments are intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 170.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 3705B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

The amendments incorporate changes to comply with Iowa Code Supplement section 231C.3(7). The changes allow a housing or service provider to become certified and enter into contractual partnerships to create an assisted living program within a broad scope of subsidized housing options (i.e., Housing and Urban Development, United States Department of Agriculture, tax credits).

These amendments will allow flexibility in service provider/housing partnerships; only one certificate will be issued, and the entity certified will be accountable for all statutory and rule requirements.

The amendments clarify that all programs, regardless of funding sources, will be held to the same standards under the Code of Iowa and the Iowa Administrative Code.

The amendments allow for addenda to a tenant's lease or occupancy agreement to cover provisions required by state

ELDER AFFAIRS DEPARTMENT[321](cont'd)

law or rules when the federal law does not permit prescribed documents to be changed in federally funded housing options.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 19, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing on October 19, 2004, at 10 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Great River Area Education Agency 16
3601 West Avenue Road (Enter east side of building;
directions will be posted)
Burlington

Northeast Iowa Community College
1625 Hwy 150 South
Industrial Technologies Bldg. (west end of campus),
Room 115
Calmar

Loess Hills Area Education Agency 13
24997 Hwy 92 (Use east entrance; directions to room
will be posted)
Council Bluffs

Department of Public Safety, Wallace State Office
Building
Third Floor Conference Room
502 East 9th Street
Des Moines

University of Iowa – 1
At the end of North Madison Street
West Entrance, North Hall, Room 107
Iowa City

Spencer National Guard Armory
11 East 23rd Street (Use south side building entrance)
Spencer

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code Supplement chapter 231C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/LAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend 321—Chapter 25 by renumbering rules **321—25.1(231C)** to **321—25.43(231C)** as **321—25.3(231C)** to **321—25.45(231C)** and adopting the following **new** rules:

321—25.1(231C) Purpose. The purpose of these rules is to encourage the establishment and maintenance of a safe and homelike environment and consumer-driven quality of ser-

vice for individuals of all income levels who require assistance to live independently; and to establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on individual independence, needs and desires for those who require health-related care only on a part-time or intermittent basis.

321—25.2(231C) Applicability. This chapter applies to all housing and service providers for assisted living programs regardless of the funding sources used for dwelling unit construction, remodeling and maintenance or for provision of services or acquisition of goods. If a single entity is not responsible for all aspects of the program, there shall be contractual agreements between all parties which stipulate the terms and conditions of each entity's operation. These agreements shall be submitted as a part of the certification application process established by this chapter.

ITEM 2. Amend renumbered rule **321—25.3(231C)**, definition of "assisted living," to read as follows:

"Assisted living" means provision of housing with services, which may include but are not limited to health-related care, *nutrition*, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. ~~The requirements of this chapter are applicable to all assisted living facilities.~~ There may be other requirements for specific facilities contained in other *federal or state laws, rules or regulations as well as other chapters* under agency number 321.

ITEM 3. Amend renumbered rule **321—25.3(231C)** by adding the following **new** definitions in alphabetical order.

"Addendum" or "addenda" means contract document(s) added to an occupancy agreement or lease if federal or state law or regulations do not permit inclusion of new language or changing of existing language to cover facilities or services to be provided to a tenant.

"Certificate" or "certification" means a certificate issued to either a qualified housing provider or service provider in an assisted living program.

"Housing provider" means the entity responsible for construction, remodeling, modification and maintenance of dwelling units.

"Service provider" means the entity responsible for providing services to tenants, including but not limited to personal and health care, nutrition, and assistance with instrumental activities of daily living.

ITEM 4. Amend renumbered subrule 25.6(10) to read as follows:

25.6(10) ~~A copy~~ *Copies* of the current tenant occupancy agreement *and addenda*.

ITEM 5. Amend renumbered subrule 25.24(1) to read as follows:

25.24(1) Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the program shall enter into an occupancy agreement *and any necessary addenda* that clearly ~~describes~~ *describe* the rights and responsibilities of the tenant and of the program, and shall sign a managed risk policy disclosure statement.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

ITEM 6. Amend renumbered subrule 25.24(2) to read as follows:

25.24(2) The occupancy agreement *and addenda* shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

ITEM 7. Amend renumbered subrule 25.24(3), introductory paragraph, to read as follows:

25.24(3) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement, *in an addendum* or in the supporting documents ~~and~~ *or* attachments:

ITEM 8. Amend renumbered paragraph **25.24(3)“f,”** introductory paragraph, to read as follows:

f. A statement that the assisted living program shall notify the tenant or the tenant's representative, as applicable, in writing at least 30 days prior to any change being made in the occupancy agreement *or addenda* with the following exceptions:

ITEM 9. Amend renumbered subparagraph **25.24(3)“f”(2)** to read as follows:

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement *or addenda* and the necessary services cannot be safely provided by the assisted living program.

ITEM 10. Amend renumbered subrule **25.24(3)** by adding the following **new** paragraph **“t”**:

t. Contact information for the housing provider and service provider(s).

ITEM 11. Amend renumbered subrule 25.24(4) to read as follows:

25.24(4) ~~A copy~~ *Copies* of the occupancy agreement *and addendum* shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

ITEM 12. Amend renumbered subrule 25.24(5) to read as follows:

25.24(5) The occupancy agreement *and addenda* shall be reviewed and updated as necessary to reflect the change in the services and financial arrangements.

ITEM 13. Amend renumbered subrule 25.24(6) to read as follows:

25.24(6) ~~A copy~~ *Copies* of the most current occupancy agreement *and addendum* form(s) shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement *and any addenda* is available to all persons upon request.

ITEM 14. Amend renumbered subrule 25.25(1) to read as follows:

25.25(1) Evaluation prior to occupancy. A program shall evaluate each proposed tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement *and any addenda* and taking occupancy, in order to determine the tenant's eligibility for the program, including whether services needed can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

ITEM 15. Amend renumbered subrule 25.25(4) to read as follows:

25.25(4) Disclosure of additional occupancy and transfer criteria. A program may have additional occupancy or transfer criteria if disclosed in the written occupancy agreement *or addenda* prior to occupancy.

ITEM 16. Amend renumbered subrule 25.25(6) to read as follows:

25.25(6) Right to appeal involuntary transfer. Under the occupancy agreement *or addenda* and Iowa Code Supplement section 231C.6, each tenant shall have the right to an internal appeal of an involuntary transfer.

ITEM 17. Amend renumbered paragraph **25.28(1)“a”** to read as follows:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement *or addenda*, of the need to transfer, the reason for the transfer, and the contact information for the tenant advocate.

ITEM 18. Amend renumbered paragraph **25.29(1)“j”** to read as follows:

j. A complete copy of the tenant's occupancy agreement *and addenda*, including any updates;

ITEM 19. Amend renumbered subrule 25.30(2) to read as follows:

25.30(2) Prior to the tenant's signing the occupancy agreement *and any necessary addenda* and taking occupancy, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

ITEM 20. Amend renumbered paragraph **25.30(4)“b”** to read as follows:

b. Any services and care to be provided pursuant to the occupancy agreement *or addenda* with the tenant;

ITEM 21. Amend renumbered subparagraph **25.31(1)“a”(2)** to read as follows:

(2) The tenant or the tenant's legal representative delegates administration of the medication to the program in the occupancy agreement, *addendum* or signed service plan. The program shall not prohibit a tenant from self-administering medications.

ITEM 22. Amend renumbered subparagraph **25.31(1)“b”(2)** to read as follows:

(2) The tenant or the tenant's legal representative, if applicable, delegates partial or complete control of medications to the program in the occupancy agreement, *addenda* or signed service plan.

ARC 3703B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 25, “Assisted Living Programs,” Iowa Administrative Code.

These amendments are considered technical changes to the chapter:

1. To remove a definition no longer used in the chapter;
2. To change rule language to comply with Iowa Code requirements;
3. To clarify a provision of medication administration; and
4. To clarify the statement regarding alarms on exit doors.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 19, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing on October 19, 2004, at 10 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Great River Area Education Agency 16
3601 West Avenue Road (enter east side of building;
directions will be posted)
Burlington

Northeast Iowa Community College
1625 Hwy 150 South
Industrial Technologies Bldg. (west end of Campus),
Room 115
Calmar

Loess Hills Area Education Agency 13
24997 Hwy 92 (use east entrance; directions to room will
be posted)
Council Bluffs

Dept. of Public Safety, Wallace State Office Building
502 East 9th Street
Third Floor Conference Room
Des Moines

University of Iowa - 1
At the end of North Madison Street
West Entrance, North Hall, Room 107
Iowa City

Spencer National Guard Armory
11 East 23rd Street (use south side building entrance)
Spencer

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code Supplement chapter 231C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **321—25.1(231C)** by rescinding the definition of “allied health care professional.”

ITEM 2. Amend rule 321—25.2(231C) to read as follows:

321—25.2(231C) Program certification. A program ~~may~~ *shall* become certified by meeting all the requirements in Iowa Code Supplement chapter 231C and the applicable rules of this chapter. In addition, a program may be voluntarily accredited by either CARF or JCAHO. For the purpose of these rules, certification is the equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

ITEM 3. Amend subrule **25.22(3)** by adding **new** paragraph “**t**” as follows:

t. A statement as to whether or not the program provides an operating alarm system(s) connected to each exit door.

ITEM 4. Amend subrule **25.29(1)** by adding **new** paragraph “**e**” as follows:

e. Medications are not required to be kept in a locked storage area within the tenant’s dwelling unit when nurse-delegated assistance is used.

ARC 3697B**HOMELAND SECURITY AND
EMERGENCY MANAGEMENT
DIVISION[605]****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 29C.8(3), the Homeland Security and Emergency Management Division proposes to amend Chapter 9, “Iowa Comprehensive Plan,” Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state.

Consideration will be given to all written suggestions or comments on the proposed amendment on or before October

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

19, 2004. Such written materials should be sent to the Administrator, Iowa Homeland Security and Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319, or by facsimile to (515)281-7539.

Also, there will be a public hearing on October 19, 2004, at 9 a.m. (local Iowa time) in the Homeland Security and Emergency Management Division Conference Room, Hoover State Office Building, Level A, Des Moines, Iowa, at which time persons may present their views. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Homeland Security and Emergency Management Division and advise of specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3698B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code section 29C.8.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

INSURANCE DIVISION

Notice of Proposed Workers' Compensation Rate Filing

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects the premium rates for workers' compensation insurance.

The filing proposes a rate of 1 cent per \$100 payroll for domestic terrorism, earthquakes, and catastrophic industrial accidents. The net statewide effect of the filing would be an overall increase in rates of +0.6%. The filing has a proposed effective date of January 1, 2005.

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by October 14, 2004, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, 330 Maple, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by October 25, 2004.

INSURANCE DIVISION

Notice of Proposed Workers' Compensation Rate Filing

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects the premium rates for workers' compensation insurance.

The rate filing proposes an overall decrease in rates of -1.1% and an increase in the expense constant from \$240 to

\$260 for a combined premium level decrease of -0.8%. The filing has a proposed effective date of January 1, 2005.

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by October 14, 2004, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, 330 Maple, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by October 25, 2004.

ARC 3694B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 515.109 and chapter 515F, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 20, "Property and Casualty Insurance Rate and Form Filing Procedures," Iowa Administrative Code.

Effective October 1, 2004, 2004 Iowa Acts, Senate File 2257, sets forth requirements for insurers that use credit reports, credit information or insurance scores with respect to certain lines of personal insurance to provide the Insurance Commissioner with the necessary information to ensure that the use of the credit reports or credit scores is in accordance with Iowa statutes. The statutory amendments to Iowa Code chapter 515 necessitate the rescission of rule 191—20.12(515.515F) regarding the use of credit information in personal insurance.

Any interested person may make written comments on the proposed amendment on or before October 20, 2004. Comments should be directed to Angela Burke Boston, Assistant Commissioner, Insurance Division, 330 Maple, Des Moines, Iowa 50319. Comments may also be transmitted by E-mail to angela.burke.boston@iid.state.ia.us or may be transmitted via facsimile to (515)281-3059. Persons wishing to convey their views orally should contact the Insurance Division at (515)281-5705.

No waiver provision is included in this amendment because the amendment is necessitated by the statutory amendments to Iowa Code chapter 515.

This amendment is intended to implement 2004 Iowa Acts, Senate File 2257.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind and reserve rule **191—20.12(515,515F)**.

ARC 3689B**MEDICAL EXAMINERS
BOARD[653]****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 Medical Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Administrative and Regulatory Authority," Iowa Administrative Code.

The Board approved the amendments at its regularly held meeting on September 2, 2004.

The proposed amendments update the chapter. Under rule 1.2(17A) regarding the purpose of the Board, references to Iowa Code chapters 68B, 252J and 261 are removed. While the Board is obligated to abide by these chapters, it is not responsible for their enforcement. Rule 1.2(17A) is expanded to refer to the Board's licensee review committee. In 2003, Iowa Code section 272C.3(1)"k" was amended to allow the Board to refer physicians to participate in the licensee review committee, in addition to having physicians self-report.

Rule 1.3(17A) is amended to clarify that action on disciplinary matters requires a majority vote of the number of Board members appointed to the Board; whereas, routine business requires a simple majority vote of the members present. Other amendments to rule 1.3(17A) clarify that the Board has the authority to establish and administer rules on mandatory training for the identification and reporting of child abuse and dependent adult abuse, in addition to continuing education, and that the Board is obligated by law to establish fees with the intention of producing sufficient revenue to cover the expenses involved with operation of the Board and the Board office. In addition, the Board's committees are revised as follows: Policy duties are added to the executive committee, and one member-at-large is added to the executive committee's structure, thus ensuring that at least one member of the executive committee is a public member; the disciplinary committees are eliminated; the names of several committees are updated; and the licensure committee's duties are expanded to include review of volunteer physician applications. New paragraphs 1.3(5)"m," "n" and "o" establish the Iowa physician health committee as the Board's licensee review committee and clarify that the Board is authorized to hire and supervise the executive director and to file administrative rules and pursue legislation where necessary to conduct the Board's business. The Board is using the name Iowa physician health committee and program for its licensee review committee rather than the former name, impaired physicians review committee and program.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on October 19, 2004. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@iowa.gov.

There will be a public hearing on October 19, 2004, at 3:15 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of

Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 17A, 68B, 147, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 653—1.2(17A) as follows:

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters ~~68B~~, 147, 148, 148E, 150, 150A, ~~252J~~, ~~261~~ and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture; ~~and the imposition of discipline upon licensees as provided by statute or rule; and the operation of a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability and who self-report or who are referred by the board to the committee.~~

ITEM 2. Amend subrule 1.3(4) as follows:

1.3(4) A majority of the members of the board shall constitute a quorum. Official action requires a majority vote of members present. *Action on disciplinary matters requires a majority vote of the number of board members appointed.*

ITEM 3. Amend subrule **1.3(5)**, paragraphs "**j**," "**k**" and "**l**," as follows:

j. Establish and administer rules for continuing education and mandatory training requirements as a condition of license renewal.

k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board with the intention of producing sufficient revenue to cover the expenses involved with operation of the board and the board office.

l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include:

(1) Executive committee. The membership shall be composed of the elected officers of the board and ~~an~~ *two* at-large ~~member~~ *members* appointed by the chairperson. *At least one public member shall be appointed to the executive committee.* ~~Its~~ *The executive committee* duties may include, but are not limited to:

- Guidance and supervision of the executive director.
- Budgetary review and recommendations to the board.
- Review and recommendations to the board on rules and legislative proposals.
- *Study and recommendations to the board on practice issues and policy.*

MEDICAL EXAMINERS BOARD[653](cont'd)

(2) ~~Disciplinary committees. Their duties may include:~~

- ~~• Considering complaints in which preliminary investigation has shown further review or investigation is needed.~~
- ~~• Conducting interviews as needed with licensees under investigation or with licensees with restricted licenses, except for final appearances.~~
- ~~• Referring matters requiring peer review to a peer review consultant or committee.~~
- ~~• Reviewing cases and recommending appropriate action to the board.~~

(3) ~~(2) Intake and screening Screening committee. Its duties may include The committee reviews:~~

- ~~• Reviewing complaints Complaints and recommending makes recommendations to the board on appropriate action including further investigation, referral to a disciplinary committee; or referral to the board for closure.~~

(4) ~~(3) License and examination Licensure committee. Its duties may include:~~

- ~~• Recommending appropriate action on completed applications for licensure.~~
- ~~• Conducting interviews with applicants when appropriate.~~
- ~~• Reviewing licensure examination matters.~~
- ~~• Reviewing and recommending to the board appropriate changes in licensure application forms.~~
- ~~• Reviewing and making recommendations to the board regarding volunteer physician applicants who wish to participate in the state-indemnified volunteer physician program and who are under investigation or who have or have had disciplinary action against a license in the present or in the past.~~
- ~~• Making recommendations on licensure policy issues.~~

(5) ~~(4) Allied health and monitoring Monitoring committee. The committee oversees all matters relating to the allied health professions under the board's jurisdiction and to the monitoring of physicians with board orders and makes recommendations to the board on these matters. The committee's responsibilities include:~~

- ~~• Serving as a liaison between the board and the board of physician assistant examiners where appropriate.~~
- ~~• Reviewing and making recommendations to the full board on all matters relating to the licensure of acupuncturists.~~
- ~~• Monitoring physicians whose licenses are restricted by a board order, e.g., probation, and making recommendations to the full board on these matters.~~

~~• Reviewing and making recommendations to the full board on volunteer physician applicants who are under investigation or who have had disciplinary action against a license in the past or present.~~

ITEM 4. Amend subrule 1.3(5) by adding **new** paragraphs “m,” “n” and “o” as follows:

- m. Establish the Iowa physician health committee as its licensee review committee.
- n. Hire and supervise the executive director.
- o. Adopt administrative rules and pursue legislation where necessary to conduct the board's business.

ITEM 5. Amend rule 653—1.10(68B) as follows:

653—1.10(68B) Selling of goods or services by members of the board or impaired physician review committee (IPRC) Iowa physician health committee (IPHC).

1.10(1) Application of the rule. The board members and members of the IPRC IPHC shall not sell, either directly or indirectly, any goods or services to individuals, associations,

or corporations that are subject to the regulatory authority of the department except as authorized by this rule.

1.10(2) No change.

1.10(3) Authorized sales. Sales may be authorized under the following conditions:

a. A member of the board or IPRC IPHC may sell goods or services to any individual, association, or corporation regulated by any division within the department, other than the board or committee on which that official serves. This consent is granted because the sale of such goods or services does not affect the member's duties or functions on the board or IPRC IPHC.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board or IPRC IPHC member's duties or functions on the board or IPRC IPHC, respectively. In the event an individual, association, or corporation regulated by the board, to whom a board or IPRC IPHC member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board or IPRC IPHC member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board or IPRC IPHC member to a member of the public, that board or IPRC IPHC member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board or IPRC IPHC, or would otherwise present a conflict of interest.

1.10(4) and **1.10(5)** No change.

This rule is intended to implement Iowa Code section 68B.4.

ARC 3690B

MEDICAL EXAMINERS BOARD[653]

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 Medical Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Iowa Physician Health Committee,” and Chapter 17, “Licensure of Acupuncturists,” Iowa Administrative Code.

The Board approved the amendments at its regularly held meeting on September 2, 2004.

The proposed amendments open the Iowa Physician Health Program to any applicants for licensure or to licensees of the Iowa Board of Medical Examiners and clarify how the board and IPHP will handle confidentiality issues of the IPHP participants.

MEDICAL EXAMINERS BOARD[653](cont'd)

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on October 19, 2004. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@iowa.gov.

There will be a public hearing on October 19, 2004, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 272C.3(1)“k.”

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend the following definition in rule **653—14.2(272C)**:

“~~Physician health~~ *Health contract*” or “contract” means the written document executed by a ~~physician~~ *an applicant or licensee* and the IPHC which establishes the terms for participation in the Iowa physician health program.

ITEM 2. Amend rule 653—14.3(272C) as follows:

653—14.3(272C) Purpose. The IPHC evaluates, assists, and monitors the recovery, rehabilitation, or maintenance of ~~physicians~~ *licensees* who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies the board in the event of noncompliance with contract provisions. The IPHC is both an advocate for ~~physician~~ *licensees'* health and a means to protect the health and safety of the public.

ITEM 3. Amend rule 653—14.6(272C) as follows:

653—14.6(272C) Type of program. The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the impaired ~~physician~~ *licensee*. The committee, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the applicant's or licensee's impairment. The committee shall prepare a ~~physician~~ *health contract*, to be signed by the applicant or licensee, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the applicant's or licensee's obligations therein.

ITEM 4. Amend subrule 14.7(3) as follows:

14.7(3) Practice restrictions. The IPHP may impose restrictions on the license to practice ~~medicine~~ *the applicable profession* as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPHC determines, based on all relevant information, that the licensee is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the licensee or applicant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the applicant or licensee to the board for appropriate action.

ITEM 5. Amend subrule 14.9(1) as follows:

14.9(1) The IPHC may communicate information about an IPHP participant to the ~~medical~~ *applicable* regulatory au-

thorities, ~~medical professional~~ *societies*, or impaired ~~physician~~ *licensee* programs of any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice or in which the participant may seek licensure.

ITEM 6. Amend subrule 14.9(3) as follows:

14.9(3) The IPHC may communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract. The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges *or other appropriate action*. *If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing. The IPHC shall file with the board a report on board-referred cases upon the licensee's successful completion of the program.*

ITEM 7. Renumber subrule **14.9(4)** as **14.9(7)** and add **new** subrules 14.9(4) to 14.9(6) as follows:

14.9(4) The IPHC may communicate information about an IPHP participant to the board if the IPHP receives information that the participant has violated any of the grounds for eligibility contained in rule 653—14.5(272C).

14.9(5) The board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing pursuant to subrule 14.11(3).

14.9(6) The IPHC shall file with the board a report on board-referred cases upon the licensee's successful completion of the program.

ITEM 8. Amend subrule **14.11(2)**, paragraphs “b,” “c” and “g,” as follows:

b. The IPHC shall make a determination whether the applicant or licensee is an appropriate candidate for participation in the IPHP. Upon this determination, the IPHC shall offer the referred applicant or licensee a ~~physician~~ *health contract* which provides a detailed description of the goals of the program, the requirements for successful participation, and the applicant's or licensee's obligations therein. See 14.6(272C).

c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the ~~physician~~ *health contract* in the time period specified by the IPHC, the IPHC shall notify the board promptly.

g. Referral of an applicant or licensee by the board to the IPHP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the applicant or licensee shall be subject to the provisions of 653—Chapter 14. Specifically, the applicant or licensee shall be subject to board review and potential formal disciplinary action pursuant to 653—subrule 14.7(2) for noncompliance with the provisions of the IPHP ~~physician~~ *health contract*.

ITEM 9. Amend subrule 14.11(3) as follows:

14.11(3) Investigation and disciplinary action on referrals. Referral of an applicant or licensee to the IPHP does not prevent the board from conducting a disciplinary investigation of the applicant or licensee, or prevent the board from initiating disciplinary action against the licensee for violations other than impairment. *If the board initiates disciplin-*

MEDICAL EXAMINERS BOARD[653](cont'd)

ary action against a licensee for violations other than impairment, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing, if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

ITEM 10. Amend rule 653—17.1(148E) as follows:

653—17.1(148E) Purpose. The licensure of acupuncturists is established to ensure that practitioners are qualified to provide Iowans with safe and healthful care. The provisions of Iowa Code chapters 147, 148E and 272C authorize the board of medical examiners to establish examination requirements for licensure; evaluate the credentials of applicants for licensure (147.2, 148E.3); grant licenses to qualified applicants (148E.2); institute continuing education requirements (272C.2); investigate complaints and reports alleging that licensed acupuncturists violated statutes and rules governing the practice of acupuncture (147.55, 148E.6); *make available participation in the Iowa physician health program (272C.3);* and discipline licensed acupuncturists found guilty of infractions as provided in state law and board rules (147.55, 148E.6).

ARC 3706B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 27, "Lands and Waters Conservation Fund Program," Iowa Administrative Code.

The amendments accomplish the following:

1. Update the acronym reference to LWCF (Land and Waters Conservation Fund) throughout the chapter.
2. Clarify language for the LWCF assistance ceiling and establish SCORP as the acronym for the state comprehensive outdoor recreation plan.
3. Clarify language as to when the applications are due each year.
4. Change the make-up of the review committee to include a representative from county conservation boards and a representative from cities.
5. Add a new bonus point category for recycled content materials for local and state project applications.
6. Rescind subrule 27.6(5), which states that state grant applications will be returned if not selected.
7. Change the reference to "League of Municipalities" to "League of Cities."
8. Insert language in rule 27.11(456A) specifying time periods for initiating projects which are approved by an administering federal agency.
9. Rescind the existing subrule regarding project billing frequency and insert a new subrule allowing for no more than two project billings plus a final project billing.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 19, 2004. Such written materials should be directed to the State Parks Bureau, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 19, 2004, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace 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 amendments.

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

These amendments are intended to implement Iowa Code sections 456A.27, 456A.28, 456A.29, 456A.30, 456A.31, 456A.32, 456A.33, 456A.34 and 456A.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rules **571—27.1(456A)** to **571—27.4(456A)**, **571—27.6(456A)**, and **571—27.14(456A)** by striking all references to "L&WCF" and inserting "LWCF" in lieu thereof.

ITEM 2. Amend rule 571—27.4(456A) as follows:

571—27.4(456A) Assistance ceiling. Local entities are eligible to receive annual assistance from the LWCF in accordance with the following schedule:

Population of Area of Jurisdiction	LWCF Assistance Ceiling
0- 1,000	\$ 50,000
1,001- 5,000	75,000
5,001-10,000	100,000
10,001-25,000	125,000
25,001-50,000	150,000
50,001-75,000	175,000
over 75,000	200,000

ITEM 3. Amend subrule 27.5(1) as follows:

27.5(1) Form of application. Grant applications for both state and local projects shall be on forms and following *following* guidelines provided by the department. Projects selected for funding with land and water conservation assistance must be in accordance with state comprehensive outdoor recreation plan (*SCORP*) priorities.

ITEM 4. Amend subrule 27.5(2) as follows:

27.5(2) Application timing. The following information applies to local projects only. Grant applications and amendment requests which increase the existing grant amount shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). Annual reviews shall be held in April. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, by the close of

NATURAL RESOURCE COMMISSION[571](cont'd)

business on the workday closest to the fifteenth day of the month preceding each review month *March*.

4.0 percent	2 points
4.5 percent	3 points

ITEM 5. Amend subrule 27.6(1) as follows:

27.6(1) Review and selection committee. A *five-member* review and selection committee, hereinafter referred to as the committee, *shall be* composed of three staff members of the department as appointed by the director of the department, *one member appointed by the director with input from the Iowa Association of County Conservation Boards, and one member appointed by the director of the department with input from the Iowa League of Cities and the Iowa Parks and Recreation Association.* The committee shall determine which grant applications and amendment requests shall be selected for funding at the local level. A review and selection committee for state projects shall be composed of four staff members of the department as appointed by the director.

ITEM 8. Rescind subrule **27.6(5)**.

ITEM 9. Amend rule 571—27.7(456A) as follows:

571—27.7(456A) Public participation. All regional planning agencies will be advised of the time and place of review sessions. Written comments will be accepted prior to each review session. A time period for public comment will be allowed immediately prior to each review session.

Potential applicants will be advised of any changes in the project evaluation and selection processes and criteria; but in any event, state agencies, regional planning agencies, county conservation boards and the Iowa League of ~~Municipalities~~ *Cities* will be advised of the availability of program funding at least once every two years.

ITEM 10. Amend rule 571—27.11(456A) as follows:

571—27.11(456A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. Projects for which grants are approved *by the administering federal agency* between January 1 and May 31 shall be commenced during the same calendar year. Projects for which grants are approved *by the administering federal agency* between June 1 and December 31 shall be commenced by June 1 of the following year. Failure to do so may be cause for termination of the project and cancellation of the grant.

ITEM 11. Rescind subrule 27.13(3) and insert in lieu thereof the following **new** subrule:

27.13(3) Project billing frequency. No more than two project billings plus a final project billing shall be allowed.

ITEM 6. Amend subrule **27.6(3)** by rescinding paragraph **“b”** and adopting in lieu thereof the following **new** paragraph **“b”**:

b. Bonus points. Additional points will be added to the total score for the following:

(1) Projects which have special features for the elderly and handicapped above the normal access requirements for this population will receive three points.

(2) Projects which include the use of recycled content materials will receive two points.

(3) Projects which serve an area of greater minority population than the state average of 2.6 percent will receive points as follows:

Minority population greater than:	
3.5 percent	1 point
4.0 percent	2 points
4.5 percent	3 points

(4) Projects which show evidence that the specific project has been through the normal channels of review and approval by proper local decision makers, thereby ensuring that public support and a commitment to develop and operate the facility are present and that the project under consideration is a part of (or does not conflict with) broader plans which exist, may receive up to three bonus points.

ITEM 7. Amend subrule 27.6(4) as follows:

27.6(4) Application rating system for state projects. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor assigned for each, will be considered:

Criteria	Weight Factor
SCORP priority	4
Quality of site	1
Renovation/rehabilitation project	1
Direct recreation benefits	1

Each criterion will be given a score from 0 to 10, which is then multiplied by the weight factor. Additional points will be added to the total score for the following:

Projects which have special features for the elderly and handicapped above the normal access requirements for this population will receive three points.

Projects which include the use of recycled content materials will receive two points.

~~Project~~ *Projects which will* serve an area of greater minority population than the state average of 2.6 percent *will receive points* as follows:

Minority population greater than:	
3.5 percent	1 point

ARC 3708B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

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

The amendments accomplish the following:

1. Add the newest state park, Banner Lakes at Summer-set State Park, to the list of state parks in rule 571—61.2(461A).

2. Change the language in 61.3(5) to clarify that campers must vacate the “park” rather than the “area” for three days before returning. There are a few parks that have more than one campground within close proximity to each other which created confusion for the public.

3. Increase the cabin rental fees at Pine Lake State Park to be consistent with the rental fees for similar cabins at other state parks.

NATURAL RESOURCE COMMISSION[571](cont'd)

4. Establish new fees for the new camping cabins at Brushy Creek State Recreation Area and Honey Creek State Park.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2004. Such written materials should be directed to the State Parks Bureau, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 19, 2004, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace 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 amendments.

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

These amendments are intended to implement Iowa Code sections 461A.3, 461A.47, 461A.49 and 461A.57.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **571—61.2(461A)**, definition of "state park," as follows:

"State park" means the following areas managed by the state and designated by action of the natural resource commission:

<u>Area</u>	<u>County</u>
A. A. Call	Kossuth
Backbone	Delaware
<i>Banner Lakes at Summerset</i>	<i>Warren</i>
Beed's	Lake Franklin
Bellevue	Jackson
Big Creek	Polk
Black Hawk	Sac
Cedar Rock	Buchanan
Clear Lake	Cerro Gordo
Dolliver Memorial	Webster
Elinor Bedell	Dickinson
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Geode	Henry and Des Moines
George Wyth	Black Hawk
Green Valley	Union

Gull Point	Dickinson
Honey Creek	Appanoose
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake Macbride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor
Lake Wapello	Davis
Ledges	Boone
Lewis and Clark	Monona
Maquoketa Caves	Jackson
McIntosh Woods	Cerro Gordo
Mini-Wakan	Dickinson
Nine Eagles	Decatur
Okamanpedan	Emmet
Palisades-Kepler	Linn
Pikes Peak	Clayton
Pikes Point	Dickinson
Pilot Knob	Winnebago
Pine Lake	Hardin
Prairie Rose	Shelby
Preparation Canyon	Monona
Red Haw	Lucas
Rice Lake	Winnebago
Rock Creek	Jasper
Shimek Forest Campground	Lee
Springbrook	Guthrie
Stephens Forest Campground	Lucas
Stone	Plymouth and Woodbury
Trapper's Bay	Dickinson
Twin Lakes	Calhoun
Union Grove	Tama
Viking Lake	Montgomery
Walnut Woods	Polk
Wanata	Clay
Wapsipinicon	Jones
Waubonsie	Fremont
Wildcat Den	Muscatine
Yellow River Forest Campground	Allamakee

Trapper's Bay
Twin Lakes
Union Grove
Viking Lake
Walnut Woods
Wanata
Wapsipinicon
Waubonsie
Wildcat Den
Yellow River Forest Campground

ITEM 2. Amend paragraph **61.3(5)"g"** as follows:

g. Campers shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park campground after the fourteenth night and may not return to ~~that same area~~ *the park* until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources program.

ITEM 3. Amend subrule **61.4(1)**, paragraph **"a,"** as follows:

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

	<u>Per Night*</u>	<u>Per Week</u>
Backbone State Park, Delaware County		
Renovated cabins	\$ 50	\$300
Two-bedroom cabins	85	510
Deluxe cabins	100	600
Brushy Creek State Recreation Area, Webster County	35	210

NATURAL RESOURCE COMMISSION[571](cont'd)

	<u>Per Night*</u>	<u>Per Week</u>
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
<i>Honey Creek State Park, Appanoose County</i>	35	210
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County	35	210
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
Palisades-Kepler State Park, Linn County	50	300
Pine Lake State Park, Hardin County		
Sleeping-area cabins (four-person occupancy limit)	50 65	300 390
One-bedroom cabins	65 75	390 450
Pleasant Creek State Recreation Area, Linn County	25	150
Springbrook State Park, Guthrie County	35	210
Wilson Island State Recreation Area, Pottawattamie County	25	150
Extra cots, where available	1	

*Minimum two nights

ARC 3707B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 64, "Metal Detectors Use in State Areas," Iowa Administrative Code.

The amendments accomplish the following:

1. Clarify the definition of a beach or beach area.
2. Change the areas where metal detector use is allowed to include only designated beaches and drained lakes.
3. Increase the number of hours metal detectors may be used on beach areas during the main recreation season.
4. Change when a metal detector may be used on a drained lake to take into account archaeological resources.
5. Add a provision to allow metal detector use for archaeological and scientific studies.
6. Change the Iowa Code reference for found items to reflect the current number.
7. Clarify language to require written approval for an owner to use a metal detector to search for lost items.
8. Clarify language regarding digging limitations and restoration to reflect the type of tool being used.
9. Clarify existing language regarding disposal of litter.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 20, 2004. Such written materials should be directed to the State Parks Bureau, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who

wish to convey their views orally should contact the Bureau at (515)242-6233 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 20, 2004, at 10 a.m. in the Fourth Floor West Conference Room of the Wallace 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 amendments.

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

These amendments are intended to implement Iowa Code sections 461A.3 and 461A.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation statutes in each rule number in **571—Chapter 64** by striking "111" and inserting "461A".

ITEM 2. Amend rule **571—64.1(461A)**, definition of "beach" or "beach area," as follows:

"Beach" or "beach area" means that portion of state parks or recreation areas designated for swimming activity including *the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines.*

ITEM 3. Rescind rule 571—64.2(461A) and adopt the following **new** rule:

571—64.2(461A) Use areas. Metal detector use in state parks and recreation areas is prohibited except in the following areas:

NATURAL RESOURCE COMMISSION[571](cont'd)

64.2(1) Designated beach areas. From May 22 to September 7 each year, metal detectors may be used on designated beach areas from 4 a.m. to 10 a.m. each day. From September 8 to May 21 each year, metal detectors may be used on designated beach areas during the hours established in 571—61.1(461A).

64.2(2) Drained lakes. When an artificial lake has been completely drained for any reason, metal detector use may be allowed during the hours established in 571—61.1(461A) only after the lake bed has been thoroughly surveyed for archaeological resources and a survey report has been completed and approved by the state historic preservation office.

ITEM 4. Rescind rule 571—64.3(461A) and adopt the following **new** rule:

571—64.3(461A) Archaeological/scientific studies. When the use of a metal detector may support an archaeological or scientific study, a permit may be issued by the manager in charge of the property. Review of all permit applications shall be coordinated with the state historic preservation officer and the state archaeologist. The DNR shall take the state historic preservation officer's and the state archaeologist's views into account before acting upon the issuance of a permit.

ITEM 5. Rescind rule **571—64.4(461A)** and renumber rules **571—64.5(461A)** to **571—64.9(461A)** as **571—64.4(461A)** to **571—64.8(461A)**.

ITEM 6. Amend renumbered rule 571—64.4(461A) as follows:

571—64.4(461A) Found items. All items found are subject to the provisions of Iowa Code chapter 644 556F.

ITEM 7. Amend renumbered rule 571—64.5(461A), introductory paragraph, as follows:

571—64.5(461A) Lost item search by owner. An owner of lost property may use a metal detector to search for that item in an area where such use is prohibited by ~~64.3(461A)~~ under the following conditions.

ITEM 8. Amend renumbered subrule 64.5(1) as follows:

64.5(1) Approval *Written approval* has been granted by the director of the department of natural resources or designee.

ITEM 9. Amend renumbered subrule 64.7(1) as follows:

64.7(1) In recovering items located below the ground, ~~the earth is not to be unduly disturbed with a person shall not unduly disturb the earth and shall limit~~ all excavations ~~limited~~ to less than three inches square *when using probes and ten inches in diameter when using sand scoops or sieves.*

ITEM 10. Amend renumbered rule 571—64.8(461A) as follows:

571—64.8(461A) Disposal of litter. Persons using metal detectors shall wear or carry a litter apron or bag, and all litter *that is recovered shall* be disposed of in approved trash receptacles.

ARC 3709B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby proposes to adopt new Chapter 79, "Fish Stocking Procedures and Fees for Private Waters," Iowa Administrative Code.

Iowa Code section 481A.78 authorizes the Commission, after investigation of waters to determine their suitability as to size, depth, living conditions for fish, and management, to provide a breeding stock of fish at the request of the owner of a privately owned farm pond. The new chapter is intended to define procedures and fees for the stocking of private waters to assist landowners in their efforts to provide quality angling to fellow Iowans.

Any interested person may make written suggestions or comments on this proposed new chapter prior to October 22, 2004. Such written materials should be directed to Mike Mason, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6072 or at the Fisheries Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 22, 2004, at 1 p.m. in the Fourth Floor West Conference Room of the Wallace 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 rules.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 456A.24 and 481A.78.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement section 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** chapter:

CHAPTER 79
FISH STOCKING PROCEDURES AND FEES
FOR PRIVATE WATERS

571—79.1(481A) Purpose. This chapter establishes procedures and fees for the stocking of private waters.

571—79.2(481A) Application procedures.

79.2(1) Eligibility. Upon approval of application and payment of fees, any owner of a pond may receive fish stocks

NATURAL RESOURCE COMMISSION[571](cont'd)

for private waters, provided all of the following conditions are met:

- a. The pond is newly impounded, has been drained and refilled, or is free of fish.
- b. Livestock are, and will continue to be, excluded from the impoundment area with a minimum of a 60-foot buffer between pond edge and fence.
- c. The pond is at least one-half acre and no more than ten acres in size.
- d. The pond has a depth of at least eight feet at its deepest point.

79.2(2) The following procedures shall be used to administer the stocking of private waters:

- a. Application shall be made on a standard form provided by the department which shall include the name, address, and telephone number of the pond owner and the location of and physical information about the pond to be stocked.
- b. The pond owner shall submit the appropriate fee with the application to the department.
- c. A department employee will review the pond information to determine eligibility.
- d. An application shall not be accepted after August 15 of each year for fish stocking that same year.
- e. If the application is rejected, the fee shall be refunded to the pond owner.

79.2(3) Limitations.

- a. Pursuant to Iowa Code section 481A.141, a pond stocked by the department pursuant to Iowa Code section 481A.78 shall not be used for aquaculture purposes.
- b. The landowner retains full rights to control access to the land, but fishing shall be subject to all applicable Iowa fishing regulations.
- c. Once an application has been accepted, the fee is non-refundable.

79.2(4) Customer obligation. Fish stocks will be delivered to one site in a county, with advance notice of time and place provided to each approved applicant by the department. It is the responsibility of each pond owner to pick up the fish and place them in the designated waters.

571—79.3(481A) Fish stocks. Fish species provided by the department and maximum stocking rates are as follows: largemouth bass – 70/acre, bluegill – 1000/acre and channel catfish – 100/acre. The stocking cycle begins in October with the delivery of bluegill and channel catfish. The cycle is then completed during June of the following year with the delivery of largemouth bass.

571—79.4(481A) Fees. The stocking fee will be \$25 per acre or fraction of an acre as follows:

0.5-1.0 acre =	\$ 25
1.1-2.0 acres =	\$ 50
2.1-3.0 acres =	\$ 75
3.1-4.0 acres =	\$ 100
4.1-5.0 acres =	\$ 125
5.1-6.0 acres =	\$ 150
6.1-7.0 acres =	\$ 175
7.1-8.0 acres =	\$ 200
8.1-9.0 acres =	\$ 225
9.1-10.0 acres =	\$ 250

These rules are intended to implement Iowa Code sections 456A.24 and 481A.78.

NATURAL RESOURCES DEPARTMENT

NOTICE OF PUBLIC HEARING—IOWA DRINKING WATER STATE REVOLVING FUND AMENDED INTENDED USE PLAN

Iowa's drinking water state revolving fund program makes loans to drinking water systems for design and construction to ensure public health and provide safe drinking water. The Iowa Department of Natural Resources (DNR) publishes loan priorities and projected use of set-aside funds each year in its Intended Use Plan (IUP). Scoring criteria address health risks, rule compliance, and infrastructure needs, including criteria for loan eligibility. The criteria include a point system based on Maximum Contaminant Level violations, system vulnerability, infrastructure improvement needs, population, and design deficiencies.

The IUP, considered at the public hearing on June 15, 2004, is being amended to add projects to the priority list. A public hearing on the amended IUP for state fiscal year 2005 will be held in the DNR Water Supply Offices, West Conference Room, 401 SW 7th Street, Suite M, Des Moines, Iowa, on November 3, 2004, at 9:30 a.m. Comments on the IUP will be accepted at that time, and all written comments must be received by the Department on or before November 5, 2004. For questions or to obtain a copy of the draft IUP, contact Jennifer Bunton at (515)725-0298 or by E-mail at jennifer.bunton@dnr.state.ia.us.

PUBLIC SAFETY DEPARTMENT

Public Notice

Pursuant to the authority of Iowa Code sections 321J.4, 321J.4B, 321J.9, 321J.17 and 321J.20, and in accordance with 661 Iowa Administrative Code subrules 7.5(1) and 7.8(2), the following devices are approved for use in the State of Iowa as ignition interlock devices.

Device	Company	Company Location
CST Intoxalock	Consumer Safety Technology, Inc.	Clive, Iowa
IMT Lifesafer Interlock	Lifesafer Interlock, Inc.	Cincinnati, Ohio
Autosense Interlock	Autosense International	San Jose, California
Guardian Interlock, Model 4.4	Guardian Interlock Systems	Marietta, Georgia
Draeger 920 Interlock	Draeger Interlock, Inc.	Durango, Colorado
Draeger XT Interlock	Draeger Interlock, Inc.	Durango, Colorado

The listed devices are approved for use in Iowa effective September 1, 2004. This list supersedes any previous list of approved devices.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any addi-

PUBLIC SAFETY DEPARTMENT(cont'd)

tional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

Any manufacturer of a preliminary breath testing or ignition interlock device may apply to have the device approved for use in the State of Iowa. Contact the Iowa Division of Criminal Investigation Criminalistics Laboratory at the following address for instructions:

Iowa Department of Public Safety
DCI Criminalistics Laboratory
Wallace State Office Building
Des Moines, Iowa 50319-0041

ARC 3684B**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 237.3, subsection 3, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code section 237.3 authorizes the State Fire Marshal to adopt rules establishing fire safety standards for facilities in which “foster care is provided by agencies.” Such facilities with six or more beds are subject to the provisions of the Fire Marshal’s rules for “residential facilities,” 661—5.607(100) through 5.613(100). Recently, staff of the Department of Human Services inquired about the applicability of these requirements to smaller facilities providing foster care. After consultation between staff of the Fire Marshal and staff of the Department of Human Services, the Fire Marshal has determined that fire safety standards should be promulgated for facilities in which agencies provide foster care to fewer than six children, but that these standards should be less stringent, and therefore less costly to implement, than the existing standards which apply to larger foster care facilities.

The rule proposed herein would require small foster care facilities to provide smoke detection, fire extinguishers, egress windows in basement rooms where children are sleeping, and other basic fire protection features. The rule would apply to any facility, including a single-family residence, in which foster care is provided to fewer than six children by an agency.

A public hearing on this proposed amendment will be held on October 21, 2004, at 9:30 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

This amendment is intended to implement Iowa Code section 237.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Adopt the following **new** rule:

661—5.615(237C) Facilities in which foster care is provided to fewer than six children by agencies. Any facility, including a single-family residence, within which foster care is provided by an agency to fewer than six children shall meet each of the requirements established in this rule.

5.615(1) Battery operated smoke detectors shall be installed in each sleeping room and on each floor of the home and shall be installed in compliance with the manufacturer’s instructions.

5.615(2) Each exit and exit path shall remain clear and unobstructed at all times.

5.615(3) A five-pound 2A:10B:C fire extinguisher shall be installed in the primary caregiver’s sleeping room. Additional extinguishers may be provided. Each extinguisher in the facility shall be inspected yearly by a third party in accordance with NFPA Standard 10, Standard for Portable Fire Extinguishers, 2002 edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

5.615(4) No combustible items shall be stored within a three-foot clearance of furnaces, hot water heaters, and electrical panels.

5.615(5) A carbon monoxide detector shall be installed on each floor of the residence. A detector shall be installed in proximity to any gas-fired appliance. All detectors shall be installed in accordance with the manufacturer’s installation instructions.

5.615(6) If propane is used in the facility, a propane leak detector shall be installed in proximity to each propane-fired appliance. All detectors shall be installed in accordance with the manufacturer’s installation instructions.

5.615(7) An evacuation plan shall be maintained, and fire drills shall be conducted at least once every other month.

5.615(8) If a child is sleeping in a basement room, then an egress window shall be provided in the room. An “egress window” means an existing operable window with a clear opening area of not less than 5.7 square feet, and with a minimum opening height and width of 24 inches and 20 inches respectively.

This rule is intended to implement Iowa Code section 237.3, subsection 3.

ARC 3686B**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 692A.10, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 8, “Criminal Justice Information,” and to adopt new Chapter 83, “Iowa Sex Offender Registry,” Iowa Administrative Code.

The Iowa Department of Public Safety maintains a central registry of information collected from persons who are required to register under Iowa Code chapter 692A, which is known as the Iowa Sex Offender Registry. Prior to May 17, 2004, the extent to which information from the registry was accessible to the general public varied according to the outcome of a risk assessment performed in accordance with Iowa Code Supplement section 692A.13A. Language included in 2004 Iowa Acts, Senate File 2298, deleted references to risk assessments and provided that, with narrow exceptions, information regarding all registrants could be placed on the Iowa Sex Offender Registry Web site, which is maintained by the Department of Public Safety.

Emergency rule making was undertaken in July to implement the changes to Iowa Code chapter 692A which passed as part of 2004 Iowa Acts, Senate File 2298, and was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3549B**. The emergency rule making took effect on July 15, 2004. This Notice of Intended Action provides an opportunity for public comment on the changes that were Adopted and Filed Emergency in July, and also proposes some additional changes to the Iowa Sex Offender Registry rules. Additional changes include rescinding the definition of “affirmative public notification,” which is no longer needed. A provision related to confidential background investigations by government agencies has been stricken, reflecting a change in the statute. An exception to the confidentiality of requests for information from the Registry was stricken, also reflecting the statute. The definition of “other relevant offenses” was changed to reflect the passage of 2004 Iowa Acts, House File 2146, which added incest against a dependent adult to the definition. Finally, the rules are proposed to be transferred from the existing Chapter 8, which includes rules dealing with a number of systems for handling criminal justice information into a new Chapter 83, which will include only rules for the Iowa Sex Offender Registry. This is part of a more general renumbering of the rules of the Department, in order to rationalize their organization and simplify the task of persons attempting to locate rules on specific subjects.

A public hearing on these proposed amendments will be held on October 21, 2004, at 10 a.m. in the Third Floor Conference Room at the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa De-

partment of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515) 281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend 661—Chapter 8 by rescinding rules **661—8.301(692A)** through **661—8.305(692A)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 83**IOWA SEX OFFENDER REGISTRY**

661—83.1(692A) Sex offender registry established. The Iowa sex offender registry, as authorized by Iowa Code chapter 692A, is hereby established in the division of criminal investigation.

661—83.2(692A) Definitions. The following definitions apply to rules 661—83.1(692A) to 661—83.5(692A).

83.2(1) “Aggravated offense” means a conviction for any of the following offenses:

- a. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
- b. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
- c. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
- d. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
- e. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- f. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”
- g. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- h. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- i. Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”

83.2(2) “Convicted” or “conviction” means a guilty verdict in a criminal case or an adjudication of delinquency in juvenile court for an offense specified in these rules or in Iowa Code chapter 692A as requiring registration with the Iowa sex offender registry. For purposes of these rules, “convicted” or “conviction” includes deferred judgments, deferred sentences, and acquittals by reason of insanity, and adjudications of delinquency of persons whose juvenile court records have been sealed under Iowa Code section 232.150.

83.2(3) “Criminal or juvenile justice agency” means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such

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agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

83.2(4) "Criminal offense against a minor" means a violation of any of the following sections of the Code of Iowa or equivalent laws of the United States or of any other jurisdiction, if committed against a minor:

a. Enticing a person into a brothel or detaining a person in a brothel by force, intimidation, or false pretenses in violation of Iowa Code section 709.7.

b. Kidnapping of a minor.

c. False imprisonment of a minor.

d. Any indictable offense involving sexual conduct directed toward a minor:

(1) Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph "b," subparagraph (3), if the offense is sexually motivated.

(2) Any violation of the following Iowa Code sections, subsections, and paragraphs: 709.3(2), 709.4(2)"b," 709.4(2)"c," 709.8, 709.12, or 709.14.

(3) Any violation of the following Iowa Code sections with a minor victim: 709.2, 709.3, 709.4, 709.9, 709.15, 709.16, or 726.2; violations of section 698.1 (Iowa Code, 1975), 704.1 (Iowa Code, 1975), or 705.2 (Iowa Code, 1975).

e. Solicitation of a minor to engage in an illegal sex act; any violation of Iowa Code section 709A.6 involving an offense which would warrant registration.

f. Enticing away a child in violation of Iowa Code section 710.10.

g. Use of a minor in a sexual performance: any violation of Iowa Code section 728.12(1).

h. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsection 2 or 3.

i. Solicitation of a minor to practice prostitution: any violation of Iowa Code section 725.3(2).

j. Incest in violation of Iowa Code section 726.2, when committed against a minor.

k. Dissemination or exhibition of obscene materials to minors:

(1) Any violation of Iowa Code section 728.2 or 728.15.

(2) Any violation of Iowa Code section 728.4 if delivery is to a minor.

l. Admitting minors to premises where obscene material is exhibited: any violation of Iowa Code section 728.3.

m. An attempt to commit sexual abuse of a minor: any violation of Iowa Code section 709.11; also, any violation of section 698.4 (Iowa Code, 1975).

83.2(5) "Full-time or part-time" means a period of time exceeding 14 days or an aggregate period of time exceeding 30 days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

83.2(6) "Offender" means a person who is required to register with the Iowa sex offender registry.

83.2(7) "Other relevant offenses" means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

b. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

c. Indecent exposure in violation of Iowa Code section 709.9.

d. Incest committed in violation of Iowa Code section 726.2 against a dependent adult, as defined in Iowa Code section 235B.2.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "d" if committed in this state.

83.2(8) "Registrant" means a person who is currently registered with the Iowa sex offender registry.

83.2(9) "Relevant information" means information including, but not limited to, offender's name, offender's address or addresses, a photograph or photographs of the offender, locations frequented by the offender, criminal history information from the registry, physical descriptors of the offender, ages and genders of victims, and other information deemed relevant by the department.

83.2(10) "Sexual exploitation" means sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

83.2(11) "Sexually violent offense" means any of the following indictable offenses:

a. Sexual abuse as defined in Iowa Code section 709.1.

b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.

c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.

d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "d" of this subrule if committed in this state.

83.2(12) "Sexually violent predator" means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

661—83.3(692A) Forms and procedures. The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

83.3(1) Notification. Form DCI-144, Notification of Registration Requirement, which notifies offenders of their duty to register with the Iowa sex offender registry, shall be provided to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

83.3(2) Registration.

a. Form DCI-145, Sex Offender Registration, shall be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be residing and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry. This form shall also be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be a student, be employed, or be engaging in a vocation on a full-time or part-time basis at an institution of higher education, in order to satisfy the registration requirements of Iowa Code section 692A.3A.

b. Form DCI-145 shall be used to report changes of residence, telephone number, name of registrant, or change in status as a student, employee, or practicing a vocation at an institution of higher education. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant's place of residence, telephone number, or name changes within five days

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of the change of residence, telephone number, or name, whether within or outside the state of Iowa. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county in which the registrant is a student, employee, or practicing a vocation on a full-time or part-time basis at an institution of higher education within five days of the registrant's becoming a student, employee, or engaged in a vocation at the institution of higher education. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant's new state of residence of the registrant's name, new address, and telephone number. Upon notification of the appropriate out-of-state agency, the department shall remove the registrant from the active registry. The registrant shall not be required to submit annual or quarterly verifications of address while residing outside of Iowa, provided that the registrant is not a student at, employed by, or engaged in a vocation at an institution of higher education in Iowa. The department shall maintain the registrant's file in the event the registrant establishes a residence in Iowa or becomes a student, employee, or practices a vocation at an institution of higher education in Iowa in the future. The department may also maintain the file for any other purpose.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant's appearance has not changed significantly in the judgment of the submitting agency.

d. A list of all registrants within a county may be provided by the division of criminal investigation to the county sheriff.

83.3(3) Annual verification. Form DCI-146, Annual Verification of Address, shall be mailed annually by the division of criminal investigation to each registrant at the last address known to the registry during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope on which it is clearly stated that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.

83.3(4) Application for determination. Form DCI-148, Application for Determination, shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry, whether the time period during which the registrant is re-

quired to register has expired, or whether the registrant is exempt from the placement of information on the sex offender registry Web site. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the registrant intends to present to the department in support of the application. Failure to submit any of the required information shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, relevant statutory provisions, and other records provided, and is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

83.3(5) Decision of determination. Form DCI-149, Decision of Determination, shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

83.3(6) Request for information. Form DCI-150, Request for Registry Information, shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

83.3(7) Confidential records. Completed forms filled out pursuant to rules 661—83.1(692A) through 83.5(692A) are confidential records that shall not be released to the public.

661—83.4(692A) Availability of records.

83.4(1) Release of information to criminal or juvenile justice agencies. The department may, without restriction, release information regarding any registrant to any criminal or juvenile justice agency, an agency of the state of Iowa, any sex offender registry of another state, or the federal government.

83.4(2) Sex offender registry Web site. The department shall place information regarding each registrant on the registry Web site (www.iowasexoffenders.com), except that information regarding any registrant for whom the sole basis of registration is a conviction or convictions for a violation or violations of Iowa Code section 709.4, subsection 2, paragraph "c," subparagraph (4), and whose offense was com-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

mitted when the offender was under 20 years of age, shall not be placed on the Web site. Information regarding a registrant placed on the sex offender registry Web site may include any relevant information.

83.4(3) Release of information by a criminal or juvenile justice agency. A criminal or juvenile justice agency may provide relevant information from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, any sex offender registry of another state, or the federal government.

b. The general public, including public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, or a criminal or juvenile justice agency's Web site.

83.4(4) List of registrants in county. Any county sheriff shall provide access to the list of all registrants within the county in which the sheriff has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. Section 3521 shall not be disclosed.

83.4(5) Release of information in response to individual request. A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation via the Iowa on-line warrants and articles (IOWA) system as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and may provide the requester with the relevant information regarding the registrant.

83.4(6) Submission of information to the National Sex Offender Registry. The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

83.4(7) Single contact repository. The division shall perform a search of the sex offender registry for information about an individual, based on a request submitted through the single contact repository established pursuant to Iowa Code section 135C.33. The information provided from the registry shall be limited to whether the identified person is registered.

83.4(8) No identification of victims. Any release of information regarding any registrant, other than to criminal or juvenile justice agencies, shall not identify any victim of the registrant.

861—83.5(692A) Expungement of records.

83.5(1) Expungement upon reversal of conviction. Upon receipt of a certified copy of a court order reversing a conviction which forms the basis for a registrant's being required to register, the division of criminal investigation shall expunge the registration, provided that the registrant has been convicted of no other offense requiring registration.

83.5(2) Expungement upon expiration of registration period. The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the

registrant has not subsequently been convicted of an offense that would require registration.

These rules are intended to implement Iowa Code chapter 692A as amended by 2004 Iowa Acts, Senate File 2298, Division XXV.

ARC 3710B**PUBLIC SAFETY
DEPARTMENT[661]****Amended Notice of Intended Action**

The Department of Public Safety hereby gives notice that the period for public comment is extended on rules proposed in a Notice of Intended Action to amend Chapter 54, "Fire Fighter Certification," Iowa Administration Code, which was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3482B**.

The Notice of Intended Action, **ARC 3482B**, proposed the adoption of rules which would establish minimum training standards for fire fighters.

The Administrative Rules Review Committee, at its meeting on August 10, 2004, instructed the Department of Public Safety to complete a regulatory analysis of the proposed rules, pursuant to Iowa Code section 17A.4A. This section provides that, once a regulatory analysis has been required, the period for public comment is to be extended at least 20 days beyond the required publication of a "concise summary" of the regulatory analysis in the Iowa Administrative Bulletin. Since the publication date of the regulatory analysis is unknown at this time, the closing date for the extended period for public comment on the proposed rules will be specified in the concise summary of the regulatory analysis published in the Iowa Administrative Bulletin.

Comments on the rules proposed in **ARC 3482B** may be transmitted to the Department via electronic mail to admrule@dps.state.ia.us, regular mail to Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319, telephone at (515)281-5524, or fax at (515)242-6136. Further information, including the text of the Notice of Intended Action, may be obtained from the Department's Web site at <http://www.dps.state.ia.us/admrule>.

ARC 3700B**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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 38, "Administration," Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42,

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"Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," Chapter 44, "Penalty and Interest," Chapter 46, "Withholding," Chapter 47, "Declaration of Estimated Income Tax by Individuals," Chapter 49, "Estimated Income Tax for Individuals," Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 55, "Assessments, Refunds, Appeals," Chapter 57, "Administration," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Chapter 59, "Determination of Net Income," Chapter 60, "Assessments, Refunds, Appeals," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

These amendments clarify existing rules and remove obsolete rules or rule provisions.

Item 1 rescinds rules 701—10.40(422) through 701—10.43(422), which are obsolete rules regarding the computation of penalty for individual income tax for tax periods beginning prior to January 1, 1991.

Item 2 rescinds rule 701—10.50(422), which is an obsolete rule regarding the computation of penalty for withholding tax for tax periods beginning prior to January 1, 1991.

Item 3 rescinds rules 701—10.56(422) through 701—10.58(422), which are obsolete rules regarding the computation of penalty for corporation income tax for tax periods beginning prior to January 1, 1996.

Item 4 rescinds rule 701—10.66(422), which is an obsolete rule regarding the computation of penalty for franchise tax for tax periods beginning prior to January 1, 1991.

Item 5 amends rule 701—38.15(422) to provide a similar time frame for requesting innocent spouse relief for Iowa tax purposes that is applicable for federal tax purposes.

Item 6 amends subrule 38.17(3) to change the method of taxing military nonresidents of Iowa based on the Servicemembers Civil Relief Act passed by Congress in 2003.

Items 7, 8 and 9 amend subrules 39.1(1), 39.1(2) and 39.1(3) to remove obsolete provisions regarding filing requirements for residents, nonresidents and part-year residents of Iowa for tax years prior to 1993.

Item 10 amends subrule 39.1(7) to update the examples of refundable tax credits listed in the subrule.

Item 11 rescinds subrules 39.2(2) and 39.2(3), which are obsolete subrules regarding extensions of time to file Iowa returns for tax years prior to 1991.

Item 12 amends subrule 39.5(2) to update a cross reference to a chapter which is rescinded under Item 38.

Item 13 rescinds subrules 39.5(8) and 39.5(9), which are obsolete subrules regarding the exemption from Iowa income tax for tax years prior to 1992.

Item 14 rescinds subrules 39.6(1) and 39.6(2), which are obsolete subrules regarding Iowa minimum tax for tax years prior to 1987.

Item 15 amends subrule 39.6(3) to delete a cross reference to a rule which is rescinded under Item 35.

Item 16 amends subrule 40.2(1) to provide that interest income from Series I bonds issued by the United States Treasury is exempt from Iowa income tax.

Item 17 rescinds rule 701—40.4(422), which is an obsolete rule regarding pension, annuities and retirement allowances for tax years prior to 1991.

Item 18 rescinds rule 701—40.10(422), which is an obsolete rule regarding exclusion of interest and dividend income for tax years prior to 1987.

Item 19 rescinds rule 701—40.11(422), which is an obsolete rule regarding a two-earner married couple deduction for tax years prior to 1987.

Item 20 rescinds rule 701—40.25(422), which is an obsolete rule regarding unemployment benefits that covered only the 1979 tax year.

Item 21 rescinds rule 701—40.26(422), which is an obsolete rule regarding contributions to the judicial retirement system for tax years prior to 1989.

Item 22 rescinds rule 701—40.33(422), which is an obsolete rule regarding a partial exclusion of pension and annuities for retired and disabled public employees that covered only the 1989 and 1990 tax years.

Item 23 rescinds rule 701—40.41(422), which is an obsolete rule regarding disallowance of private club expenses for tax years prior to 1994.

Item 24 rescinds subrule 41.5(2), which is an obsolete subrule regarding political contributions for tax years prior to 1982.

Item 25 rescinds subrule 41.5(6), which is an obsolete subrule regarding private club expenses for tax years prior to 1994.

Item 26 adopts new rule 701—41.13(422) to clarify how Iowa tax refunds from refundable tax credits should be reported in computing Iowa adjusted gross income. To clarify this provision, an example is included.

Item 27 amends rule 701—42.1(257,422) to provide that the school district surtax is applicable for resident members of the armed forces of the United States living in an Iowa school district with a surtax, even if the member is not physically present in Iowa on the last day of the tax year.

Item 28 amends rule 701—42.2(422) to update the amounts for the personal exemption credit.

Item 29 rescinds subrules 42.2(2) through 42.2(5), which are obsolete subrules regarding the child care credit for tax years prior to 1990, the political contributions credit for tax years prior to 1986, and the Iowa venture capital investment credit, which was repealed in 1995. In addition, the current exemption credit listed in subrule 42.2(2) is incorporated into the amendment to subrule 42.2(1) in Item 28.

Item 30 amends rule 701—42.6(422) to remove obsolete provisions regarding the motor fuel credit for tax years beginning prior to July 1, 1986.

Item 31 amends subrule 42.7(2) to correct a cross reference.

Item 32 amends rule 701—42.9(422) to delete a cross reference to a subrule rescinded under Item 29.

Item 33 adopts new rule 701—42.23(422) to set forth the sequence of tax credits for individual income tax.

Item 34 rescinds subrule 43.3(13), which is an obsolete subrule regarding the statute of limitations that affected only the 1988 tax year.

Item 35 rescinds rules 701—43.6(422) and 701—43.7(422), which are obsolete rules regarding the 1978 income tax rebate and a special refund for net capital gains for tax years prior to 1990.

Item 36 rescinds 701—Chapter 44 and adopts a new Chapter 44 with the same title setting forth provisions for penalty and interest for individual income tax.

Item 37 adopts new rule 701—46.5(422) to set forth the provisions for penalty and interest for withholding tax.

Item 38 rescinds and reserves 701—Chapter 47, which is an obsolete chapter regarding estimated income tax for tax years beginning before January 1, 1986.

Item 39 amends subrule 49.1(1) to remove obsolete provisions regarding the payment of estimated tax for tax years beginning prior to January 1, 1990.

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Item 40 rescinds subrule 49.6(3), which is an obsolete subrule regarding the penalty for underpayment of estimated tax that only affected the 1987 tax year.

Item 41 rescinds subrule 51.2(2), which is an obsolete subrule regarding waiver of the statute of limitations for waivers entered into before July 1, 1989.

Item 42 adopts new subrule 52.4(3) to set forth the provisions for penalty and interest for corporation income tax.

Item 43 rescinds subrule 52.5(1), which is an obsolete subrule regarding minimum tax for tax years beginning prior to January 1, 1987.

Item 44 adopts new subrule 52.5(3) to provide that estimated payments are required for corporations that are subject to minimum tax.

Item 45 amends rule 701—52.6(422) to remove obsolete provisions regarding the motor fuel credit for tax years beginning prior to July 1, 1986.

Item 46 rescinds subrules 52.11(7) through 52.11(9), 52.11(11) and 52.11(13), which are obsolete subrules regarding the computation of interest on refunds for claims filed prior to June 11, 1984, and interest on overpayments for returns due prior to April 30, 1981.

Item 47 rescinds subrule 53.8(1), which is an obsolete subrule regarding the disallowance of private club expenses for tax years prior to 1994.

Item 48 amends rule 701—53.13(422) to clarify how Iowa tax refunds from refundable tax credits should be reported in computing Iowa taxable income. To clarify this provision, an example is included.

Item 49 rescinds subrule 55.3(4), which is an obsolete subrule regarding the statute of limitations for refunds for tax years prior to 1979.

Item 50 adopts new subrule 55.3(7) to clarify how the statute of limitations for refund is determined for taxpayers who have paid 90 percent of the tax by the due date and file an Iowa return in the six-month extended period after the due date. To clarify this provision, examples are included.

Item 51 rescinds subrule 57.2(2), which is an obsolete subrule regarding waiver of the statute of limitations for waivers entered into before July 1, 1989.

Item 52 amends subrule 58.4(3) to set forth the provisions for penalty and interest for franchise tax.

Item 53 rescinds subrule 58.5(1), which is an obsolete subrule regarding minimum tax for tax years beginning prior to January 1, 1987.

Item 54 amends subrule 58.5(3) to delete a reference to a rule rescinded under Item 4.

Item 55 rescinds subrules 58.6(7), 58.6(8), 58.6(10), 58.6(12) and 58.6(14), which are obsolete subrules regarding the computation of interest on refunds for claims filed prior to June 11, 1984, and interest on overpayments for returns due prior to April 30, 1981.

Item 56 rescinds rule 701—59.17(422), which is an obsolete rule regarding the disallowance of private club expenses for tax years prior to 1994.

Item 57 rescinds subrule 60.3(4), which is an obsolete subrule regarding the statute of limitations for refunds for tax years prior to 1979.

Item 58 adopts new subrule 60.3(7) to clarify how the statute of limitations for refund is determined for taxpayers who have paid 90 percent of the tax by the due date and file an Iowa return in the six-month extended period after the due date.

Items 59, 60 and 61 amend subrules 89.4(7), 89.4(9) and 89.5(3) to correct cross references.

Item 62 amends rule 701—89.9(422) to correct an incorrect cross reference.

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 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 determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 1, 2004, to the Policy Section, Compliance 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 October 19, 2004. Such written comments should be directed to the Policy Section, Compliance 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, Compliance 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 October 22, 2004.

These amendments are intended to implement Iowa Code chapter 422.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **701—10.40(422)** through **701—10.43(422)**.

ITEM 2. Rescind and reserve rule **701—10.50(422)**.

ITEM 3. Rescind and reserve rules **701—10.56(422)** through **701—10.58(422)**.

ITEM 4. Rescind and reserve rule **701—10.66(422)**.

ITEM 5. Amend rule **701—38.15(422)** by adding the following **new** numbered paragraph "**5**" before the implementation clause:

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief.

ITEM 6. Amend subrule **38.17(3)**, fourth unnumbered paragraph, to read as follows:

~~Although~~ *Since* military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay ~~can~~ *cannot* be considered for purposes of Iowa's taxation of nonresidents *in accordance with the*

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Servicemembers Civil Relief Act, Public Law 108-189. The mere inclusion of military compensation in a formula determining rate of tax on income from state sources does not constitute taxation of military income of a nonresident individual as a violation of 50 U.S.C. Appx § 574(1). *United States v. Kansas* (1987, CA10 Kan) 810 F2d 935. *The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in subrule 42.3(1).*

ITEM 7. Amend subrule 39.1(1) as follows:

39.1(1) Residents of Iowa for tax years beginning on or after January 1, 1993.

a. For tax years beginning prior to January 1, 1993. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income, as defined in Iowa Code section 422.7, is \$4,000 or more (\$5,000 or more for taxable years beginning on or after January 1, 1987, but before January 1, 1992), (\$7,500 or more for taxable years beginning in the 1992 year), or who is required to file a federal income tax return if it is for a tax year beginning before January 1, 1992, must make, sign, and file a return. Each resident whose net income as defined in Iowa Code section 422.7 is \$3,000 or more and who is claimed as a dependent on another person's return, or who is required to file a federal income tax return if it is for a tax year beginning before January 1, 1992, must make, sign, and file a return. In determining whether returns must be filed, income from all sources, taxable under this division, must be considered. For purposes of this paragraph, the portion of a lump sum distribution subject to separate federal tax is included in net income to determine if a person has to file a return.

b. For tax years beginning on or after January 1, 1993. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income is greater than \$13,500 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, unmarried heads of household and surviving spouses or greater than \$9,000 in the case of single persons must make, sign, and file a return. Each resident who is claimed as a dependent on another person's return and whose net income is \$4,000 or more, or whose net income is \$5,000 or more for tax years beginning on or after January 1, 2001, must make, sign, and file a return. For purposes of this paragraph *subrule*, the portion of a lump sum distribution subject to separate federal tax is included in net income to determine if a person has to file a return.

ITEM 8. Amend subrule 39.1(2) as follows:

39.1(2) Nonresidents of Iowa.

a. Tax years beginning on or before December 31, 1981. For each taxable year, every nonresident of Iowa who is not claimed as a dependent on another person's return, but is required to file a federal income tax return and who has a net income, as defined in Iowa Code section 422.7, from sources within this state of \$4,000 or more, must make, sign and file a nonresident return. Each nonresident who is claimed as a dependent on another person's return, and whose net income, as defined in Iowa Code section 422.7, from sources within this state is \$3,000 or more, and who is required to file a federal income tax return, must make, sign and file a nonresident return.

b. Tax years beginning on or after January 1, 1982, but before January 1, 1993. For each taxable year, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of \$500 or more from Iowa

sources and meets one or more of the following conditions: (1) is required to file a federal income tax return if the taxable year begins before January 1, 1992, (2) has a net income from all sources of \$4,000 (\$5,000 for tax years beginning on or after January 1, 1987, but before January 1, 1992), (\$7,500 or more for taxable years beginning in the 1992 year), or (3) is claimed as a dependent on another person's return and had a net income from all sources of \$3,000 or more.

e a. Tax years beginning on or after January 1, 1993. For each taxable year, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$13,500 in the case of married persons filing jointly, filing separately on a combined return or filing separate returns, unmarried heads of household and surviving spouses, (2) has a net income from all sources greater than \$9,000 in the case of single persons, (3) is claimed as a dependent on another person's return and has a net income from all sources of \$4,000 or more or has a net income from all sources of \$5,000 or more if the tax year begins on or after January 1, 2001. For purposes of this paragraph, the portion of a lump sum distribution subject to separate federal tax that is allocable to Iowa is included in net income to determine if the nonresident has sufficient net income to make and file a return.

d b. Nonresidents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every nonresident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign, and file a return if the nonresident is subject to Iowa alternative minimum tax.

ITEM 9. Amend subrule 39.1(3) as follows:

39.1(3) Part-year residents of Iowa.

a. Tax years beginning on or before December 31, 1981. Every part-year resident of Iowa, except those part-year residents claimed as a dependent on another person's return, whose net income earned from all sources during the time the person was a resident and whose net income earned from Iowa sources for the portion of the year the person was a nonresident, totals \$4,000 or more, or every part-year resident who is required to file a federal income tax return, must make, sign and file an Iowa resident income tax return. Every part-year resident of Iowa, who is claimed as a dependent on another person's return, and whose net income earned from all sources during the time the person was a resident and whose net income earned from Iowa sources for the portion of the year the person was a nonresident, totals \$3,000 or over, or every part-year resident who is required to file a federal income tax return, must make, sign and file an Iowa income tax return.

b. Tax years beginning on or after January 1, 1982, but before January 1, 1993. For each taxable year, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident has a net income of \$500 or more from Iowa sources and meets one or more of the following conditions: (1) is required to file a federal income tax return if the taxable year begins before January 1, 1992, (2) has a net income from all sources of \$4,000 or more (\$5,000 or more for tax years beginning on or after January 1, 1987, but before January 1, 1992), (\$7,500 or more for tax years beginning in the 1992 year), or (3) is claimed as a dependent on another person's return and had a net income from all sources of \$3,000 or more.

See rules 701—40.16(422), 41.7(422) and 701—subrule 42.2(1).

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e a. Tax years beginning on or after January 1, 1993. For each taxable year, every part-year resident of Iowa must make, sign, and file a return if the individual has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$13,500 in the case of married persons filing jointly, filing separately on a combined return form or filing separate returns, unmarried heads of household and surviving spouses, (2) has a net income from all sources that is greater than \$9,000 in the case of a single person, or (3) is claimed as a dependent on another person's return and had a net income from all sources of \$4,000 or more. For purposes of this paragraph, the portion of a lump sum distribution that is allocable to Iowa is included in net income to determine if the person has sufficient net income to make and file a return.

d b. Part-year residents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every part-year resident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign and file a return if the part-year resident is subject to Iowa alternative minimum tax.

ITEM 10. Amend subrule 39.1(7) to read as follows:

39.1(7) Returns filed for refund. A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimate tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the research activities credit, and the motor vehicle fuel tax credit, *the claim of right credit (if elected in accordance with rule 701—38.18(422)), the assistive device credit, the property rehabilitation tax credit, the ethanol blended gasoline tax credit and the investment tax credit for value-added agricultural products or biotechnology-related processes.*

ITEM 11. Rescind and reserve subrules **39.2(2)** and **39.2(3)**.

ITEM 12. Amend subrule 39.5(2) as follows:

39.5(2) Payment of tax on income not subject to withholding. Those taxpayers with income not subject to withholding which will produce a tax liability of \$50 \$200 or more, shall file and pay a declaration of estimated tax. See 701—Chapter 47 49 of the rules.

ITEM 13. Rescind and reserve subrules **39.5(8)** and **39.5(9)**.

ITEM 14. Rescind and reserve subrules **39.6(1)** and **39.6(2)**.

ITEM 15. Amend subrule **39.6(3)**, paragraph “a,” subparagraph (2), as follows:

(2) **The federal tax preference items which are also applicable in computing state minimum taxable income are:

1. Accelerated depreciation of real property placed in service before 1987.
2. Accelerated depreciation on leased personal property placed in service before 1987.
3. Amortization of certified pollution control facilities placed in service before 1987.
4. Appreciated property charitable deduction.
5. Incentive stock options.

6. Reserves for losses on bad debts of financial institutions.

~~Note that in the case of taxpayers that file claims for the special refunds described in rule 701—43.7(422) for tax years beginning in 1987, the capital gain deductions determined for purposes of the special refunds are tax preference items for state minimum tax purposes.~~ For tax periods ending on or after September 10, 2001, any federal adjustments or tax preference items that are determined based on a percentage of taxpayer's federal adjusted gross income may have to be adjusted for Iowa alternative minimum tax purposes. These adjustments and preferences for Iowa alternative minimum tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).

ITEM 16. Amend subrule **40.2(1)**, paragraph “a,” as follows:

a. United States Government obligations: United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, and H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes

ITEM 17. Rescind and reserve rule **701—40.4(422)**.

ITEM 18. Rescind and reserve rule **701—40.10(422)**.

ITEM 19. Rescind and reserve rule **701—40.11(422)**.

ITEM 20. Rescind and reserve rule **701—40.25(422)**.

ITEM 21. Rescind and reserve rule **701—40.26(422)**.

ITEM 22. Rescind and reserve rule **701—40.33(422)**.

ITEM 23. Rescind and reserve rule **701—40.41(422)**.

ITEM 24. Rescind and reserve subrule **41.5(2)**.

ITEM 25. Rescind and reserve subrule **41.5(6)**.

ITEM 26. Amend 701—Chapter 41 by adopting the following **new** rule:

701—41.13(422) Iowa income taxes and Iowa tax refund. As provided in subrule 41.5(1), Iowa individual income taxes paid or accrued are allowable itemized deductions for federal income tax purposes, but are not allowable itemized deductions for Iowa income tax purposes. To the extent Iowa income taxes were deducted as itemized deductions for federal tax purposes, they shall be disallowed as an itemized deduction for Iowa income tax purposes.

Refunds of Iowa income taxes to the extent that the refunds were included in the determination of federal adjusted gross income shall be allowed as a reduction to Iowa adjusted gross income, only to the extent that an itemized deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable income tax credits are not allowed as a reduction for Iowa income tax purposes.

EXAMPLE: Individual A made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as an itemized deduction for federal tax purposes, but was not allowed as an itemized deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Individual A had \$2,000 of Iowa esti-

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mated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Individual A will be allowed a \$400 (\$2,000 - \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.9.

ITEM 27. Amend rule **701—42.1(257,442)**, third unnumbered paragraph, to read as follows:

An individual serving in the armed forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax ~~only if~~ *regardless of whether* the individual is physically residing in the school district on the last day of the tax year.

ITEM 28. Amend rule 701—42.2(422) as follows:

Amend the introductory paragraph as follows:

701—42.2(422) Exemption, research activities, earned income, and investment tax and child care credits. Iowa Code section 422.12 provides for personal exemption and child care credits which are deducted from computed tax. ~~The total amount of credits allowable cannot exceed the computed tax.~~

Amend subrule 42.2(1) as follows:

42.2(1) Exemption credits *for tax years* beginning prior to ~~on or after~~ January 1, ~~1979~~ 1998.

a. A single person may deduct from the computed tax a personal exemption credit of \$15 40. A single person is defined in 701—subrule 39.4(1).

b. A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, may, if a joint return is filed, deduct from the computed tax a personal exemption of \$30 80. Where such spouse files a separate return, each *spouse* is entitled to deduct from the computed tax a personal exemption of \$15 40. The personal exemption may not be divided between the spouses in any other proportion.

c. A taxpayer may deduct from computed tax an exemption of \$10 40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents may be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, ~~they the spouses~~ may elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the money credits for a particular dependent.

d. A head of household as defined in 701—subrule 39.4(7) is allowed ~~an additional~~ *a* personal exemption credit of \$15 ~~in addition to any other credits allowed by this rule~~ 80.

e. A taxpayer who is 65 years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of \$15 20 in addition to any other credits allowed by this rule.

f. A taxpayer who is blind as defined in Iowa Code section 422.12(5) is allowed an additional personal exemption credit of \$15 20 in addition to any other credits allowed by this rule.

g. A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if ~~they were residents~~ *the resident taxpayer or part-year taxpayer was a resident* for the entire year.

ITEM 29. Rescind and reserve subrules **42.2(2)** through **42.2(5)**.

ITEM 30. Amend rule 701—42.6(422) as follows:

701—42.6(422) Motor fuel credit.

~~**42.6(1)** Motor fuel credit for tax years beginning on or after January 1, 1975, but before July 1, 1986. An individual may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual who holds a motor fuel refund permit under Iowa Code section 452A.18 must cancel the permit before the taxpayer becomes eligible to take a motor fuel credit on the individual's income tax return. The permit must be canceled within 30 days after the first day of the individual's tax year. Once an election is made, it will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.~~

~~The amount of income tax credit shall be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax deductible under Iowa Code section 422.52(4). The credit shall be deducted on the tax return filed for the year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or credited to income tax due in subsequent years.~~

~~The motor fuel credit option is available on individual income tax returns filed for tax years beginning on or after January 1, 1975.~~

~~Effective for tax returns which are timely filed after January 1, 1980, members of partnerships or S corporations may claim a credit for their respective shares of the motor vehicle fuel tax paid by the partnership or S corporation. The credit is to be shared in the same ratio as the person's pro rata share of the earnings from the partnership or S corporation. In order to be eligible for the tax credit, the partnership or S corporation must not hold a valid motor vehicle fuel refund permit during the tax year or the permit must have been canceled within 30 days after the beginning of the tax year. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each partner or shareholder.~~

~~**42.6(2)** Motor fuel credit for tax years beginning on or after July 1, 1986. An individual, partnership, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.~~

~~The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax deductible under Iowa Code section 422.52(4). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.~~

~~The motor fuel tax credits for fuel taxes paid by partnerships and S corporations are not claimed on returns filed for the partnerships and S corporations. Instead, the pro rata shares of the motor fuel tax credits are allocated to the partners and shareholders in the same ratio as incomes are allocated to the partners and shareholders. A schedule must be attached to the individual's returns showing the distribution~~

REVENUE DEPARTMENT[701](cont'd)

of gallons and the amount of credit claimed by each shareholder or partner.

The partnership or S corporation must attach to its return a schedule showing the allocation to each partner or shareholder of the motor fuel purchased by the corporation or partnership which ~~qualify~~ *qualifies* for the credit.

This rule is intended to implement Iowa Code sections 422.110 and 422.111.

ITEM 31. Amend subrule **42.7(2)**, first unnumbered paragraph, as follows:

No out-of-state credit will be allowed on the Iowa return for minimum tax paid to another state or foreign country to the extent that the minimum tax of the other state or foreign country is imposed on items of tax preference not subject to the Iowa minimum tax. In addition, no out-of-state credit will be allowed for minimum tax paid to another state or foreign country of capital gains or losses from distressed sales which are excluded from the Iowa minimum tax. Capital gains or losses from distressed sales are described in *rule 701—subrule 39.6(2), paragraph “b.” 40.27(422)*.

ITEM 32. Amend rule 701—42.9(422), introductory paragraph, as follows:

701—42.9(422) Child and dependent care credit. Effective for tax years beginning on or after January 1, 1990, there is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits. ~~This refundable child and dependent care credit is in lieu of the non-refundable child and dependent care credit which was applicable for tax years beginning on or after January 1, 1977, but before January 1, 1990, and is described in subrule 42.2(3).~~

ITEM 33. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.10 through 422.12C shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. Iowa earned income credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. Venture capital credits.
8. Endow Iowa tax credit.
9. Investment tax credit.
10. New jobs credit.
11. Alternative minimum tax credit.
12. Property rehabilitation tax credit.
13. Ethanol blended gasoline tax credit.
14. Research activities credit.
15. Assistive device credit.
16. Motor fuel credit.
17. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
18. Estimated tax payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.12, 422.12B and 422.12C.

ITEM 34. Rescind and reserve subrule **43.3(13)**.

ITEM 35. Rescind and reserve rules **701—43.6(422)** and **701—43.7(422)**.

ITEM 36. Rescind 701—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44 PENALTY AND INTEREST

701—44.1(422) Penalty. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 421.27 and 422.25.

701—44.2(422) Computation of interest on unpaid tax. Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

This rule is intended to implement Iowa Code sections 421.7 and 422.25.

701—44.3(422) Computation of interest on refunds resulting from net operating losses. If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carry-back beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment, whichever is later.

This rule is intended to implement Iowa Code section 422.25.

701—44.4(422) Computation of interest on overpayments. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

ITEM 37. Adopt **new** rule 701—46.5(422) as follows:

701—46.5(422) Penalty and interest.

46.5(1) Penalty. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

46.5(2) Computation of interest on unpaid tax. Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

46.5(3) Computation of interest on overpayments. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue

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interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code sections 421.27, 422.16 and 422.25.

ITEM 38. Rescind and reserve **701—Chapter 47.**

ITEM 39. Amend subrule 49.1(1) as follows:

49.1(1) General rule. For tax years beginning on or after January 1, 1986, every taxpayer, including a nonresident taxpayer, other than an estate or a trust, must make estimated payments on forms prescribed by the director, if the taxpayer's income tax liability attributable to incomes other than salaries or wages subject to withholding tax is reasonably expected to be \$50 or more for the tax year if the tax year began prior to January 1, 1990. In the case of *For* tax years beginning on or after January 1, 1990, estimated payments are required if the taxpayer's income tax liability attributable to incomes not subject to withholding is expected to be \$200 or more. The amount of estimated tax paid must be used as a credit on the taxpayer's individual income tax return. For tax years beginning prior to January 1, 1986, taxpayers subject to estimated income tax were required to make estimated declarations as described in 701—Chapter 47.

ITEM 40. Rescind and reserve subrule **49.6(3).**ITEM 41. Rescind and reserve subrule **51.2(2).**

ITEM 42. Adopt **new** subrule 52.4(3) as follows:

52.4(3) Penalty and interest on unpaid tax. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

ITEM 43. Rescind and reserve subrule **52.5(1).**

ITEM 44. Adopt **new** subrule 52.5(3) as follows:

52.5(3) Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

ITEM 45. Amend rule 701—52.6(422) as follows:

701—52.6(422) Motor fuel credit.

52.6(1) For tax years beginning on or after January 1, 1975, but before July 1, 1986. A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel refund permit under Iowa Code section 452A.18 must cancel its permit before it becomes eligible to take a motor fuel credit on the corporate income tax return. The permit must be canceled within 30 days after the first day of the corporation's tax year. Once an election is made, it will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of income tax credit shall be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and section 422.110

less any state sales tax deductible under Iowa Code subsection 422.52(4). The credit shall be deducted on the tax return filed for the year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or credited to income tax due in subsequent years.

The motor fuel credit option is available on corporate income tax returns filed for tax years beginning on or after January 1, 1975.

Effective for tax returns which are timely filed after January 1, 1980, members of partnerships or S corporations may claim a credit for their respective share of the motor vehicle fuel tax paid by the partnership or S corporation. The credit is to be shared in the same ratio as the person's pro-rata share of the earnings from the partnership or S corporation. In order to be eligible for the tax credit, the partnership or S corporation must not hold a valid motor vehicle fuel refund permit during the tax year or the permit must have been canceled within 30 days after the beginning of the tax year. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each partner or shareholder.

The corporation or partnership must attach to its return a schedule showing the allocation to each shareholder or partner of gallons purchased.

52.6(2) For tax years beginning on or after July 1, 1986. A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel tax refund permit when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax deductible under Iowa Code subsection 422.52(4). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

Shareholders of S corporations may claim an income tax credit on their individual income tax returns for their respective shares of the motor vehicle fuel taxes paid by the corporations. The credit for a shareholder is that person's pro-rata share of the fuel tax paid by the corporation. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each shareholder or partner.

The corporation must attach to its return a schedule showing the allocation to each shareholder of the motor fuel purchased by the corporation.

This rule is intended to implement Iowa Code section 422.33.

ITEM 46. Rescind and reserve subrules **52.11(7)** through **52.11(9)**, **52.11(11)** and **52.11(13)**.

ITEM 47. Rescind and reserve subrule **53.8(1)**.

ITEM 48. Amend rule 701—53.13(422) as follows:

701—53.13(422) Iowa income taxes and Iowa tax refund. Iowa corporation income taxes paid or accrued during the tax year as may be applicable under the method of filing are per-

REVENUE DEPARTMENT[701](cont'd)

missible deductions for federal corporation income tax purposes, but are not *permissible deductions* for purposes of determining Iowa net taxable income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes. Refunds of Iowa income tax to the extent that the refunds were included in the determination of federal taxable income shall be subtracted from federal taxable income, *only to the extent that a deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable tax credits are not allowed as a deduction for Iowa corporation income tax purposes.*

EXAMPLE: Corporation A reports income on a cash basis and made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as a deduction for federal income tax purposes, but was not allowed as a deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Corporation A had \$2,000 of Iowa estimated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Corporation A will be allowed a \$400 (\$2,000 – \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.35.

ITEM 49. Rescind and reserve subrule **55.3(4)**.

ITEM 50. Amend rule 701—55.3(422) by adopting the following **new** subrule:

55.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Corporation A had paid at least 90 percent of the tax shown due on its Iowa corporation income tax return for the year ending December 31, 1999, by the April 30 original due date and filed its original 1999 Iowa return on May 15, 2000. Corporation A determined that it was entitled to claim additional deductions on the original 1999 Iowa return, so Corporation A filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Corporation B paid 90 percent of the tax shown due on its return for the period ending June 30, 2000, by the October 31 original due date and filed the original return on or before the October 31, 2000, original due date for this return. Corporation B determined that when it filed the original Iowa return for the period ending June 30, 2000, Corporation B failed to claim an Iowa credit for increasing

research activities. Corporation B filed an amended Iowa return on November 15, 2003, to claim the Iowa credit for increasing research activities. This amended return was rejected by the department because it was not filed within three years of the due date of the return. Although Corporation B had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of October 31, 2000.

ITEM 51. Rescind and reserve subrule **57.2(2)**.

ITEM 52. Amend subrule 58.4(3) as follows:

58.4(3) Penalty and interest on unpaid tax. ~~In computing penalty and interest on unpaid tax, refer to rule 701—10.66(422).~~ See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

ITEM 53. Rescind and reserve subrule **58.5(1)**.

ITEM 54. Amend subrule 58.5(3) as follows:

58.5(3) Penalty and interest. ~~In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to 701—subrules 10.66(2) and 10.66(3).~~ Effective for tax years beginning on or after January 1, 1986, *estimate* estimated payments are required for minimum tax.

ITEM 55. Rescind and reserve subrules **58.6(7)**, **58.6(8)**, **58.6(10)**, **58.6(12)** and **58.6(14)**.

ITEM 56. Rescind and reserve rule **701—59.17(422)**.

ITEM 57. Rescind and reserve subrule **60.3(4)**.

ITEM 58. Amend rule 701—60.3(422) by adopting the following **new** subrule:

60.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

See 701—subrule 55.3(7) for examples illustrating how this rule is applied.

ITEM 59. Amend subrule 89.4(7) as follows:

89.4(7) Amended returns. An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended

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return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules ~~43.3(4)~~ 43.3(8) and ~~43.3(5)~~ 43.3(15) for the period of time for making a claim for a refund of excess tax paid.

ITEM 60. Amend subrule **89.4(9)**, paragraph “**h**,” as follows:

h. Liability of a withholding agent. A withholding agent is personally liable for the amount of the tax required to be withheld under Iowa Code subsection 422.16(12) if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid and, in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 701—44.1(422) to ~~44.7(422)~~ 44.4(422) for the application and computation of penalty and interest on income tax required to be withheld.

ITEM 61. Amend subrule 89.5(3) as follows:

89.5(3) Extension of time for the decedent’s final *tax* return. ~~701—subrules 39.2(2) and 39.2(3) subrule 39.2(4) providing which provides~~ for extensions of time to file individual income tax returns will apply to the decedent’s final *tax* return.

ITEM 62. Amend rule 701—89.9(422) as follows:

701—89.9(422) Audits, assessments and refunds. Rules 701—43.1(422) to ~~43.4(422)~~ 43.3(422) governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid, shall

also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement Iowa Code sections 422.16, 422.25, 422.30, 422.70 and 422.73.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%
December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%

ARC 3676B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1 and Iowa Code Supplement section 170.3, the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," and Chapter 66, "Livestock Movement," Iowa Administrative Code.

The purpose of these amendments is to reinstate rules governing the monitoring of farm deer for chronic wasting disease that were rescinded in **ARC 3534B**, published in the July 21, 2004, Iowa Administrative Bulletin, due to a lack of financial resources available to continue implementation of a voluntary chronic wasting disease monitoring program for farm deer. However, recently the Department was successful in getting one-time federal funding which will permit reinstatement of the program for one year. These amendments do not reinstate the whitetail deer hunting preserve program for farmed whitetail deer. They also do not reinstate the fee schedule that had previously been in place to support these programs.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical. The Department received substantial comment that the termination of the chronic wasting disease program created a significant hardship for the farm deer producers. Reinstatement of the program will ameliorate those hardships. Notice and public participation would needlessly delay reinstatement of the program. There has already been significant public discussion on the merits of the chronic wasting disease program.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator. The amendments confer a benefit on the Iowa farm deer industry because they permit those individuals who wish to move their animals across state lines to participate in a recognized chronic wasting disease program.

No waiver provision is included in these amendments. However, the Department has a general rule which allows for waivers in appropriate cases. The waiver rule applies to these amendments.

These amendments are also published herein under Notice of Intended Action as **ARC 3678B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 170.

These amendments became effective September 3, 2004. The amendments to the chronic wasting disease program sunset on August 17, 2005, when federal funding for the program ceases.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **64.34(10)**, paragraph "a," as follows:

a. Native Iowa Cervidae. Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. *CWD susceptible Cervidae intended for exhibition must originate from a herd that has completed at least one year in the CWD monitoring program.* Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification *and the monitored CWD cervid herd number or certified CWD herd number for CWD susceptible Cervidae, including the status level and anniversary date,* and contains the following statement:

"All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

ITEM 2. Amend subrule 64.35(6) as follows:

64.35(6) Cervidae. *Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. CWD susceptible Cervidae intended for exhibition must originate from a herd that has completed at least one year in the CWD monitoring program.* Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification *and the monitored CWD cervid herd number or certified CWD herd number for CWD susceptible Cervidae, including the status level and anniversary date,* and contains the following statement:

"All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

ITEM 3. Amend 21—Chapter 64 by adopting the following **new** rules 21—64.104(163) through 21—64.119(163):

CHRONIC WASTING DISEASE (CWD)

21—64.104(163) Definitions. Definitions used in rules 64.104(163) through 64.119(163) are as follows:

"Accredited veterinarian" means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state/federal animal disease control and eradication programs.

"Adjacent herd" means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.

2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past four years as determined by the designated epidemiologist.

"Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD and which has not been in compliance with the control program for CWD as described in rules 64.104(163) through 64.119(163).

"Approved laboratory" means an American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited

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

ited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

“Certificate” means an official document, issued by a state veterinarian or federal animal health official or an accredited veterinarian at the point of origin, containing information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the state veterinarian.

“Certified CWD cervid herd” means a herd of Cervidae that has met the qualifications for and has been issued a certified CWD cervid herd certificate signed by the state veterinarian.

“Cervidae” means all animals belonging to the Cervidae family.

“Cervid CWD surveillance identification program” or “CCWDSI program” means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae over 16 months of age including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

“Cervid dealer” means any person who engages in the business of buying, selling, trading, or negotiating the transfer of Cervidae, but not a person who purchases Cervidae exclusively for slaughter on the person’s own premises or buys and sells as part of a normal livestock production operation.

“Cervid herd” means a group of Cervidae or one or more groups of Cervidae maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

“Cervid herd of origin” means a cervid herd, or any farm or other premises, where the animals were born or where they currently reside.

“Chronic wasting disease” or “CWD” means a transmissible spongiform encephalopathy of cervids.

“CWD affected” means a designation applied to Cervidae diagnosed as affected with CWD based on laboratory results, clinical signs, or epidemiologic investigation.

“CWD exposed” or “exposed” means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past five years.

“CWD susceptible Cervidae” means whitetail deer, black-tail deer, mule deer, red deer, elk, and related species and hybrids of these species.

“CWD suspect” or “suspect” means a designation applied to Cervidae for which laboratory evidence or clinical signs suggest a diagnosis of CWD but for which laboratory results are inconclusive.

“Designated epidemiologist” means a veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

“Group” means one or more Cervidae.

“Individual herd plan” means a written herd management and testing plan that is designed by the herd owner, the owner’s veterinarian, if requested, and a designated epidemiolo-

gist to identify and eradicate CWD from an affected, exposed, or adjacent herd.

“Monitored CWD cervid herd” means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, four-year, and five-year monitored herds in accordance with the time in years such herds have been in compliance with the CCWDSI program.

“Official cervid CWD test” means an approved test to diagnose CWD conducted at an official laboratory.

“Official cervid identification” means one of the following:

1. A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

4. A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Elk Breeders Association.

5. A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Deer Farmers Association.

“Permit” means an official document that is issued by the state veterinarian or USDA area veterinarian-in-charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

“Quarantine” means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

“State” means any state of the United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; or Guam.

“Traceback” means the process of identifying the herd of origin of CCWDSI-positive animals, including herds that were sold for slaughter.

21—64.105(163) Supervision of the cervid CWD surveillance identification program. The state veterinarian’s office will conduct an annual inventory of Cervidae in a herd enrolled in the CCWDSI program.

21—64.106(163) Surveillance procedures. For cervid herds enrolled in this voluntary certification program, surveillance procedures shall include the following:

64.106(1) Slaughter establishments. All slaughtered Cervidae 16 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.106(2) Cervid herds. All cervid herds must be under continuous surveillance for CWD as defined in the CCWDSI program.

64.106(3) Identification. Effective June 1, 2003, animals not identified with a tattoo must be identified with two forms of official identification.

21—64.107(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.

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

3. Western blot.
4. Negative stain electron microscopy.
5. Bioassay.
6. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

21—64.108(163) Investigation of CWD affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an approved laboratory as affected with CWD. All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined.

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules shall be removed as follows:

1. For herds of origin, quarantines shall be removed after five years of compliance with rules 64.104(163) through 64.119(163).
2. For herds having contact with affected or exposed animals, quarantines shall be removed after five years of compliance with rules 64.104(163) through 64.119(163).
3. For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.

21—64.110(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. The herd plan must be developed and signed within 60 days after the determination that the herd is affected. The plan must address herd management and adhere to rules 64.104(163) through 64.119(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status.

21—64.111(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian.

21—64.112(163) Cleaning and disinfecting. Premises must be cleaned and disinfected under state supervision within 15 days after affected animals have been removed.

21—64.113(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. The animals that are part of a certified herd cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS Manual 91-45-011, revised as of January 22, 1999. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

64.113(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the department shall issue a new certificate in the new owner's name. The anniversary date and herd status for the purchased animals shall be the same as for the herd to which the animals are added; or if

part or all of the purchased herd is moved directly to premises that have no other Cervidae, the herd may retain the certified CWD status of the herd of origin. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

64.113(2) Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of five years.

21—64.114(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by state veterinarians are required every 9 to 15 months from the anniversary date. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

21—64.115(163) Movement into a certified CWD cervid herd.

64.115(1) Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd with no change in the status of the herd of destination.

64.115(2) The movement of animals originating from noncertified or lesser status herds into certified CWD cervid herds will result in the redesignation of the herd of destination to the lesser status.

21—64.116(163) Movement into a monitored CWD cervid herd.

64.116(1) Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

64.116(2) The movement of animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will result in the redesignation of the herd of destination to the lesser status.

21—64.117(163) Recognition of monitored CWD cervid herds. The state veterinarian shall issue a monitored CWD cervid herd certificate, including CWD monitored herd status as CWD monitored Level 1 during the first calendar year, CWD monitored Level 2 during the second calendar year, CWD monitored Level 3 during the third calendar year, CWD monitored Level 4 during the fourth calendar year, CWD monitored Level 5 during the fifth calendar year, and CWD certification at the completion of the fifth year and thereafter.

21—64.118(163) Recognition of certified CWD cervid herds. The state veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies for certification. The state veterinarian shall issue a renewal form annually.

21—64.119(163) Effective period. Rules 21—64.104(163) through 21—64.118(163) shall be rescinded on August 17, 2005.

These rules are intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 170.

ITEM 4. Amend rule 21—66.14(163) as follows:

21—66.14(163) Intrastate movement requirements.

66.14(1) All intrastate movements of Cervidae other than to a state or federally inspected slaughter establishment shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. *Movement of CWD susceptible Cervidae, other than*

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

direct movement to slaughter, shall only be allowed from herds that have been enrolled in the Iowa CWD monitoring program and have successfully completed at least one year. As used in this subrule, "been enrolled" means that the herd owner has received from the department written notification of the herd's enrollment and participation in the program.

66.14(2) Such intrastate movement certificate shall include all of the following:

- a. Consignor's name and address.
- b. Consignee's name and address.
- c. Individual, official identification of each animal.
- d. ~~The following statement:~~ For CWD susceptible *Cervidae*, the certificate shall include the CWD herd premises number, the herd status level, the anniversary date, and the expiration date. The following statement must be included on the certificate:

"All *Cervidae* listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

e. For *Cervidae* other than CWD susceptible *Cervidae*, the following statement must be included on the certificate:

"The animal(s) has not spent any time within the past 36 months in a zoo, animal menagerie, or like facility, or has not been on the same premises as a cervid herd which has been classified as a CWD infected herd, exposed herd, or trace herd."

This rule is intended to implement Iowa Code chapter 163 and Iowa Code Supplement chapter 170.

[Filed Emergency 9/3/04, effective 9/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3698B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 29C.8(3), the Homeland Security and Emergency Management Division hereby amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state.

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

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on September 10, 2004, as it confers a benefit upon state and local governments as well as certain not-for-profit

agencies to meet federal requirements to adopt the plan by November 1, 2004.

The Homeland Security and Emergency Management Division adopted this amendment on September 10, 2004.

This amendment is also published herein under Notice of Intended Action as **ARC 3697B** to allow for public comment. This emergency filing permits the Division to implement the provisions of the law.

This amendment is intended to implement Iowa Code section 29C.8.

This amendment became effective September 10, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement section 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend **605—Chapter 9** as follows:

CHAPTER 9

IOWA COMPREHENSIVE PLAN

605—9.1(29C) Description. Iowa Code section 29C.8 requires the administrator of the *homeland security and emergency management division* to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This comprehensive plan is comprised of the following parts:

Part A: Iowa Emergency Response Plan

Part B: Iowa Hazard Mitigation Plan

Part C: Iowa Disaster Recovery Plan

Part D: Iowa Critical Asset Protection Plan (confidential per Iowa Code section 22.7, Confidential records)

605—9.2(29C) Part A: Iowa Emergency Response Plan. The Part A: Iowa Emergency Response Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted, published, and maintained by the division. Part A details the state government response to a wide range of natural, technological or human-caused disasters.

1. A copy of Part A will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.

2. Part A shall be distributed to state agencies and departments that have been assigned emergency functions and to all ~~county sheriffs and~~ county emergency management agencies.

3. The Iowa Emergency Response Plan serves as the state disaster emergency response document.

4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list.

5. Part A shall be available for public view at the *Homeland Security and Emergency Management Division*, Hoover State Office Building, Level A, Des Moines, Iowa.

605—9.3(29C) Part B: Iowa Hazard Mitigation Plan. *The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on September 10, 2004, published, and maintained by the division. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.*

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

1. A copy of Part B will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.

2. Part B shall be distributed to state agencies and departments that have participated in the writing of the plan or are assigned hazard mitigation functions and to all county emergency management agencies.

3. The Iowa Hazard Mitigation Plan serves as the state hazard mitigation document and demonstrates the state's commitment to reduce risks from natural, technological, and human-caused hazards and serves as a guide for the commitment of resources to reducing the effects of natural, technological, and human-caused hazards.

4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list. Part B shall be reviewed and amended as appropriate at a minimum of every three years.

5. Part B shall be available for public view at the Homeland Security and Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa.

605—9.4(29C) Part C: Iowa Disaster Recovery Plan. The Part C: Iowa Disaster Recovery Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on September 10, 2004, published, and maintained by the division. Part C details the state government goals, objectives,

and strategies to recover from a wide range of natural, technological, or human-caused disasters.

1. A copy of Part C will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.

2. Part C shall be distributed to state agencies and departments that have been assigned recovery functions and to all county emergency management agencies.

3. The Iowa Disaster Recovery Plan serves as the state disaster recovery document.

4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list. Part C shall be reviewed and amended as appropriate at a minimum of every three years.

5. Part C shall be available for public view at the Homeland Security and Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 29C.8.

[Filed Emergency 9/10/04, effective 9/10/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3675B

ARC 3674B

DENTAL EXAMINERS BOARD[650]

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 11, "Licensure to Practice Dentistry or Dental Hygiene"; Chapter 13, "Special Licenses"; Chapter 14, "Renewal"; and Chapter 15, "Fees," Iowa Administrative Code.

The amendments require applicants for a dental or dental hygiene license, faculty permit, or reinstatement of a license to submit a completed fingerprint packet and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa Division of Criminal Investigation (DCI) and the Federal Bureau of Investigation (FBI), as authorized by the U.S. Department of Justice pursuant to the Volunteers for Children Act, Title 42, United States Code.

The amendments specify that the Board may issue a license or permit or reinstate a license prior to receipt of the criminal history report by the FBI. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the Board if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI. Noncompliance with Board rules or fraud or deceit in procuring a license is grounds for disciplinary action.

The Board has required a completed fingerprint packet with all new dental licenses and dental hygiene licenses for many years. The amendments merely add the requirement that applicants pay to have the fingerprint packet evaluated by the DCI and FBI. Application fees for dental licenses, dental hygiene licenses and faculty permits have not increased since 1983.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, fees are not subject to waiver pursuant to rule 15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3522B**. A public hearing on the amendments was held on August 10, 2004. No written or oral comments on the amendments published under Notice were received. These amendments are identical to those published under Notice.

These amendments were approved at the August 27, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

These amendments will become effective on November 3, 2004.

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 [11.2(2), 11.3(2), 11.5(2), 11.6(2), 11.8(5), 13.2(2), 13.2(4), 14.5(1), 15.1(14)] is being omitted. These amendments are identical to those published under Notice as **ARC 3522B**, IAB 7/21/04.

[Filed 8/31/04, effective 11/3/04]
[Published 9/29/04]

[For replacement pages for IAC, see IAC Supplement 9/29/04.]

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 35, "Iowa Practitioner Review Committee," and Chapter 51, "Contested Cases," Iowa Administrative Code.

These amendments allow the Board to collect either the actual costs of monitoring a practitioner's compliance with terms of an Iowa practitioner program contract or settlement agreement or to collect a \$100 quarterly monitoring fee, as agreed to by the licensee or registrant in the contract or settlement agreement.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3521B**. A public hearing on the amendments was held on August 10, 2004. No written or oral comments on the amendments were received. These amendments are identical to those published under Notice.

These amendments were approved at the August 27, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

These amendments will become effective on November 3, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **35.1(6)**, paragraph "d," as follows:

d. Monitoring costs. A provision for payment of the actual costs *or a \$100 quarterly fee to cover the board's expenses* associated with monitoring a practitioner's compliance with the terms of the IPRC initial agreement or contract may be included in the initial agreement and contract. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, ~~which~~. *Monitoring costs* shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 2. Amend subrule 51.19(9) as follows:

51.19(9) A provision for payment of the actual costs *or a \$100 quarterly fee to cover the board's expenses* associated with monitoring a licensee's or registrant's compliance with the settlement agreement may be included in the settlement agreement. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, ~~which~~. *Monitoring costs* shall be considered repayment receipts as defined in Iowa Code section 8.2.

[Filed 8/31/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3704B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby amends Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

The amendments clarify the requirements for alarm systems on doors in assisted living facilities.

Notice of Intended Action was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3530B**. A public hearing was held over the Iowa Communications Network (ICN) on August 10, 2004. Comments were received at the public hearing and in writing. The comments received resulted in the following change:

Subrule 25.37(2) was rearranged to place a critical requirement first in the paragraph and to clarify the remaining stipulations.

The Commission adopted the amendments during the Commission meeting held on August 31, 2004.

These amendments will become effective on November 3, 2004.

These amendments are intended to implement Iowa Code Supplement chapter 231C.

The following amendments are adopted.

ITEM 1. Amend rule **321—25.1(231C)** by inserting, in alphabetical order, the following **new** definition:

"Wandering behavior" means a behavioral problem of disorientation and difficulty relating to the environment with aimless or purposeful motor activity that causes a social problem such as getting lost, leaving a safe environment or intruding in inappropriate places.

ITEM 2. Rescind subrule 25.37(2) and insert in lieu thereof the following **new** subrule:

25.37(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

a. Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of wandering or a tenant exhibits wandering behavior.

b. Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

[Filed 9/10/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3702B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby amends Chapter 26, "Monitoring, Civil Penalties, Complaints and Investigation for Adult Day Services and Assisted Living Programs," Iowa Administrative Code.

The amendments include elder group homes in monitoring, complaint, and investigation procedures as appropriate under Iowa Code Supplement chapter 231B.

Notice of Intended Action was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3531B**. A public hearing was held over the Iowa Communications Network (ICN) on August 10, 2004. Comments were received at the public hearing and in writing. The comments received resulted in the following changes:

1. Subrule 26.2(3) is changed to conform to existing rules and standards and to clarify that the 24-hour complaint investigation requirement applies only to elder group homes, and that the assisted living programs and adult day services programs investigations are given a 48-hour time frame.

2. In subrule 26.3(2), the change of the word "imminent" to "immediate" was not adopted, so that the language will conform to Iowa Code section 231C.14.

The Commission adopted the amendments during the Commission meeting held on August 31, 2004.

These amendments will become effective on November 3, 2004.

These amendments are intended to implement Iowa Code Supplement chapter 231B.

The following amendments are adopted.

Amend 321—Chapter 26 as follows:

CHAPTER 26**MONITORING, CIVIL PENALTIES, COMPLAINTS
AND INVESTIGATION FOR ELDER GROUP HOMES,
ADULT DAY SERVICES AND
ASSISTED LIVING PROGRAMS**

321—26.1(17A,231B,231C,231D) ~~Adult day services/assisted living program monitoring~~ **Monitoring.**

26.1(1) The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

26.1(2) All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24, ~~and~~ 25 and 29 shall be accessible to DIA for purposes of monitoring.

321—26.2(17A,231B,231C,231D) **Complaint procedure.**

26.2(1) *The process for filing a complaint is as follows:*

a. Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. *When the nature of the complaint is outside of DIA authority, DIA shall forward the complaint, or refer the complainant, to the appropriate investigatory entity.*

ELDER AFFAIRS DEPARTMENT[321](cont'd)

c. Complaints related to elder group homes and assisted living programs may also be filed in the office of the long-term care resident's advocate as set forth in Iowa Code Supplement section 231.42.

26.2(2) *The complaint shall include the complainant's name, address and telephone number; the complainant's relationship to the program, tenant or participant; and the reason for the complaint. DIA shall act on anonymous complaints unless DIA determines that the complaint is intended to harass the program. If DIA, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, DIA may dismiss the complaint.*

26.2(2) 26.2(3) Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—Chapter 25 for assisted living programs, or 321—Chapter 29 for elder group homes, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate harm danger, in which case the investigation for elder group homes shall be completed within 24 hours of the receipt of the complaint and investigations for adult day services or assisted living programs shall be completed within 48 hours.

26.2(3) (4) For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

- a. Promptly investigate the allegation.
- b. Take certification enforcement action, as appropriate, in accordance with this chapter.
- c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

26.2(4) (5) DIA shall apply a preponderance-of-evidence standard in determining whether or not a complaint is substantiated.

26.2(5) (6) DIA shall notify the department, the program, and, if known, the complainant, of the results of the complaint investigation as follows:

- a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the complaint investigation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, or 321—Chapter 25 or 29, whichever is applicable, within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.
- b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

321—26.3(17A,231B,231C,231D) Enforcement action. DIA may take the following actions as a result of noncompliance with Iowa Code Supplement chapters 231B, 231C for assisted living programs and Iowa Code Supplement chapter 231D for adult day services programs and rules promulgated by the Iowa department of elder affairs.

26.3(1) In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall

specify the issues of noncompliance and the period of time required to comply with each issue. At any time up to 10 working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, or 321—Chapter 25, or 29, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

26.3(2) Civil penalty for adult day services and assisted living programs. If a program continues to fail fails or refuses to comply, DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

- a. A program in noncompliance with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in imminent danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.
- b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety, or security of program participants or tenants, up to but not to exceed \$5,000.

321—26.4(17A,231B,231C,231D) Notice—hearings.

26.4(1) ~~The A notice setting forth the denial, suspension, or revocation of a certificate shall be effected by delivering delivered to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, a notice setting forth the particular reasons for such action.~~ Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

26.4(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

26.4(3) At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—26.5(17A,231C,231D) Appeals. All appeals authorized under Iowa Code Supplement section 231C.11 or 231D.6 shall be conducted pursuant to 481—Chapter 10.

321—26.6(17A,231B,231C,231D) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—26.7(17A,21,231B,231C,231D) Public disclosure of findings. The program shall post a notice in a prominent public location in the facility stating that copies of the final report resulting from a monitoring evaluation or a complaint inves-

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tigation are available upon request. Copies shall be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone (515)281-6325.

321—26.8(17A,231C,231D) Discrimination or retaliation. A tenant of an assisted living program or a participant of an adult day services program, or a legal representative or family member of a tenant or participant, if applicable, or an employee of the program may file a complaint with DIA if a *any* person has been the subject of discrimination or retaliation as prohibited by Iowa Code Supplement section 231C.13 or 231D.12. DIA shall follow the complaint procedures outlined in 26.2(17A, 231B,231C,231D). A program found in violation of Iowa Code Supplement section 231C.13 or 231D.12 shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

321—26.9(17A,231C,231D) Emergency removal of adult day services participants or assisted living tenants. If DIA determines that the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

26.9(1) ~~DIA shall notify the local area agency on aging; the department; the departments of human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, to alert them to the need to transfer participants or tenants from a program and to request assistance in identifying alternative programs or other appropriate settings and in contacting the participants or tenants, legal representatives and family members of participants or tenants, if applicable, and others as appropriate, including health care professionals. DIA shall notify the local area agency on aging; the departments of elder affairs, human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, for the following:~~

- a. *To alert them to the need to transfer participants or tenants from a program;*
- b. *To request assistance in identifying alternative programs or other appropriate settings; and*
- c. *To contact the participants or tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.*

26.9(2) DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(1).

26.9(3) DIA shall proceed with the transfer of participants or tenants.

26.9(4) DIA may suspend a program's certification prior to a hearing.

321—26.10(231C,231D) Notification of casualties. DIA shall be notified by telephone within 24 hours of *casualties in adult day services and assisted living programs*, and may request a written report following notification, in the following situations:

26.10(1) Any accident or incident causing substantial injury to or death of a participant or tenant.

26.10(2) When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231B, 231C and 231D.

[Filed 9/10/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3701B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 29, "Elder Group Homes," Iowa Administrative Code, and adopts a new Chapter 29 with the same title.

This chapter sets standards for elder group homes and establishes requirements for program certification.

These rules will be subject to waiver at the discretion of the Department in accordance with 321—Chapter 11, "Waivers or Variances from Administrative Rules."

Notice of Intended Action was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3528B**. A public hearing was held over the Iowa Communications Network (ICN) on August 10, 2004. Comments were received at the public hearing and in writing. The comments received resulted in the following changes:

1. A definition of "program" was added.
2. The word "routine" was added to the definition of "supervision of self-administered medications."
3. The Web site for the Department of Inspections and Appeals was added to subrule 29.2(1).
4. Subrule 29.15(3) was reworded to address comments made during the public hearing, with related changes in 29.15(2)"a"(5), 29.15(2)"c"(8) and 29.15(2)"d"(1)"3."

The Commission adopted the amendment during the Commission meeting held on August 31, 2004.

This amendment will become effective on November 3, 2004.

This amendment is intended to implement Iowa Code Supplement chapter 231B.

The following amendment is adopted.

Rescind 321—Chapter 29 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 29
ELDER GROUP HOMES****321—29.1(231B) Definitions.**

"Assessment" means the administration of a standardized tool, recognized by the department and administered by a health care professional, to determine appropriate admission qualifications and develop a service plan.

"Assistance" means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

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“Committee” means a resident advocate committee established by 321—Chapter 9.

“Condition” means a provision attached to a new or existing certification that limits or restricts the scope of the certification or imposes additional requirements on the certificate holder.

“Convenience services” means hotel-type services and may include meals, transportation, laundry and housekeeping provided for the convenience of a tenant.

“Department” means the department of elder affairs or the department’s designee.

“DIA” means the department of inspections and appeals.

“EGH” means an elder group home.

“Elder” means a person 60 years of age or older.

“Elder group home” means a single-family residence that is operated by a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Homelike” means an environment that promotes the dignity, security and comfort of tenants through the provision of personalized care and services to encourage independence, choice and decision making by the tenants.

“Household occupant” means a homeowner, a member of the homeowner’s family, a tenant, an operator, a member of the operator’s family, an on-site manager or a member of the on-site manager’s family.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Nurse-delegated assistance” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Occupancy agreement” means a written contract entered into between an EGH and a tenant that clearly describes the rights and responsibilities of the EGH and the tenant and other information required by rule or statute. The occupancy agreement may include a separate signed lease and signed service agreement.

“On-site manager” means the person on duty responsible for direct supervision or provision of tenant care. The “on-site manager” may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

“Operator” means the person who takes responsibility for all care and ensures that appropriate staffing is provided to tenants on a 24 hours per day, seven days per week basis.

“Part-time or intermittent health-related care” means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

“Person” has the same meaning as that defined in Iowa Code section 4.1(20).

“Personal care” means services that may include bathing, personal hygiene, dressing, grooming, and supervision of self-administered medications. However, “personal care” does not include the administration of medications or the services of a registered nurse or licensed practical nurse.

“Personal care provider” means an individual who, in return for remuneration, assists with the essential activities of daily living which the recipient can perform personally only with difficulty.

“Program” shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized as an elder group home.

3. Services provided to persons eligible for an elder group home as defined in this chapter.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the written description of a tenant’s needs and capabilities, including by whom, when and how often care and services will be provided.

“Supervision of self-administered medications” means the verbal reminder or guidance in the identification of the medication and the times and manner of administration. “Supervision of self-administered medications” includes activities such as routine prompting or reminding, opening of containers or packaging at the direction of the tenant, and reading instructions or other label information in order for a tenant to self-administer a medication. “Supervision of self-administered medications” does not include the placing of the medication internally or externally on the tenant’s body. Supervision of self-administration shall comply with rule 321—29.9(231B).

“Tenant” means any person who is receiving room, board, personal care or convenience services for payment of fees in an EGH on a 24 hours per day, seven days per week basis.

“Usable floor space” means open floor space that is not under fixtures, furniture or other barriers and is available for walking or using a wheelchair.

“Waiver” means action taken by DIA which suspends in whole or in part the requirements or provisions of a rule as applied to an identified tenant on the basis of that tenant’s particular circumstances.

321—29.2(231B) Application content. Any entity that meets the definition of an EGH as defined in Iowa Code Supplement section 231B.1(4) must be certified by DIA. An eligible applicant is any for-profit or nonprofit corporation or person that owns a single-family residence.

29.2(1) Application materials may be obtained by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325. The Web site is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

29.2(2) The initial or renewal application for certification shall contain:

a. A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the owner, operator or designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The EGH

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operator shall notify DIA of any changes in the list within ten working days of the change;

b. A statement affirming that the individuals listed in 29.2(2)“a” have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult or child abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 29.2(2)“a” have or have had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

d. A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool to be used to identify the functional, cognitive and health status of each tenant;

e. Identification of target population;

f. A copy of the current EGH service plan format;

g. If the EGH contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity’s current license or certification;

h. The current policy and procedure for addressing medication needs of tenants;

i. The current policy and procedure describing accident and emergency response;

j. A copy of the current tenant occupancy agreement;

k. The current policy and procedure for mutual managed risk agreements and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—29.3(231B) Initial certification process.

29.3(1) The applicant shall submit one copy of the completed application and associated documentation to DIA at the address stated in 29.2(1) at least 60 calendar days prior to the expected date of beginning operations. An application for an EGH that intends to operate in new construction shall include proof of compliance with all applicable local housing and state building codes.

29.3(2) The applicant shall notify the state fire marshal of the applicant’s intent to become certified as an EGH at least 60 calendar days prior to the expected date of beginning operations.

29.3(3) DIA shall review the application for completeness and compliance with this chapter. A completed application shall include all necessary documentation including state fire marshal approval.

29.3(4) DIA shall notify the applicant within 20 working days of approval or denial, upon receipt of a completed application.

29.3(5) Certification for an EGH, unless suspended or revoked, shall expire at the end of the time period specified in the certificate.

321—29.4(231B) **Renewal of certification.** Certification may be renewed upon application by the owner or operator in accordance with this rule. In order to renew the EGH certification, the applicant must submit:

1. A completed application that includes all information required by 29.2(2) at least 90 days prior to the expiration of the certification;

2. Documentation by a qualified professional that the following systems have been inspected and found to be maintained in conformance with the manufacturer’s recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, wastewater, artificial light, and ventilation; and, if applicable, garbage disposal, cooking area, laundry and elevators;

3. Documentation that all employees have received the two-hour mandatory reporter training on dependent adult abuse as well as documentation that the EGH has established a policy for reporting abuse allegations and a policy for employee sanctions if allegations are substantiated; and

4. Documentation to reflect any structural or operational changes in the EGH from the information submitted since the last application.

321—29.5(231B) Denial, suspension, or revocation of certification.

29.5(1) DIA shall have the authority to deny, suspend or revoke certification in any case in which DIA finds there has been a substantial or repeated failure on the part of the EGH to comply with the requirements of Iowa Code Supplement chapter 231B and this chapter or for any of the following reasons:

a. Cruelty or indifference to EGH tenants.

b. Appropriation or conversion of the property of an EGH tenant without the tenant’s or the tenant’s legal representative’s written consent.

c. Permitting, aiding or abetting any illegal act set forth in Iowa Code Supplement chapter 231B or this chapter.

d. Obtaining or attempting to obtain or retain certification by fraudulent means or misrepresentation or by submitting false information.

e. Habitual intoxication or addiction to controlled substances by the owner, operator, on-site manager or other staff of the EGH.

f. Securing the devise or bequest of property owned by a tenant by threats, coercion or undue influence.

g. The documentation or presence of any individual, on staff or otherwise, who has or has had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.5(2) When an applicant for certification, an owner or an operator is an entity other than an individual, DIA may deny, suspend, or revoke certification if any person in a position of control or an officer of the entity engages in any act or omission prohibited by Iowa Code Supplement chapter 231B or this chapter.

321—29.6(231B) Notice, hearing, appeal and judicial review.

29.6(1) Notice of denial, suspension, or revocation of a certificate shall be effected by delivery to the applicant or certificate holder by certified mail, return receipt requested, or by personal service setting forth the particular reasons for the action. The denial, suspension, or revocation shall be-

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come effective 30 days after the receipt or service of the notice. The applicant or certificate holder may, within the 30-day period, give written notice to DIA requesting a hearing. Any DIA action on the notice shall be suspended until the hearing and all appeals are concluded.

29.6(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

29.6(3) At any time at or prior to the hearing, DIA may rescind the notice of denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

29.6(4) All appeals shall be conducted pursuant to 481—Chapter 10.

29.6(5) Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—29.7(231B) Tenant admission requirements.

29.7(1) The operator or on-site manager may only admit or continue to care for tenants whose service needs include personal care as defined in this chapter.

29.7(2) Criteria for exclusion of tenants. An EGH shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine one-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self, other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or
 - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
 - e. Is under the age of 18; or
 - f. Requires more than part-time or intermittent health-related care; or
 - g. On a routine basis, has unmanageable incontinence.

29.7(3) A tenant may be accepted for residence only if a bedroom and a bathroom are available to the tenant from which the unaided tenant immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

321—29.8(231B) Service plan required.

29.8(1) At the time of admission, the tenant's service plan shall be developed from an assessment of the tenant's functional abilities in cooperation with the tenant or the tenant's legal representative.

29.8(2) The service plan shall be individualized and shall, at a minimum:

- a. Indicate the tenant's identified needs and tenant's requests for assistance with expected outcomes;
- b. Indicate any services and care to be provided pursuant to the agreement with the tenant;
- c. Identify the provider(s) if other than the EGH; and
- d. Be updated within 30 days of admission, as needed and, at a minimum, annually.

29.8(3) The tenant's service plan shall be reviewed for appropriateness as follows:

- a. Based on an assessment of the tenant's needs; or
- b. At the request of the tenant, the tenant's legal representative, the operator or the on-site manager.

321—29.9(231B) Medications. When medications are administered or stored by the EGH, the following requirements shall apply:

29.9(1) The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced reg-

istered nurse practitioner registered in Iowa or the agent delegated in accordance with 655—subrules 6.2(5) and 6.3(1) and Iowa Code chapter 155A.

29.9(2) The EGH shall document any medication the EGH has agreed to administer or store.

29.9(3) Medication, other than that self-administered by a tenant, shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

29.9(4) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

29.9(5) No person other than the dispensing pharmacist shall alter a prescription label.

29.9(6) Each tenant's medication shall be stored in its originally received container.

29.9(7) When partial or complete control of medication is delegated to the EGH by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

29.9(8) Each EGH shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—29.10(231B) Occupancy agreement.

29.10(1) Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the EGH shall enter into and sign an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the EGH, and shall sign a managed risk policy disclosure statement.

29.10(2) The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

29.10(3) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. A description of all fees, charges, and rates describing the tenant's accommodations and basic services covered, as well as any additional and optional services with their related costs.
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources are accepted by the EGH.
- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
- e. The term of the occupancy agreement.
- f. A statement that the EGH must notify the tenant or the tenant's legal representative, as applicable, in writing at least 30 days prior to any change in the occupancy agreement, with the following exceptions. In these instances the notification shall be immediate:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the EGH.

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g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer from the EGH. The internal appeals process provided relative to an involuntary transfer.

i. The EGH policies and procedures for addressing grievances between the EGH and the tenant, including grievances relating to transfer and occupancy.

j. A policy regarding discrimination or retaliation against a tenant, tenant's family, or an employee of the EGH who has initiated or participated in any proceeding authorized by this chapter.

k. The emergency response policy.

l. The staffing policy which specifies that staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. The refund policy.

n. A statement regarding billing and payment procedures.

o. The telephone number for filing a complaint with DIA.

p. The telephone number for the office of the state long-term care resident advocate/ombudsman.

q. The telephone number for the elder abuse hotline.

r. A copy of the EGH statement on tenant rights.

s. A statement that the tenant landlord law applies to the EGH.

29.10(4) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the EGH.

29.10(5) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in the services offered and in financial arrangements.

29.10(6) A blank copy of the most current occupancy agreement form shall be made available to the general public upon request. The EGH basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

321—29.11(231B) Waiver of the level of care requirements.

29.11(1) Criteria for level of care waiver.

a. When it becomes apparent to the EGH staff that a tenant will need licensed nursing activities or hospice care and the tenant or tenant's legal representative does not want or approve of a transfer from the EGH, a request for waiver of level of care shall be submitted to DIA by the tenant, tenant's legal representative, homeowner, operator or on-site manager.

b. DIA may grant a waiver if an investigation establishes by clear and convincing evidence that the following criteria have been met:

(1) It is the informed choice of the tenant or tenant's legal representative to remain in the home; and

(2) The operator is able to provide appropriate care to the tenant in addition to adequate care of the other tenants, or that additional staff is available or can be obtained to meet the tenant's care needs; and

(3) The waiver shall not jeopardize the care, health, safety or welfare of the tenant or others; and

(4) The tenant does not meet the criteria for exclusion set forth in 29.7(2).

29.11(2) Level of care waivers. Requests for waiver of the level of care requirements for a tenant of an EGH shall be submitted on a form and in a manner designated by DIA and

in accordance with this rule. DIA may grant a waiver for an individual tenant on a time-limited basis.

29.11(3) DIA shall:

a. Review and respond in writing to waiver requests within two working days of receipt of necessary documentation.

b. Monitor regularly, for the duration of the waiver, the tenant's medical and functional information for continued appropriateness of the waiver.

29.11(4) The waiver applicant shall notify DIA within five calendar days of any changes in the condition of the tenant as provided in the approved waiver request.

29.11(5) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—29.12(231B) Resident advocate committees. Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

29.12(1) Committee placement. A resident advocate committee shall be established by the department for each EGH certified in accordance with this chapter.

29.12(2) Committee visitations. The committee shall visit the EGH assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.

321—29.13(231B) Requirements for and qualifications of staff.

29.13(1) The EGH shall be staffed by an on-site manager 24 hours per day, seven days per week.

29.13(2) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

29.13(3) All personnel of the EGH shall be able to implement the EGH accident, fire safety and emergency procedures.

29.13(4) Personal care providers shall have completed, at a minimum, a home care aide training program that meets the requirements and criteria established in 641—Chapter 80.

29.13(5) The operator shall maintain proof of training of EGH staff for review as required by these rules.

29.13(6) All staff shall sign a statement disclosing whether the staff member has or has had ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.13(7) The EGH shall conduct, on each employee hired after July 1, 1998, a criminal background check including a dependent adult and child abuse record check in accordance with Iowa Code section 135C.33.

29.13(8) Any person refusing to sign the statement required in 29.13(6) or subsequently found to have provided false information on said statement shall not serve on staff.

321—29.14(231B) Tenant documents.

29.14(1) A file shall be maintained for each tenant at the EGH and shall contain:

a. An occupancy record including the tenant's name; birth date; identification numbers; date of occupancy; names, addresses and telephone numbers of health care professional(s) and tenant's legal representative; tenant's diagnosis (if

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applicable); and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

- b. Application forms;
- c. Initial assessment and all updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the tenant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health care professionals' orders, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the tenant's occupancy agreement, including any updates;
- k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- l. A copy of the tenant's power of attorney, guardianship, conservatorship letters of appointment or other documentation of a legal representative as necessary.

29.14(2) The EGH records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

29.14(3) All records shall be protected from loss, damage and unauthorized use.

321—29.15(231B) EGH facility standards.

29.15(1) The EGH shall be safe; sanitary; well-ventilated; properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

29.15(2) If the structure exists and is being used as an EGH on November 3, 2004, and is unchanged until on or after July 1, 2005, the EGH shall meet the following standards:

- a. General.
 - (1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.
 - (2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.
 - (3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.
 - (4) The yard, fire exits and exterior steps shall be kept free of obstructions, and shall be accessible and appropriate to the condition of the tenants.
 - (5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment is to be accommodated. Common living space remodeled after July 1, 2005, must meet the square footage requirement in 29.15(3).
 - (6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.
 - (7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use and located in a reasonable accommodation for privacy for all calls.

b. Safety.

(1) All combustion appliances shall be used and maintained properly, and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

c. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the homeowner or the person currently in charge of the EGH must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four EGH household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each toilet. At least one tub or shower is required for each six household occupants. Programs remodeled after July 1, 2005, must meet the requirements in 29.15(3)"b" and "c."

d. Bedroom requirements.

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;
 2. Be adequately ventilated, heated, cooled and lighted;
 3. Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright. Bedrooms remodeled after July 1, 2005, must meet the square footage requirement in 29.15(3);
 4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to by the tenant, or the tenant's legal representative, in the occupancy agreement;
 5. Be on ground level for tenants with impaired mobility;
 6. Be in close enough proximity to the on-site manager to ensure that tenants can alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.
- (2) Owners, operators, on-site managers, their family members, convenience service providers and personal care

ELDER AFFAIRS DEPARTMENT[321](cont'd)

providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for EGH storage areas.

29.15(3) Programs constructed after July 1, 2005.

a. The square footage requirements for living areas and tenant bedrooms in an EGH shall be as follows:

(1) Common living area, 300 square feet of usable floor space.

(2) Tenant bedroom, 100 square feet of usable floor space.

b. One toilet and one sink are required for every two EGH household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants. A sink shall be located near each toilet.

c. At least one tub or one shower is required for each four household occupants.

321—29.16(231B) Records. DIA collects and stores a variety of records in the course of certifying and monitoring EGHs. Some stored information may be personally identifiable. Each EGH record maintained by DIA contains both open and confidential information. The confidential information shall not be retrievable by personal identifier unless an EGH uses an individual's name in the business title.

321—29.17(231B) Classes of information.

29.17(1) Open information includes the following:

- a. Certification application and status;
- b. Final findings of state monitoring evaluations;
- c. Records of complaints;
- d. Reports from the state fire marshal;
- e. Plans of correction submitted by an EGH;
- f. Official notices of certification sanctions; and
- g. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 321—29.5(231B) and 321—29.6(231B).

29.17(2) Confidential information includes the following:

a. Information which does not comprise a final finding resulting from monitoring or an investigation. That information which does not contain a final finding may be made public in a legal proceeding concerning a citation issued to an EGH, or denial, suspension or revocation of certification;

b. Names of all complainants;

c. Names of tenants of an EGH, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator.

321—29.18(231B) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

These rules are intended to implement Iowa Code Supplement chapter 231B.

[Filed 9/10/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3692B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Nursing Facilities," Iowa Administrative Code.

The adopted amendment implements a change made to the admission procedures for nursing facilities, as required by 2004 Iowa Acts, Senate File 2298, section 226. The amendment exempts the Iowa Veterans Home from the requirement that nursing facilities receiving reimbursements through the Medicaid program assist the Iowa Commission on Veterans Affairs in identifying residents eligible or potentially eligible for benefits through the federal Department of Veterans Affairs (VA).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3552B**. No comments were received on the amendment. The adopted amendment is identical to the one published under Notice of Intended Action.

The adopted amendment was presented to the State Board of Health for initial review at the Board's July 14, 2004, meeting. The adopted amendment was presented to and approved by the State Board of Health at its September 8, 2004, meeting.

This amendment is intended to implement 2004 Iowa Acts, Senate File 2298, section 226.

This amendment will become effective November 3, 2004.

The following amendment is adopted.

Amend subrule **58.12(1)**, paragraph "1," third unnumbered paragraph, as follows:

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care *or to the admission of an individual to the Iowa Veterans Home.* (II, III)

[Filed 9/9/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3691B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 103, "Bingo," Iowa Administrative Code.

The adopted amendments implement changes made to the state's social and charitable gambling laws pursuant to 2004 Iowa Acts, Senate Files 2149 and 2249. The amendments stipulate that animals cannot be awarded as prizes at social and charitable gambling events, including but not limited to concession stands at fairs. Additionally, the adopted amend-

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ments clarify the number of times bingo occasions may be conducted under a two-week qualified organization license, change the number of times jackpot games may be played, allow jackpot prize amounts to increase by \$200 per game with a maximum amount of not more than \$2,500 for the second jackpot prize, authorize bingo patrons to trade in cards, and provide for the predrawing of bingo numbers under certain circumstances.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3561B**. No comments were received on the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement 2004 Iowa Acts, Senate Files 2149 and 2249.

These amendments will become effective November 3, 2004.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **481—103.1(10A,99B)** as follows:

“Limited license” is a 14-day license issued only to a qualified organization. There are no limits on the number of games played or occasions held, *except that a bingo occasion may be conducted only once per each seven consecutive calendar days under this license.*

“Merchandise” prizes are tangible goods, scholarships, antique coins, airline tickets or similar items. Iowa lottery tickets are merchandise. *Animals are not merchandise and shall not be awarded as prizes.*

ITEM 2. Amend rule 481—103.2(10A,99B), introductory paragraph, as follows:

481—103.2(10A,99B) License. Licenses are issued for two years or 14 days. Licenses issued for 14 days are called limited licenses. *Under a 14-day license, a bingo occasion may be conducted only once per each seven consecutive calendar days during the period specified in the license.* Before any organization may conduct bingo games or occasions, an application must be approved by the department. The license shall be prominently displayed and is valid only at the gambling location named.

ITEM 3. Amend rule 481—103.3(99B), introductory paragraph, as follows:

481—103.3(99B) Bingo occasion. A qualified organization may conduct only three bingo occasions per week, but not more than 14 occasions per month, *under a two-year qualified organization license.* A week starts on Sunday and ends on Saturday. An occasion begins when the first ball is called and shall end no more than four hours later.

ITEM 4. Rescind subrule **103.4(2)**, paragraph “d.”

ITEM 5. Rescind subrule **103.4(4)**, paragraph “e,” and adopt in lieu thereof the following **new** paragraph “e”:

e. Bingo games allowing for a trade-in of a bingo card during a bingo game for not more than fifty cents per trade-in may be allowed.

ITEM 6. Amend subrule **103.6(1)**, first unnumbered paragraph, as follows:

NOTE: Prizes of more than \$600 require the ~~withholding~~ *deduction of 5 percent in some withholding taxes, plus any applicable local option or school taxes, for the state of Iowa.* See 103.6(6), paragraph “g.”

ITEM 7. Amend subrule 103.6(4) as follows:

103.6(4) Merchandise such as scholarships, airline tickets and other similar items awarded as prizes shall not be con-

verted to cash by the donor or provider. Winning lottery tickets or shares awarded as prizes may be converted to cash pursuant to lottery rules and statutes. *An animal shall not be awarded as a prize for persons participating in a game or fair event.*

ITEM 8. Amend rule 481—103.6(99B) as follows:

Amend subrule 103.6(6) as follows:

103.6(6) ~~One jackpot game~~ *No more than two jackpot games* may be played during a 24-hour period as follows:

a. An organization is limited to ~~one two~~ *two* jackpot ~~game~~ *games.*

b. The jackpot starting prize shall not exceed \$300 *in cash or actual retail value of merchandise.*

c. The jackpot prize shall not increase more than \$100 ~~per occasion~~ *\$200 after each jackpot game.* The maximum prize ~~is \$800~~ *shall not be greater than \$1,000 for the first jackpot game and shall not be greater than \$2,500 for the second jackpot game.*

d. The jackpot prize shall not decrease until it is won.

e. If a jackpot is not won in the specified number of calls, the game reverts to a regular game with a prize of \$100 or less.

f. ~~A jackpot game shall not begin during a session in which a jackpot has been won.~~ Each jackpot game shall begin again at no more than \$300.

g. Cash prizes over \$600 require the deduction of 5 percent withholding tax, plus any applicable local option or school tax. This tax is to be withheld by the organization conducting the game. The amount deducted shall be remitted to the ~~state Iowa~~ *Iowa* department of revenue ~~and finance~~ on behalf of the prize winner.

Amend the implementation sentence as follows:

This rule is intended to implement Iowa Code sections 99B.7(1), 99B.21, ~~and 422.16 and 717D.2.~~

ITEM 9. Amend subrule **103.13(1)**, paragraph “e,” as follows:

e. A list of all games played including a description of each game, the cost to play each game, the number and category of bingo cards used for each game and the prize or prizes paid in each game. The summary shall also include the totals for the occasion of the gross receipts, prizes awarded and the jackpot prize ~~amount~~ *amounts.*

ITEM 10. Amend the forms in **481—Chapter 103** by striking the words “Inspections Division” and inserting the words “Social and Charitable Gambling Program.”

[Filed 9/9/04, effective 11/3/04]

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ARC 3681B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17), the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the current qualified allocation plan for the low-income housing tax credit program with

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the 2005 qualified allocation plan, which is incorporated by reference in rule 12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority's Web site at www.ifahome.com. It is the Authority's intent to incorporate the 2005 qualified allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.) Moreover, due to the competitive nature of the award of low-income housing tax credits, a waiver would create unevenness in the application of the rules and would expose the Authority to liability.

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in this order and finds that the amendments will serve an important public need in furthering the housing policy of the state to encourage the production and availability of affordable housing in Iowa.

Notice of Intended Action was published in the August 4, 2004, Iowa Administrative Bulletin as **ARC 3559B**. The Authority held a public hearing over the Iowa Communications Network on August 24, 2004, to receive public comments on the 2005 qualified allocation plan (2005 QAP). The Authority received written comments in addition to the oral comments received at the public hearing. No changes to the actual text of the amendments to the rules have been made, as the changes were made to the qualified allocation plan incorporated by reference.

The Authority received both oral and written public comments on the draft 2005 QAP. These public comments addressed various aspects of the 2005 QAP, including the sections on developer/consultant cap and project cap; the service-enriched set-aside; the affordable assisted living set-aside; fees; land use restrictive covenants agreement; tax-exempt bond project requirements; underwriting standards; operating and replacement reserves; limits on developer and builder fees; debt service coverage ratio requirement; unit cost cap; site control; site locations; market study requirements; capital needs assessment; ineligible parties; rehabilitation standards; selection and scoring criteria; waiting list; appeals process; glossary definitions; and other general comments on the 2005 QAP.

The Authority revised the draft 2005 QAP based on the public comments received. Some revisions merely clarified sections of the 2005 QAP that may have been subject to misunderstanding, while other revisions were more substantive. The substantive changes included changing market study fees; allowing for refunds of amounts not actually paid to market study providers; clarifying tax-exempt bond language; increasing per unit cost caps; expanding ineligible significant party language; revising MSA cap limits; reinstating brownfield points; and changing the definition of local contributing effort.

The Authority adopted these amendments on September 8, 2004.

These amendments will become effective on November 3, 2004.

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2004 2005 Qualified Allocation Plan effective ~~October 8, 2003~~ *November 3, 2004*, shall be the qualified allocation plan for the allocation of 2005 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~October 8, 2003~~ *November 3, 2004*. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site. Copies are available upon request at no charge from the authority.

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ARC 3682B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 170, the Iowa Finance Authority hereby adopts a new Chapter 20, “Senior Living Revolving Loan Program,” Iowa Administrative Code.

This amendment adopts a new chapter concerning the senior living revolving loan program operated by the Authority. Through the senior living revolving loan program, the Authority seeks to assist in the development of affordable assisted living and service-enriched affordable housing for seniors and persons with disabilities. The rules outline the purpose, application procedure, program guidelines, and other necessary requirements of the senior living revolving loan program.

These rules do not contain a waiver provision, as the Authority does not intend to grant waivers under this program, other than as may be allowed pursuant to Chapter 18 of the Authority's rules.

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Notice of Intended Action was published in the August 4, 2004, Iowa Administrative Bulletin as **ARC 3557B**. The Authority held a public hearing over the Iowa Communications Network on August 24, 2004, to receive public comments on these rules. The Authority received written comments in addition to the oral comments received at the public hearing. These public comments addressed various aspects of the proposed chapter, including whether the loan funds are available for projects awarded credit last year; awarding loans based on score and not based on set-asides; affordability period; requiring prudent reserves; loan term and amortization period; the debt service ratio; whether the loan funds are federal funds; interest rate; fees; underwriting of proposed loans; and other general comments on the new rules.

The Authority revised the draft rules based on the public comments received. Some revisions merely clarified sections of the rules that may have been subject to misunderstanding, while other revisions were more substantive. The substantive changes included changing the loan term and amortization period to 30 years; revising the language concerning reserve funds; clarifying the debt service ratio requirement; and allowing either a title guaranty certificate or an attorney's opinion to satisfy the marketable title requirement.

The Authority adopted these rules on September 8, 2004.

These rules will become effective on November 3, 2004.

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 170. The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 20

SENIOR LIVING REVOLVING LOAN PROGRAM

265—20.1(16) Purpose. Through its senior living revolving loan program (program), the authority seeks to assist in the development of affordable assisted living and service-enriched affordable housing for seniors and persons with disabilities. This chapter implements 2004 Iowa Acts, Senate File 2298, section 170, which adds Iowa Code section 16.182 to the authority's enabling statute and furthers the goal of the senior living program as specified in Iowa Code section 249H.2.

265—20.2(16) Priority of loan awards. It is the authority's intent to award loans under the program to those applicants that meet all of the requirements of this chapter and satisfy all threshold and underwriting requirements of the applicable qualified allocation plan adopted by the authority pursuant to 265 IAC 12.1(16). The authority intends to award the available funds under this program each year if applicants meet all applicable requirements; provided, however, that the authority may allocate funds available between affordable assisted living and service-enriched housing in the manner it deems most appropriate. For example, the authority may choose to allocate 80 percent of available funds under the program to affordable assisted living housing and 20 percent to service-enriched housing. The authority will announce its expected allocation of funds prior to each tax credit application deadline. To the extent that sufficient funds are not available to fully fund all applications, taking into consideration the authority's allocation of funds as described above, loans under this program will be funded in the following order of priority:

1. Applicants awarded tax credits under the affordable assisted living set-aside;

2. Applicants awarded tax credits under the service-enriched set-aside; and

3. Applicants awarded tax credits outside of a set-aside. Applicants within a set-aside will compete based on points awarded under the qualified allocation plan.

265—20.3(16) Application process. Applications will be reviewed as part of an annual competition. Applications must be submitted in conjunction with the applicant's application for low-income housing tax credits, as set forth in the applicable qualified allocation plan. Once funds have been allocated, the authority will not accept for review any applications seeking funding until the next low-income housing tax credit application deadline. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site at www.ifahome.com as contacts for this program.

265—20.4(16) Program guidelines. For-profit and non-profit sponsors are eligible to apply for assistance under this program based on the following program guidelines:

20.4(1) Projects eligible for assistance must meet the following criteria:

a. Projects must be developed using low-income housing tax credits.

b. Applicants must satisfy all of the requirements of the applicable qualified allocation plan, including the plan, application and application instructions, all applicable attachments and exhibits, and applicable provisions of the Internal Revenue Code and the accompanying Treasury regulations.

c. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

d. Operating and replacement reserve funds must be adequately funded in the amounts required by the applicable qualified allocation plan.

20.4(2) The following types of activities are eligible for assistance:

a. Acquisition and rehabilitation.

b. New construction.

c. Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

20.4(3) Assistance will be provided upon the following terms and conditions:

a. Generally, the minimum loan amount is \$100,000, and the maximum loan amount is \$2,000,000. The maximum loan term and amortization period are each 30 years.

b. The debt service ratio must be at least 1.25:1 for the authority's first mortgage, as calculated by the authority.

c. Interest rates will be set by the authority, in its sole discretion, at or below the applicable federal rate in effect at the time of closing.

d. Loans shall be secured by a first mortgage. Construction financing may be awarded to projects.

e. Recipients of assistance must agree to observe several covenants and restrictions, including but not limited to recorded affordability and transfer restrictions, all in accordance with such loan and mortgage documents as may be required by the authority under this program.

f. The recipient must provide adequate evidence that its title in the real estate on which the project is to be located is a marketable title pursuant to Iowa Land Title Examination Standards, or other applicable law. Adequate evidence of marketable title is demonstrated by either (1) a title opinion of an attorney authorized to practice law in Iowa showing

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that the loan recipient has marketable title, or (2) a title guaranty certificate issued by the title guaranty division of the Iowa finance authority showing the recipient as the guaranteed.

g. Recipients must execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

20.4(4) Loan fees.

a. Loan fees are as follows:

(1) Commitment fee (construction period) – 1.0 percent of loan amount.

(2) Commitment fee (permanent loan) – 2.0 percent of loan amount.

(3) Inspection fee (construction loan) – 0.5 percent of loan amount.

b. The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

265—20.5(16) Authority analysis of applications. Authority staff will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

265—20.6(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—20.7(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 170.

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[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3683B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 171, the Iowa Finance Authority hereby adopts a new Chapter 21, “Home and Community-Based Services Revolving Loan Program,” Iowa Administrative Code.

This amendment adopts a new chapter concerning the home and community-based services revolving loan pro-

gram operated by the Authority. Through the home and community-based services revolving loan program, the Authority seeks to assist in the development and expansion of three specific community-based services (adult day services, respite services, and congregate meals) that will allow older persons of low income to remain in their homes. The rules outline the purpose, application procedure, program guidelines, and other necessary requirements of the home and community-based services revolving loan program.

These rules do not contain a waiver provision, as the Authority does not intend to grant waivers under this program, other than as may be allowed pursuant to Chapter 18 of the Authority's rules.

Notice of Intended Action was published in the August 4, 2004, Iowa Administrative Bulletin as **ARC 3556B**. The Authority held a public hearing over the Iowa Communications Network on August 24, 2004, to receive public comments on these rules. The Authority received written comments in addition to the oral comments received at the public hearing. These public comments addressed various aspects of the proposed chapter, including the loan term and amortization; interest rate; loan-to-value requirement; debt service coverage ratio; loan fees; the underwriting process; and other general comments on the new rules.

The Authority revised the draft rules based on the public comments received by changing the language concerning the manner in which the interest rate will be set.

The Authority adopted these rules on September 8, 2004.

These rules will become effective on November 3, 2004.

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 171.

The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 21**HOME AND COMMUNITY-BASED SERVICES
REVOLVING LOAN PROGRAM**

265—21.1(16) Purpose. Through its home and community-based services revolving loan program (program), the authority seeks to assist in the development and expansion of three specific community-based services (adult day services, respite services, and congregate meals) that will allow older persons of low income to remain in their homes. This chapter implements 2004 Iowa Acts, Senate File 2298, section 171, which adds Iowa Code section 16.183 to the authority's enabling statute and furthers the goals specified in Iowa Code section 231.3.

265—21.2(16) Available funds. The authority anticipates that it will, at least annually, publicize the approximate amount of funds available under this program for the applicable fiscal year on the authority's Web site at www.ifahome.com. Any unallocated or recovered funds, or payments of interest and principal, or any combination thereof, may be awarded or may be carried over to the next year's cycle of loans at the discretion of the authority.

265—21.3(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of assistance under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will serve to develop and expand facilities and infrastructure that provide adult day services, respite services, and congregate meals that

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address the needs of persons with low incomes in a manner that best serves the citizens of the state.

265—21.4(16) Application procedure. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site as contacts for this program. Once contacted with an inquiry, the authority will send an application package to the potential applicant. In the event it becomes necessary to amend the application, the authority will post the amended version of the application on its Web site. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis, beginning on or after December 6, 2004. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to develop and expand facilities and infrastructure that provide adult day services, respite services, and congregate meals that address the needs of persons with low incomes in the state.

265—21.5(16) Program guidelines. For-profit and non-profit sponsors are eligible to apply for assistance under this program based on the following program guidelines:

21.5(1) Projects eligible for assistance must meet the following criteria:

- a. In the case of adult day services, the project must:
 - (1) Set aside 40 percent of the admissions for those with incomes at or below 40 percent of area median income (AMI) for the county in which the property is located;
 - (2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay;
 - (3) Accept third-party reimbursement, including Medicaid 1915(c) waiver(s), and meet the standards set forth in 441—Chapter 77; and
 - (4) Become and remain certified as an adult day services provider, as set forth in 321—Chapter 24.
- b. In the case of respite services, the project must:
 - (1) Provide services to underserved people in the community;
 - (2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay;
 - (3) Accept third-party reimbursement, including Medicaid 1915(c) waiver(s), and meet the standards set forth in 441—Chapter 77; and
 - (4) Meet all local, state and federal requirements subject to health care limits of the proposed setting.
- c. In the case of congregate meals, the project must establish and maintain a contract with the area agency on aging to provide congregate meals under the standards established for such a program under the federal Older Americans Act.
- d. A demonstrated market need for the project must exist and the project must be in a good location, both as determined by the authority in its sole discretion.
- e. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the loan.
- f. Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.
- g. Programs shall comply with all applicable federal, state and local laws and rules related to the specified service or services offered by the sponsor.

21.5(2) The following types of activities are eligible for assistance:

- a. Acquisition and rehabilitation.
- b. New construction.
- c. Rehabilitation to expand a current program.
- d. Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

21.5(3) Assistance will be provided upon the following terms and conditions:

- a. Generally, the minimum loan amount is \$50,000, and the maximum loan amount is \$1,000,000. The maximum loan term and amortization period are each 20 years.
- b. The debt service ratio must be at least 1.30:1, as calculated by the authority. In addition, the loan-to-value ratio of the project, as calculated by the authority, will be considered. Notwithstanding the above, the authority may, in its sole discretion, accept a lower debt service ratio based on the final underwriting of the project.
- c. Interest rates will be set by the authority, in its sole discretion.
- d. Loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.

e. Recipients of assistance must agree to observe several covenants and restrictions, including but not limited to recorded affordability and transfer restrictions, all in accordance with such loan and mortgage documents as may be required by the authority under this program.

f. Each project receiving assistance must demonstrate a local contributing effort, as such term is used in Iowa Code section 16.4, of not less than 1 percent of the total loan amount.

g. Recipients shall execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

21.5(4) Loan fees.

- a. Loan fees are as follows:
 - (1) Commitment fee (construction period) – 1.0 percent of the loan amount.
 - (2) Commitment fee (permanent loan) – 2.0 percent of the loan amount.
 - (3) Inspection fee – 0.5 percent of construction loan amount.
 - (4) Application fee – 0.3 percent of total loan amount requested, payable with the submission of loan application.
- b. The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

265—21.6(16) Authority analysis of applications. Authority staff, in cooperation with the department of elder affairs staff, will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction, and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans may vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

IOWA FINANCE AUTHORITY[265](cont'd)

265—21.7(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—21.8(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 171.

[Filed 9/9/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3693B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 8, "Fees," and Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The amendments increase the renewal fee by \$75 for physicians who renew licenses using a paper application rather than on-line renewal, and decrease the reinstatement penalty by \$50 for a reinstatement within one year of the license's becoming inactive.

Notice of Intended Action regarding these amendments was published in the August 4, 2004, Iowa Administrative Bulletin as **ARC 3564B**. These amendments are identical to those published under Notice of Intended Action.

The Board received comment from one organization, but the Board chose not to revise the rules. The organization is concerned about the size of the fee differential between the paper and electronic systems, the requirement that a physician must use a credit card on line and that the system does not address the security of the on-line credit card payment system. The Board finds that the on-line credit card payment system is secure, but the Board will provide physicians using the system with more information on line about the system's security. In addition, the Board finds that this on-line credit card payment mechanism does not put physicians at more risk for identity theft than the many other transactions most physicians make with credit cards. The Board needs to move more physicians to the on-line renewal system to free staff for other work, and a large incentive, i.e., \$100, is needed to make that occur.

The Board approved the amendments to Chapters 8 and 9 during a telephone conference call held on September 9, 2004.

These amendments will become effective November 3, 2004.

These amendments are intended to implement Iowa Code section 147.80.

The following amendments are adopted.

ITEM 1. Amend subrule **8.4(1)**, paragraphs "c" and "g," as follows:

c. Renewal of an active license to practice, ~~\$350~~ \$425 if renewal is made via paper application or \$312.50 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. A convenience fee will be charged for on-line renewal.

g. Reinstatement of a license within one year of becoming inactive, the renewal fee for the most recent license period plus a ~~\$175~~ \$125 reinstatement penalty. The renewal fee is ~~\$350~~ \$425 except when the license in the most recent license period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 2. Amend subrule **9.11(3)**, paragraph "a," as follows:

a. The renewal fee is ~~\$350~~ \$425 if the renewal is made via paper application or \$312.50 if the renewal is made via on-line application.

ITEM 3. Amend subrule **9.13(1)**, paragraph "a," as follows:

a. Fees for reinstatement within one year of the license's becoming inactive. The fee shall include the renewal fee for the most recent license period plus a ~~\$175~~ \$125 reinstatement penalty. The renewal fee is ~~\$350~~ \$425 except when the license in the most recent license period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician's month and year of birth.

[Filed 9/9/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3688B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examiners hereby amends Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The amendments define "international medical school" and "foreign medical school" as being synonymous and announce that beginning July 1, 2006, an applicant for physician licensure who is a graduate of an international medical school and holder of an educational commission for foreign medical graduates (ECFMG) certificate shall submit satisfactory evidence of successful completion of two years of postgraduate training as specified in Iowa Code section 148.3, subsection 3, as amended by 2004 Iowa Acts, House File 2555.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3566B**. No public comment was received. The addition of Item 1 clarifies that an "international medical school" is the same as a "foreign medical school." The Board adopted the amendments to Chapter 9 during a telephone conference call held on September 9, 2004.

MEDICAL EXAMINERS BOARD[653](cont'd)

These amendments will become effective November 3, 2004.

These amendments are intended to implement Iowa Code section 148.3(3) as amended by 2004 Iowa Acts, House File 2555.

The following amendments are adopted.

ITEM 1. Amend rule **653—9.1(147,148,150,150A)** by adding the following **new** definitions:

“Foreign medical school,” also known as an “international medical school,” means a medical school that is located outside of any United States jurisdiction.

“International medical school,” also known as a “foreign medical school,” means a medical school that is located outside of any United States jurisdiction.

ITEM 2. Amend paragraph **9.3(1)“d,”** introductory paragraph, and subparagraph **(1),** as follows:

d. Have successfully completed one year of resident training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program. *Beginning July 1, 2006, an applicant who is a graduate of an international medical school shall have successfully completed 24 months of such training.*

(1) ~~The~~ *For those required to have 12 months of training, the program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board. Beginning July 1, 2006, for those required to have 24 months of training, the program shall have been 24 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board.*

ITEM 3. Amend subrule **9.5(2),** paragraph **“i,”** as follows:

i. Documentation of successful completion of ~~one year~~ of resident training approved by the board as specified in paragraph 9.3(1)“d.” An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

ITEM 4. Amend subrule **9.7(2),** paragraph **“c,”** as follows:

c. Once the reactivation period expires, an applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials. *Beginning July 1, 2006, an applicant who holds a valid ECFMG certificate and who reapplies shall submit evidence of having successfully completed two years of postgraduate training as specified in paragraph 9.3(1)“d.”*

[Filed 9/9/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3687B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby adopts amend-

ments to Chapter 99, “Administrative and Regulatory Authority for the Board of Mortuary Science Examiners,” Chapter 101, “Licensure of Funeral Directors,” and Chapter 104, “Fees,” Iowa Administrative Code.

These amendments adopt new subrules for the conduct of persons who attend public meetings, amend requirements for notifying the Board of name and address changes, and adopt new licensure renewal rules and new criteria and fees for obtaining a duplicate or reissued license and wallet card.

Notice of Intended Action was published in the July 7, 2004, Iowa Administrative Bulletin as **ARC 3476B**. A public hearing was held on July 28, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The Board of Mortuary Science Examiners adopted these amendments September 9, 2004.

These amendments will become effective on November 3, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

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 [99.4(2), 99.4(3), 99.6, Ch 99 impl., 101.10 to 101.17, 104.1(5) to 104.1(12)] is being omitted. These amendments are identical to those published under Notice as **ARC 3476**, IAB 7/7/04.

[Filed 9/9/04, effective 11/3/04]

[Published 9/29/04]

[For replacement pages for IAC, see IAC Supplement 9/29/04.]

ARC 3696B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 141A.2, the Department of Public Health hereby amends Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

This amendment adds a new section to Chapter 11 regarding the AIDS Drug Assistance Program. This state-administered program provides certain HIV/AIDS medications to eligible low-income individuals if adequate funding is available. The rules under the new heading address the eligibility requirements and the enrollment process for this program. Also included is guidance on the establishment of a waiting list for the program, when needed, and the process to appeal a decision of the Department to approve or deny an application or to place an applicant on the waiting list.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3571B**. A public hearing was held on August 24, 2004. No comments were received at the hearing. One written comment was received from HLR Service Corporation with a concern about the Department's ability to administer the formulary for the ADAP program. As a result of this comment, a change was made to subrule 11.88(1), adding the phrase “coinfections or

PUBLIC HEALTH DEPARTMENT[641](cont'd)

opportunistic infections” in paragraph “a.” The subrule now reads as follows:

“**11.88(1)** Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

“a. Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections or opportunistic infections; and

“b. Are on the Iowa AIDS ADAP formulary.”

The State Board of Health adopted this amendment on September 8, 2004.

This amendment will become effective November 3, 2004.

This amendment is intended to implement Iowa Code chapter 141A.

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 [11.84 to 11.91] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 3571B**, IAB 8/4/04.

[Filed 9/10/04, effective 11/3/04]
[Published 9/29/04]

[For replacement pages for IAC, see IAC Supplement 9/29/04.]

ARC 3695B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby amends Chapter 96, “Vital Records,” Iowa Administrative Code.

This amendment will increase the fee for each certified copy or short form certification of certificates or records, and for a search of the files or records when no copy is made or when no record is found on file. Iowa Code section 144.46 gives the Department the authority to establish fees for a copy of a vital record based on the average administrative cost. The last increase in these fees occurred in 1993. The fees collected by the county are divided among the county registrar, the state registrar and the general fund. The fees collected by the state registrar are divided between the state registrar and the general fund. This amendment also provides for a portion of the fee collected for death certificates to support the operation of the state medical examiner’s office because of the contribution that office makes to the modernization of vital records.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3572B**. A public hearing was held on August 24, 2004. Subrule 96.4(6) was changed to reflect comments received from the Iowa County Recorders Association in which the Association requested that the Department strike the dollar amount for plain copies issued by the county and designate that each county set the fee based on average administrative costs. The Association also requested that the Department delay the implementation of the amendment until such time as Iowa Code section 331.605(5) is revised to reflect an increase to the portion of the fee that counties retain. This is in conflict with the reason the Department is increasing the fees. An effective

date has been added to the introductory paragraph in rule 641—96.4(144).

The State Board of Health adopted this amendment on September 8, 2004.

This amendment will become effective January 1, 2005.

This amendment is intended to implement Iowa Code section 144.46; 1993 Iowa Acts, chapter 55; 1994 Iowa Acts, chapter 1068, section 8; and 2004 Iowa Acts, Senate File 2298, section 104.

The following amendment is adopted.

Rescind rule 641—96.4(144) and adopt the following **new** rule in lieu thereof:

641—96.4(144) Fees. Effective January 1, 2005, the following fees shall be charged for the various services provided by the state registrar or the county registrar.

96.4(1) A fee of \$15 shall be charged for the preparation of an adoption certificate, for amending a certificate, for amending a certificate of birth to reflect legal change of name, and for the preparation of a delayed certificate, for processing any other administrative or legal action, and for the preparation of copies of supporting documents on file in the state registrar’s office.

96.4(2) A fee of \$15 shall be charged by the state registrar and a fee of \$15 shall be charged by the county registrar for each record search conducted and shall include the issuance of a copy if the record is located. A fee of \$15 shall be charged for each additional certified copy issued. If following a search no record is found, the \$15 fee shall be retained.

96.4(3) A fee of \$15 shall be charged by the state registrar for amending an abstract or other legal documentation in support of the preparation of a new certificate.

96.4(4) Any overpayment of less than \$15 received by the state registrar for copying of or search for vital records, or for preparation or amending of a certificate, shall not be refunded.

96.4(5) When an individual is in possession of a previously issued certified copy of a vital record and the original record is subsequently changed or amended, the individual may request and receive a certified copy of the changed record without charge, if the uncorrected certified copy is relinquished.

96.4(6) When a search is conducted by the person requesting the copy, a fee based on the average administrative costs as established by the county shall be charged for an uncertified copy of a county record. The fee shall be retained by the county.

96.4(7) All fees collected by the county registrar and the state registrar, with the exception of the fee in subrule 96.4(6), shall be distributed as follows.

a. Fees collected by a county registrar. The county registrar shall retain \$4 of all fees collected by that office. The balance of fees collected by the county registrar shall be divided as follows:

(1) For birth and marriage certificates, the state registrar shall receive \$8, and \$3 shall be deposited in the general fund of the state.

(2) For death certificates, the state registrar shall receive \$6, the office of the state medical examiner shall receive \$3, and \$2 shall be deposited in the general fund of the state.

b. Fees collected by the state registrar. The state registrar shall retain \$9 of all fees collected by that office. The balance of fees collected by the state registrar shall be divided as follows:

(1) For birth and marriage certificates, \$6 shall be deposited in the general fund of the state.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) For death certificates, the office of the state medical examiner shall receive \$3, and \$3 shall be deposited in the general fund of the state.

All fees retained by the state registrar shall be added to the fund established by the department for the modernization of vital records.

All fees received by the office of the state medical examiner shall be added to the fund established for the operation of that office and the contribution it makes to the modernization of vital records.

This rule is intended to implement Iowa Code section 144.46; 1993 Iowa Acts, chapter 55; 1994 Iowa Acts, chapter 1068, section 8; and 2004 Iowa Acts, Senate File 2298, section 104.

[Filed 9/10/04, effective 1/1/05]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3685B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 100B.10, the Department of Public Safety hereby rescinds Chapter 54, "Fire Fighter Certification," and adopts new Chapter 251, "Fire Fighter Training and Certification," Iowa Administrative Code.

One of the programs of the Fire Service Training Bureau is the certification of fire fighters in the state of Iowa. There are several different levels of certification, each based upon standards promulgated by the National Fire Protection Association. While certification is voluntary under state law—that is, state law does not require certification in order to work either for pay or as a volunteer in the fire service—some fire departments within the state of Iowa require certification of their members as a condition of employment. The rules currently in Chapter 54 provide procedures for the operation of the certification program, standards for certification at various levels, and fees to be collected by the Fire Service Training Bureau related to the certification program. The changes included in these amendments update standards for the various levels of certification offered by the Fire Service Training Bureau.

Notice of Intended Action on these amendments was published in the April 14, 2004, Iowa Administrative Bulletin as **ARC 3294B**. A public hearing was held on June 3, 2004. No comments were received, either at the public hearing or otherwise.

The following change from the Notice has been made: The adopted amendments replace Chapter 54 with a new Chapter 251. This change is part of a broader renumbering of the Department's administrative rules being undertaken to rationalize the organization of the rules. The adoption of a newly numbered chapter is being undertaken now to reduce future costs of reprinting these rules, which would occur if they were amended, printed as Chapter 54 and then renumbered as a new chapter. The new chapter is organized in a fashion which will accommodate later inclusion of rules establishing minimum training standards. The rules establishing minimum training standards were proposed in a Notice of

Intended Action published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3482B**. The minimum training standard requirements are not ready for adoption at this time.

While the Notice of Intended Action included only those parts of Chapter 54 proposed to be amended and the adopted amendments published herein include all of the new Chapter 251, the text of Chapter 251 is identical to what the text of Chapter 54 would have been if the amendments proposed in the Notice of Intended Action had been adopted with no changes.

These amendments are intended to implement Iowa Code chapter 100B.

These amendments will become effective on December 1, 2004.

The following amendments are adopted.

ITEM 1. Rescind and reserve **661—Chapter 54**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 251

FIRE FIGHTER TRAINING AND CERTIFICATION

661—251.1(100B) Definition. The following definition applies to rules 661—251.1(100B) to 251.204(100B):

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

661—251.2 to 251.200 Reserved.

FIRE FIGHTER CERTIFICATION

661—251.201(100B) Fire fighter certification program.

There is established within the fire service training bureau of the fire marshal division a fire fighter certification program for the state of Iowa, which shall be known as the Iowa fire service certification system. The Iowa fire service certification system is accredited by the International Fire Service Accreditation Congress to certify fire service personnel to accepted national standards. All certifications issued by the Iowa fire service certification system shall be based upon nationally accepted standards. Participation in the Iowa fire service certification system is voluntary in that state law does not require certification to work or volunteer as a fire fighter in Iowa. However, some fire departments within the state require certification for continued employment or promotion. Inquiries regarding such requirements should be directed to the hiring or employing department.

Inquiries and requests regarding the Iowa fire service certification system should be directed to Iowa Fire Service Certification System, Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50010-3100. The bureau can be contacted by telephone at (888)469-2374 (toll-free) or at (515)294-6817, by fax at (800)722-7350 (toll-free) or (515) 294-2156, or by electronic mail at fstbinfo@dps.state.ia.us. Further information can be found on the Web site for the fire service training bureau at www.state.ia.us/government/dps/fm/fstb.

251.201(1) Eligibility. Any person seeking certification through the Iowa fire service certification system shall be a current member of a fire, emergency, or rescue organization within the state of Iowa and shall be at least 18 years of age.

EXCEPTION: Persons not meeting the requirement of membership in a fire, emergency, or rescue organization may be granted exceptions to this requirement on an individual basis. Individuals seeking such exceptions shall address these requests to the fire service training bureau.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

251.201(2) Application. Application forms for each level of fire fighter certification may be obtained from the fire service training bureau, or on the bureau's Web site at www.state.ia.us/government/dps/fm/fstb. In order to enter the certification program, an applicant shall submit a completed application, accompanied by the required fee, to the fire service training bureau. The fee must accompany the application form, although a purchase order from a public agency or private organization may be accepted in lieu of prior payment. The application and fee shall be submitted no less than two weeks prior to the date of any examination in which the applicant wishes to participate.

661—251.202(100B) Certification standards. Standards for Iowa fire fighter certification are based upon nationally recognized standards established by the National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

251.202(1) Fire fighter.

a. Fire fighter I. Certification as a fire fighter I is based upon the requirements for fire fighter I certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 2002 edition, chapter 5.

b. Fire fighter II. Certification as a fire fighter II is based upon the requirements for fire fighter II certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 2002 edition, chapter 6.

251.202(2) Driver/operator.

a. Driver/operator (pumper). Certification as a driver/operator (pumper) is based upon the requirements for fire department vehicle driver/operator (pumper) certification established in NFPA 1002, "Standard for Fire Vehicle Driver/Operator Professional Qualifications," 2002 edition, chapter 5.

b. Driver/operator (aerial). Certification as a driver/operator (aerial) is based upon the requirements for fire department vehicle driver/operator (aerial) certification established in NFPA 1002, "Standard for Fire Vehicle Driver/Operator Professional Qualifications," 2002 edition, chapter 6.

251.202(3) Fire officer.

a. Fire officer I. Certification as a fire officer I is based upon the requirements for fire officer I certification established in NFPA 1021, "Standard for Fire Officer Professional Qualifications," 2003 edition, chapter 4.

b. Fire officer II. Certification as a fire officer II is based upon the requirements for fire officer II certification established in NFPA 1021, "Standard for Fire Officer Professional Qualifications," 2003 edition, chapter 5.

251.202(4) Fire inspector. Certification as a fire inspector I is based upon the requirements for certification as a fire inspector I established in NFPA 1031, "Standard for Professional Qualifications for Fire Inspector and Plans Examiner," 2003 edition, chapter 4.

251.202(5) Fire investigator. Certification as a fire investigator is based upon the requirements for certification as a fire investigator established in NFPA 1033, "Standard for Professional Qualifications for Fire Investigator," 2003 edition, chapter 4.

251.202(6) Fire service instructor.

a. Fire service instructor I. Certification as a fire service instructor I is based upon the requirements for certification as a fire service instructor I established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," 2002 edition, chapter 4.

b. Fire service instructor II. Certification as a fire service instructor II is based upon the requirements for certification as a fire service instructor II established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," 2002 edition, chapter 5.

251.202(7) Responder to hazardous materials incidents.

a. Responder to hazardous materials incidents (awareness). Certification as a responder to hazardous materials incidents (awareness) is based upon the requirements for certification as a responder to hazardous materials incidents (awareness) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents," 2002 edition, chapter 4.

b. Responder to hazardous materials incidents (operations). Certification as a responder to hazardous materials incidents (operations) is based upon the requirements for certification as a responder to hazardous materials incidents (operations) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents," 2002 edition, chapter 5.

661—251.203(100B) Fees. Current certification application fees and any other fees related to participation in the certification process shall be listed in the publication Certification Procedures Guide for each level of certification, published by the fire service training bureau and available on request from the fire service training bureau. The information in each guide shall be effective upon publication until superseded by publication of a later edition. Prospective candidates who are considering application for a particular level of certification should contact the fire service training bureau for the latest date of publication of the Certification Procedures Guide.

Fees may be paid by personal check made payable to Iowa Department of Public Safety—Fire Service Training Bureau, credit card, purchase order from a public agency or private organization, check or draft from a public agency or private organization, or money order. The check, credit card information, purchase order, money order or draft shall be submitted with the application.

661—251.204(100B) Certification, denial, and revocation of certification.

251.204(1) Certification. Upon completion of the requirements for certification, the applicant's name shall be entered into the Iowa certification database maintained by the fire service training bureau for the respective level of certification and into the National Certification Data Base maintained by the International Fire Service Accreditation Congress. Individuals who successfully complete the certification requirements shall also receive an individualized certificate awarding national certification from the fire service training bureau, which will bear a numbered seal from the International Fire Service Accreditation Congress, and additional insignia from the fire service training bureau.

251.204(2) Denial of certification. Certification shall be denied to any applicant who fails to meet all of the requirements for the type of certification, who knowingly submits false information to the fire service training bureau, or who engages in fraudulent activity during the certification process.

251.204(3) Revocation. The fire marshal may revoke the certification of any individual who is found to have knowingly provided false information to the fire service training bureau during the certification process or to have engaged in fraudulent activity during the certification process.

251.204(4) Appeals. Any person who is denied certification or whose certification is revoked may appeal the denial

PUBLIC SAFETY DEPARTMENT[661](cont'd)

or revocation. An appeal of a denial or revocation of certification shall be made to the commissioner of public safety within 30 days of the issuance of the denial or revocation using the contested case procedures specified in 661—Chapter 10.

These rules are intended to implement Iowa Code chapter 100B.

[Filed 9/9/04, effective 12/1/04]
[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3679B

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 1, "Organization and Operation," Chapter 3, "Fair Information Practices," Chapter 4, "Contested Cases and Other Proceedings," Chapter 5, "Track and Excursion Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 7, "Greyhound Racing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred and Quarter Horse Racing," and Chapter 11, "Gambling Games," Iowa Administrative Code.

All of the amendments result from 2004 Iowa Acts, House File 2302, technological advances, or current practice. All of the amendments are nonsubstantive in nature with the following exceptions:

Items 2 and 9 insert the word "gambling" to update new legislative definitions to implement 2004 Iowa Acts, House File 2302.

Item 3 incorporates legislative language about keeping information gathered during an investigation confidential while the investigation is ongoing.

Item 11 adds requirements for information that must be submitted with the licensee's annual reports.

Item 13 allows a Commission representative to place a gambling game in operation pending approval under 661—paragraph 23.9(11)"c."

Item 14 requires that any contract for devices that allow for cash or credit must contain a clause stating that, when technology becomes available, a person must be allowed to voluntarily bar the person's access to receive cash or credit from these devices.

Item 15 requires the Commission to review contracts to ensure the utilization of Iowa products.

Item 16 removes the admission fee requirement.

Item 18 requires licensees to have a program in place to allow for persons to voluntarily exclude themselves for life from all facilities.

Item 19 makes licensees responsible for the conduct of nonlicensed persons in nonpublic areas of the facility.

Items 20 and 21 designate the gaming floor and wagering area.

Item 22 defines an excursion boat and a moored barge.

Item 23 amends the number of excursions and the length of the excursions.

Item 24 clarifies what date will be utilized for a conviction.

Item 25 allows for an interim identification badge.

Items 33 and 38 require a witness to be present during the administration of furosemide.

Items 34 and 40 require the witness to the administration of the furosemide to sign the affidavit.

Item 39 requires a jockey agent to honor the first call given.

Item 41 clarifies what type of gaming is allowed at race-track enclosures.

Item 42 changes the requirements regarding the notification to the Commission about the moving of slot machines.

These amendments were published under Notice of Intended Action in the July 7, 2004, Iowa Administrative Bulletin as **ARC 3449B**.

A public hearing was held on July 27, 2004. No comments were received.

The following changes have been made to the Notice:

In Item 12, in subrule 5.4(5), an amendment to paragraph "d" was added to exempt voluntary exclusions from being reported to the Commission.

In Item 22, paragraph "c," the definition of "moored barge" was not adopted.

In Item 23, paragraph "a," second sentence, the word "gambling" was stricken from the phrase "excursion gambling boat," as elsewhere.

In Item 26, in subrule 6.5(3), an amendment to paragraph "q" was added to strike the word "racing" in the phrase "a racing animal" so that the rule will apply to all animals, and not just racing animals.

These amendments will become effective November 3, 2004.

These amendments are intended to implement Iowa Code chapters 99D and 99F as amended by 2004 Iowa Acts, House File 2302.

The following amendments are adopted.

ITEM 1. Amend rule 491—1.4(17A,22,99F) as follows:

491—1.4(17A,22,99D,99F) Open records. Except as provided in Iowa Code sections 17A.2(11)"f," and 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone, *or fax* or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

ITEM 2. Amend subrules 1.5(1) and 1.5(3), catchwords, as follows:

1.5(1) ~~Racetrack~~ *Racing* or excursion *gambling* boat license application.

1.5(3) Renewal application for excursion *gambling* boat license.

ITEM 3. Amend subrule **3.13(2)** by relettering paragraphs "i" and "j" as "j" and "k" and adding a **new** paragraph "i" as follows:

i. Information gathered during an investigation during pendency of the investigation. (Iowa Code sections 99D.7(8) and 99F.4(6))

ITEM 4. Amend subrule 3.14(3) as follows:

3.14(3) List of contested cases and stewards' hearings. The commission ~~utilizes~~ *may utilize* a listing of contested case and stewards' hearings furnished by the ~~Association of Racing Commissioners International~~ *a national organization*

RACING AND GAMING COMMISSION[491](cont'd)

and ~~provides~~ *provide* individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

ITEM 5. Rescind and reserve subrule **4.4(1)**, paragraph “c.”

ITEM 6. Rescind and reserve subrule **4.5(11)**.

ITEM 7. Rescind and reserve subrule **4.6(5)**, paragraph “h.”

ITEM 8. Amend 491—Chapter 4 by adding a **new** rule as follows:

491—4.10(99D,99F) Appeals of administrative actions. A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person’s representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

ITEM 9. Amend the title of **491—Chapter 5** as follows:

CHAPTER 5
TRACK AND EXCURSION GAMBLING BOAT
LICENSEES’ RESPONSIBILITIES

ITEM 10. Amend **491—Chapter 5** by changing the word “grounds” to “premises” wherever it appears.

ITEM 11. Amend rule 491—5.2(99D,99F) as follows:

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee’s operation shall include an internal control letter, a balance sheet, and a profit-and-loss statement pertaining to the licensee’s activities in the state, including a breakdown of expenditures *and subsidies*. If the licensee’s fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; ~~taxable~~ attendance ~~and the dollar amount remitted to the state~~; *regulatory fee*; total mutuel handle and taxes paid to state, city, ~~and county~~ *and gambler’s treatment fund*; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the

disbursements of 1 percent of ~~the triples exotic wagers on three or more racing animals~~.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, *county endowment fund*, and gambler’s *treatment fund*; and ~~admission~~ *regulatory* fees.

b. A report on whether material weaknesses in internal accounting control exist.

c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

ITEM 12. Amend subrule **5.4(5)**, paragraphs “b” and “d,” as follows:

b. Employ adequate security. Each licensee shall employ sufficient security to remove *from the licensed premises* a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice ~~from the licensed premises~~. Security shall also be provided in and about the ~~grounds~~ *premises* to secure restricted areas ~~such as including, but not limited to,~~ the barn area, kennel area, paddock, and *racing animal drug testing* area.

d. Ejection or exclusion. A licensee may eject or exclude any person, licensed or unlicensed, from the ~~grounds~~ *premises* or a part thereof of the licensee’s facility, solely of the licensee’s own volition and without any reason or excuse given, provided ejection or exclusion is not founded on *constitutionally protected grounds* such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, *other than voluntary exclusions*, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when *the person is* ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

ITEM 13. Amend subrule 5.4(7) as follows:

5.4(7) ~~Videotaping~~ *Video recording*. Licensees are required to conduct continuous surveillance with the capability of ~~videotaping~~ *video recording* all gambling activities under Iowa administrative rules 661—Chapter 23, promulgated by the department of public safety. *A commission representative may allow a gambling game to be placed in operation pending approval under 661—paragraph 23.9(11) “c.”*

ITEM 14. Amend subrule **5.4(8)**, paragraph “a,” by adding the following **new** subparagraph (4):

(4) Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person’s access to receive cash or credit from such devices located on the licensed premises.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 15. Amend subrule **5.4(8)**, paragraph “**b**,” as follows:

b. Purpose of review. The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) ~~Consideration is given to the use of Iowa resources, goods and services are utilized.~~ Resources, goods, and services shall be considered to be from Iowa be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. to 7. No change.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code ~~section~~ sections 99D.9 and 99F.7(4) as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

ITEM 16. Rescind subrule 5.4(10) and insert in lieu thereof the following **new** subrule:

5.4(10) Taxes and fees.

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Submission of taxes and fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by 3 p.m. on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of regulatory fees paid. These reports shall be by calendar month and filed by close of the third business day following the end of the month.

ITEM 17. Amend subrule 5.4(12), catchwords, as follows:

5.4(12) ~~Gambling treatment program~~ *Problem gambling.*

ITEM 18. Amend subrule **5.4(12)**, paragraph “**a**,” as follows:

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) ~~Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.~~ Allow persons to be voluntarily excluded for life from all facilities. Each facility will disseminate information regarding the exclusion to all other facilities.

ITEM 19. Amend subrule 5.4(16) as follows:

5.4(16) Officers, agents, and employees. Licensees are accountable for the conduct of their officers, agents, and em-

ployees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. *In addition, the licensee shall be responsible for the conduct of non-licensed persons in nonpublic areas of the excursion gambling boat or racetrack enclosure.*

ITEM 20. Amend rule 491—5.4(99D,99F) by adding the following **new** subrule:

5.4(17) Designated gaming floor. The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

ITEM 21. Amend rule 491—5.5(99D) by adding the following **new** subrule:

5.5(11) Designated wagering area. The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

ITEM 22. Amend subrule 5.6(1) as follows:

5.6(1) ~~Boat design~~ *Excursion gambling boat.*

a. *Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.

b. ~~Boats must be self-propelled.~~ *Excursion boat.* A boat self-propelled, floating “vessel” as defined by the U.S. Coast Guard may contain more than one “vessel” as defined by the U.S. Coast Guard. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

ITEM 23. Amend subrule **5.6(2)**, paragraph “**a**,” as follows:

a. *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of ~~two hours~~ one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked,

RACING AND GAMING COMMISSION[491](cont'd)

passengers may embark or disembark at any time during its business hours pursuant to Iowa Code section 99F.4(17).

ITEM 24. Amend rule **491—6.1(99D,99F)**, definitions of “conviction” and “licensee,” as follows:

“Conviction” means the act or process of judicially finding someone guilty of a crime; the state of a person’s having been proved guilty; the judgment that a person is guilty of a crime or criminal offense, which includes a guilty plea entered in conjunction with a deferred judgment, and a juvenile who has been adjudicated delinquent. *The date of conviction shall be the date the sentence and judgment is entered.*

“Licensee” means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license *for a person to engage work in the pari-mutuel, racetrack enclosure, or excursion gambling boat gambling industry* in Iowa.

ITEM 25. Rescind subrule 6.2(6) and insert in lieu thereof the following **new** subrule:

6.2(6) Interim identification badge.

a. All interim identification badges issued by a facility must be recorded in a logbook, which is available for inspection by commission or DCI representatives. The logbook must reflect the following information: date issued; user’s name and date of birth (verified by photo ID); occupation; badge number; issuer; time issued; and time returned. Badges shall only be issued on a daily basis and must be returned before the employee leaves facility premises. A badge shall be effective only until the commission licensing office’s next day of business, and may not be used to avoid obtaining a duplicate license.

b. A badge shall only be issued if:

- (1) An employee is hired during a time that the commission licensing office is closed; or
- (2) An employee is not in possession of the employee’s occupational license.

ITEM 26. Amend subrule **6.5(3)**, paragraphs “e,” “j,” and “q,” as follows:

e. Theft or deceptive practice of any nature on the ~~grounds~~ *premises* of a facility.

j. Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility ~~grounds~~ *premises*.

q. Subjecting a ~~racing~~ *an* animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing a ~~racing~~ *an* animal to suffer unnecessary pain.

ITEM 27. Rescind subrule **6.13(4)**.

ITEM 28. Amend **491—Chapter 7** by changing the word “grounds” to “premises” wherever it appears.

ITEM 29. Amend subrule **7.2(2)**, paragraph “a,” as follows:

a. Equipment necessary to produce adequate ~~videotapes~~ *video recordings* of the prerace blanket and muzzle inspection and the entire race from start to finish. ~~Videotapes~~ *Video recordings* shall be retained and secured by the facility until the first day of the following racing season.

ITEM 30. Amend **491—Chapter 9** by changing the word “grounds” to “premises” and the word “lasix” to “furosemide” wherever these words appear.

ITEM 31. Amend subrule 9.2(15) as follows:

9.2(15) Patrol films or ~~videotapes~~ *video recordings*. Each facility shall provide:

a. A ~~videotaping~~ *video recording* system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards’ stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to ~~videotape record~~ the prerace of all horses approaching the starting gate and to continue to ~~videotape record~~ them until the field is dispatched by the starter.

c. One camera, designated by the commission, to ~~videotape record~~ the apparent winner of each race from the finish line until the horse has returned and the driver has dismounted.

d. At the discretion of the stewards, video camera operators to ~~videotape record~~ the activities of any horses or persons handling horses prior to, during, or following a race.

e. At least three video cameras to record races run on an oval track.

f. Upon request ~~to~~ *of* the commission, without cost, a copy of a ~~videotape~~ *video recording* of a race.

g. That ~~videotapes~~ *video recordings* recorded prior to, during, and following each race be maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, driver, or other interested individual may view a ~~videotape~~ *video recording* of a race.

i. Following any race in which there is an inquiry or objection, the ~~videotaped~~ *video recorded* replays of the incident in question which were utilized by the stewards in making their decision. The facility shall display to the public these ~~videotaped~~ *video recorded* replays on designated monitors.

ITEM 32. Rescind and reserve subrule **9.4(11)**, paragraph “i.”

ITEM 33. Rescind subrule **9.5(1)**, paragraph “a,” subparagraph (6), and insert in lieu thereof the following **new** subparagraph:

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant.

ITEM 34. Amend subrule **9.7(4)**, paragraph “d,” as follows:

d. Within 20 minutes following the administration of ~~lasix~~ *furosemide*, the veterinarian must deliver to the commission veterinarian or commission representative a signed affidavit certifying information regarding the treatment of the horse. The statement must include, at a minimum, the name of the practicing veterinarian, the tattoo number or freeze brand number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the ~~lasix~~ *furosemide* was administered. *This affidavit must be signed by the trainer or trainer’s designee who witnessed the administration of furosemide. The veterinarian shall not administer the furose-*

RACING AND GAMING COMMISSION[491](cont'd)

vide if a witness is not present. Lasix Furosemide shall only be administered only in a dose level of 250 milligrams.

ITEM 35. Amend **491—Chapter 10** by changing the word “grounds” to “premises” and the word “lasix” to “furosemide” wherever these words appear.

ITEM 36. Amend subrule 10.2(11) as follows:

10.2(11) Patrol films or ~~videotapes~~ *video recordings*. Each facility shall provide:

a. A ~~videotaping~~ *video recording* system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to ~~videotape~~ *record* the prerace loading of all horses into the starting gate and to continue to ~~videotape~~ *record* them until the field is dispatched by the starter.

c. One camera, designated by the commission, to ~~videotape~~ *record* the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

d. At the discretion of the stewards, video camera operators to ~~videotape~~ *record* the activities of any horses or persons handling horses prior to, during, or following a race.

e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request ~~to~~ *of* the commission, without cost, a copy of a ~~videotape~~ *video recording* of a race.

g. ~~Videotapes~~ *That video recordings* recorded prior to, during, and following each race *be* maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a ~~videotape~~ *video recording* of a race.

i. Following any race in which there is an inquiry or objection, the ~~videotaped~~ *video recorded* replays of the incident in question which were utilized by the stewards in making their decision. The ~~licensee facility~~ shall display to the public these ~~videotaped~~ *video recorded* replays on designated monitors.

ITEM 37. Rescind and reserve subrule **10.4(17)**, paragraph “i.”

ITEM 38. Rescind subrule **10.5(1)**, paragraph “a,” subparagraph (6), and insert in lieu thereof the following **new** subparagraph:

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant.

ITEM 39. Amend subrule **10.5(3)**, paragraph “a,” by adding the following **new** subparagraph (6):

(6) A jockey agent must honor a first call given to a trainer or the trainer's assistant trainer.

ITEM 40. Amend subrule **10.7(4)**, paragraph “d,” as follows:

d. Within 20 minutes following the administration of ~~lasix furosemide~~, the veterinarian must deliver to the commission veterinarian or commission representative a signed affidavit certifying information regarding the treatment of the horse. The statement must include, at a minimum, the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the ~~lasix furosemide~~ was administered. *This affidavit must be signed by the trainer or trainer's designee who witnessed the administration of furosemide. The veterinarian shall not administer the furosemide if a witness is not present. Lasix Furosemide shall only be administered in a dose level of 250 milligrams.*

ITEM 41. Amend subrule 11.5(2) as follows:

11.5(2) Slot machines, video poker, and all other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures *without a table games license, video machines which simulate table games of chance shall not be allowed. “video machine” as used in Iowa Code section 99F.1(9) shall mean video keno and any video machine game version of a table or card game, including but not limited to those listed in 11.5(1).*

ITEM 42. Rescind subrule 11.9(1) and insert in lieu thereof the following **new** subrule:

11.9(1) Movement.

a. Any entity providing slot machines to a licensed facility must file written notice with the commission at least five calendar days prior to receipt of the machines by the facility. A licensed facility selling or an owner removing slot machines from the facility must file written notice with the commission at least one day prior to removal. Notification by facsimile or E-mail shall be considered written notice.

b. The administrator may approve licensee transfers of slot machines among subsidiaries of the licensee's parent company.

[Filed 9/7/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3680B

**RACING AND GAMING
COMMISSION[491]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 1, “Organization and Operation,” Iowa Administrative Code.

This amendment rescinds the limitation on location and number of racetracks and excursion gambling boats and the requirement for prior Commission approval of and criteria for increasing the number of gaming machines or table games at existing facilities.

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A public hearing was held on July 27, 2004. There were comments voiced at the hearing both for and against this amendment.

This adopted amendment is identical to the one published under Notice of Intended Action in the July 7, 2004, Iowa Administrative Bulletin as **ARC 3448B**.

This amendment will become effective November 3, 2004.

This amendment is intended to implement Iowa Code chapter 99F.

The following amendment is adopted.

Rescind and reserve rule **491—1.6(99D,99F)**.

[Filed 9/7/04, effective 11/3/04]

[Published 9/29/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

ARC 3699B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14, 437A.25, and 441.21(2), the Department of Revenue hereby adopts amendments to Chapter 70, "Replacement Tax and Statewide Property Tax," Chapter 71, "Assessment Practices and Equalization," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

The rule changes require a taxpayer subject to the replacement tax to provide the Director with additional information on a return; change replacement tax return due dates; replace references to "Department of Revenue and Finance" with "Department of Revenue"; require the owner of Section 42 property to notify the assessor by March 1 of the assessment year if the property is withdrawn from the Internal Revenue Service program and impose a \$500 penalty for failure to make the required notification; and require that wind energy facilities be assessed for taxes by the Department of Revenue and require the owner of the facilities to pay the taxes levied on the property to the Department.

Notice of Intended Action was published in IAB Vol. XXVII, No. 3, p. 206, on August 4, 2004, as **ARC 3570B**.

A change has been made to the Notice of Intended Action in subrule 80.13(2).

Based on comments received from the Iowa State County Treasurers Association and the Iowa County Auditors Association, two sentences were added to subrule 80.13(2) for clarification purposes. One sentence requires the owner of the facility to file an annual report with the Department by May 1 of each year and requires the Department to certify the assessed value of the facility to the county auditor by November 1 of each year; and the other sentence requires the Department to notify the county treasurer of the date the taxes were paid.

These amendments will become effective November 3, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 437A and section 441.21(2) as amended by 2004 Iowa Acts, Senate File 2296, and 2004 Iowa Acts, Senate File 2298, sections 404 to 417.

The following amendments are adopted.

ITEM 1. Amend rule 701—70.1(437A) as follows:

701—70.1(437A) Who must file return. Each taxpayer, as defined in Iowa Code *Supplement* section 437A.3(26) (30), shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437A.8(1)"a" through "e" "f" and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

ITEM 2. Amend rule 701—70.2(437A) as follows:

701—70.2(437A) Time and place for filing return. The return must be filed with the director on or before ~~February 28~~ *March 31* following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before ~~February 28~~ *March 31* following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is \$300 or less is not required to file a return. Such A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue and Finance, Attention: Property Tax ~~Section~~ *Division*, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 3. Amend paragraph 70.6(1)"b" as follows:

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue and Finance, Property Tax ~~Section~~ *Division*, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

ITEM 4. Amend rule 701—70.15(437A) as follows:

701—70.15(437A) Time and place for filing return. The return must be filed with the director on or before ~~February 28~~ *March 31* following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before ~~February 28~~ *March 31* following the tax year is untimely.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday

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or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue and Finance, Attention: Property Tax Section Division, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 5. Amend subrule **71.5(2)** by adding the following new paragraph "h":

h. Eligibility withdrawn. The property owner shall notify the assessor when property is withdrawn from Section 42 eligibility under the Internal Revenue Code. The notification must be provided by March 1 of the assessment year or the owner is subject to a penalty of \$500.

ITEM 6. Amend rule **701—71.5(421,428,441)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 as amended by 2004 Iowa Acts, Senate File 2296, and 476.1D(10) and Iowa Code Supplement section 441.21.

ITEM 7. Amend rule 701—80.13(427B) as follows:

701—80.13(427B) Wind energy conversion property.

80.13(1) *Property that does not qualify for the wind energy production tax credit.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. The special valuation applies to property first assessed on or after the effective date of the ordinance. The lo-

cal assessor shall value the property in accordance with the schedule provided in Iowa Code Supplement section 427B.26(2). Public utility property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year the property is first assessed for tax to have the property locally assessed.

80.13(2) *Property that qualifies for the wind energy production tax credit. The wind energy production tax credit applies to electrical production facilities placed in service on or after July 1, 2004, but prior to July 1, 2007. These facilities are to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility shall file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department shall certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors shall notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department of revenue. The board shall also notify the department of those facilities that are required to pay the property taxes to the department. The department of revenue shall notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification shall authorize the county treasurer to mark the record as paid in the county system.*

This rule is intended to implement Iowa Code section 427B.26 and 2004 Iowa Acts, Senate File 2298, sections 404 to 417.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/29/04.

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