



# 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.

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**CITATION of Administrative Rules**

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

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

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## Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
***May 17***	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
***June 28***	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
***Aug. 23***	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
***Nov. 15***	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
***Dec. 13***	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
***Dec. 27***	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 7, 2006	April 26, 2006
23	Friday, April 21, 2006	May 10, 2006
24	Friday, May 5, 2006	May 24, 2006

**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

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
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The Administrative Rules Review Committee will hold a special meeting on Monday, April 10, 2006, at 8 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**BANKING DIVISION[187]**

COMMERCE DEPARTMENT[181]"umbrella"

- Mobile offices, courier services, convenience offices, 2.4(3), 2.12(2), 2.17, 8.10, Filed **ARC 5010B** ..... 3/29/06
- Mortgage bankers and mortgage brokers, adopt ch 18, Notice **ARC 5011B** ..... 3/29/06

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- Facility security; business enterprises program, 1.4, 1.13, 7.8(1), 7.10(5) to 7.10(13), 7.17, 7.17(4), Filed **ARC 4965B** ..... 3/15/06

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- Extracurricular interscholastic competition, 36.1, 36.4(3), 36.14(2), 36.14(7), 36.15(2) to 36.15(4), 36.15(5)"b" and "c," 36.16, Filed **ARC 4986B** ..... 3/29/06

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- Introduction, abbreviations and definitions, ch 1, Filed **ARC 4947B** ..... 3/15/06
- Department of elder affairs, ch 2, Filed **ARC 4949B** ..... 3/15/06
- Department planning responsibilities, ch 4, Filed **ARC 4950B** ..... 3/15/06
- Department fiscal policy, ch 5, Filed **ARC 4951B** ..... 3/15/06
- Area agency on aging planning and administration, ch 6, Filed **ARC 4952B** ..... 3/15/06
- Area agency on aging service delivery, ch 7, Filed **ARC 4948B** ..... 3/15/06
- Senior internship program (SIP)—definitions, 10.2 to 10.7, Filed **ARC 4953B** ..... 3/15/06
- Elder abuse, neglect or exploitation prevention and awareness and mandatory reporter training, ch 12, Filed **ARC 4954B** ..... 3/15/06
- Elder abuse initiative, emergency shelter and support services projects, ch 15, Filed **ARC 4955B** ..... 3/15/06
- Senior living coordinating unit, ch 16, Filed **ARC 4956B** ..... 3/15/06
- Case management plan for frail elders, rescind ch 21, Filed Emergency **ARC 4994B** ..... 3/29/06
- Iowa senior living program—home- and community-based services for seniors, ch 28, Filed **ARC 4957B** ..... 3/15/06

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Environmental covenants, adopt ch 13; 135.12(8)"a""4," 137.7(2)"e," 137.7(3), 137.7(6), 137.7(8), Notice **ARC 4983B** ..... 3/15/06
- Air pollution—equipment and processes exempt from construction permit requirement, 22.1(2)"m," 22.1(2)"x"(27), 22.1(2)"jj" to "mm," Filed **ARC 4984B** ..... 3/15/06
- Water use/water allocation program, 50.2, 50.3, 50.4(1), 50.4(1)"a," "c" and "d," 50.5(2), 50.6, 50.6(1)"a," 50.6(2) to 50.6(5), 50.7(3)"a," 50.7(5), 50.8, 51.2, 51.5 to 51.8, 52.1, 52.2(1), 52.2(4)"b," 52.3(1)"a," "b" and "d," 52.3(2)"a" and "c" to "e," 52.4(1) to 52.4(4), 52.6(1), 52.6(4), 52.7(1), 52.8(2), 52.8(3), 52.9(1), 52.9(2), 52.9(3)"b," 52.9(3)"c"(3), 52.10(2)"c" and "d," 52.10(3)"c" and "d," 52.11, 53.2, 53.4, 53.7(1), 54.7(2)"a" and "b," 54.7(4), Notice **ARC 4982B** ..... 3/15/06
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**IOWA FINANCE AUTHORITY[265]**

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**LABOR SERVICES DIVISION[875]**

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**NATURAL RESOURCE COMMISSION[571]**

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- Interpreters for the hearing impaired examiners—continuing education, adopt ch 362,  
Filed ARC 4971B ..... 3/15/06
- Interpreters for the hearing impaired examiners—discipline, adopt ch 363, Filed ARC 4972B ..... 3/15/06

**PUBLIC HEALTH DEPARTMENT[641]**

- Laboratory testing of samples for detection of alcohol or drugs—definition of “sample,”  
12.2, 12.4(3), Filed ARC 4998B ..... 3/29/06
- Private well testing, reconstruction, and plugging—grants to counties,  
adopt ch 24, Filed ARC 5000B ..... 3/29/06
- Radiation, amendments to chs 38 to 42, 45, 46, Filed ARC 5002B ..... 3/29/06
- Radiologist assistants, 42.1(2), 42.2(3)“a”(8), 42.6, ch 42 appendix A,  
Notice ARC 5001B ..... 3/29/06
- County medical examiners—deaths for which autopsies are required, 127.3(1)“k,”  
127.3(2)“c,” 127.3(4)“b”(1) to (6), 127.7(2)“b”(2), Filed ARC 4997B ..... 3/29/06
- Substance abuse commission—transfer of duties to state board of health, rescind 643—chs 1, 2, 4, 5, 7, 10;  
transfer 643—chs 3, 6, 8, 9 to 641—chs 155 to 158 and amend, Filed ARC 4999B ..... 3/29/06

**PUBLIC SAFETY DEPARTMENT[661]**

- Certification of automatic fire extinguishing system contractors, adopt ch 275, Notice ARC 4753B Terminated,  
also Notice ARC 5022B ..... 3/29/06

**REVENUE DEPARTMENT[701]**

- Hotel and motel tax; local option sales and service tax; streamlined sales and use tax agreement;  
excise taxes not governed by streamlined sales and use tax agreement, amendments to chs 103 to 105,  
107, 211, 219, 230, 231; adopt ch 241, Notice ARC 5013B ..... 3/29/06
- Child and dependent care credit; early childhood development tax credit,  
42.9(1), 42.29, Notice ARC 5012B ..... 3/29/06
- Pilot program for rebate of sales tax paid—automobile racetrack facilities,  
adopt ch 235, Filed ARC 4978B ..... 3/15/06

**SECRETARY OF STATE[721]**

- Voter declaration of eligibility, 21.4(3), 21.5, Notice ARC 5005B,  
also Filed Emergency ARC 5004B ..... 3/29/06
- Voting systems—memory card security, AutoMARK voter assist terminals,  
22.51, 22.261(20), Notice ARC 4974B ..... 3/15/06

**TRANSPORTATION DEPARTMENT[761]**

- Acquisition and relocation assistance, 111.1, Filed ARC 4959B ..... 3/15/06
- Motor carrier regulations—federal regulation citation updated, 529.1, Notice ARC 4975B ..... 3/15/06

**UTILITIES DIVISION[199]**

## COMMERCE DEPARTMENT[181]“umbrella”

- Eligibility, certification, and reporting requirements for eligible telecommunications  
carriers, 1.9(5)“c,” 22.2(7), 39.2(3)“c” to “l,” 39.5, 39.6, Notice ARC 4977B ..... 3/15/06

**VOTER REGISTRATION COMMISSION[821]**

- Specifications for voter registration data processing services contracts and  
approval procedure for such contracts, rescind ch 4, Notice ARC 4970B ..... 3/15/06
- Data processing system requirements for voter registration, rescind ch 6, Notice ARC 4969B ..... 3/15/06
- County maintenance file input specifications, rescind ch 7, Notice ARC 4968B ..... 3/15/06
- National change of address program, ch 9, Notice ARC 4967B,  
also Filed Emergency ARC 4966B ..... 3/15/06

**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  
2600 Renaissance Drive, #3  
Dubuque, Iowa 52001

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

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

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

Sonya Streit  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319

**PUBLIC HEARINGS**

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>BANKING DIVISION[187]</b>		
Mortgage bankers and mortgage brokers, adopt ch 18 IAB 3/29/06 <b>ARC 5011B</b>	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 18, 2006 10 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Environmental covenants, ch 13, 135.12, 137.7 IAB 3/15/06 <b>ARC 4983B</b>	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	April 5, 2006 1:30 p.m.
Water use/water allocation program, amendments to chs 50 to 54 IAB 3/15/06 <b>ARC 4982B</b>	Conference Room, Suite I 401 SW Seventh St. Des Moines, Iowa	April 5, 2006 10 a.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b>		
Consumer choices option for certain HCBS waivers, amendments to chs 77 to 79, 83 IAB 3/15/06 <b>ARC 4980B</b>	Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	April 5, 2006 9 to 10 a.m.
	Conference Room 3 Wapello County DHS 120 E. Main St. Ottumwa, Iowa	April 5, 2006 9:30 to 11 a.m.
	Sixth Floor Conference Rm. 605 A&B Scott County Administrative Center 428 Western Ave. Davenport, Iowa	April 5, 2006 10 to 11 a.m.
	Conference Room A Trospen-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	April 5, 2006 10 to 11 a.m.
	ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	April 5, 2006 1 to 2 p.m.
	Fifth Floor ICN Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	April 6, 2006 9 to 10:30 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	April 6, 2006 9 to 10 a.m.
	Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	April 6, 2006 10 to 11 a.m.

**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

Room 220  
Pinecrest Office Bldg.  
1407 Independence Ave.  
Waterloo, Iowa

April 6, 2006  
10 to 11 a.m.

**NATURAL RESOURCE COMMISSION[571]**

Removal of Iowa River Corridor Area in Iowa County from list of wildlife refuges, 52.1(2) IAB 3/29/06 <b>ARC 5019B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006
Commercial fishing—shovelnose sturgeon, 82.2 IAB 3/1/06 <b>ARC 4922B</b>	Conference Room D Clinton County Administration Bldg. 1900 N. Third St. Clinton, Iowa	March 29, 2006 7 p.m.
	Starr's Cave Nature Center 11629 Starr's Cave Park Rd. Burlington, Iowa	March 30, 2006 7 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3, 91.4, 91.6 IAB 3/29/06 <b>ARC 5018B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Game harvest reporting and landowner-tenant registration, adopt ch 95 IAB 3/29/06 <b>ARC 5020B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Wild turkey spring hunting, 98.1, 98.3, 98.5(8), 98.6(1), 98.7, 98.15 IAB 3/29/06 <b>ARC 5021B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Deer hunting by residents, 106.1, 106.2(5), 106.6 to 106.8, 106.10(1), 106.12, 106.13 IAB 3/29/06 <b>ARC 5015B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Bag limit for white-tailed jackrabbits, 107.2 IAB 3/29/06 <b>ARC 5016B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.
Trapping season for river otters, 108.6 to 108.9 IAB 3/29/06 <b>ARC 5017B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 18, 2006 6:30 to 9 p.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Impaired practitioner review committee, 16.3(7), 16.3(8), 16.4(2) IAB 3/29/06 <b>ARC 4990B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 1 to 1:30 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Dietitians—overpayments, 80.1 IAB 3/29/06 <b>ARC 4988B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 9 to 9:30 a.m.
Massage therapists—overpayments, 130.1 IAB 3/29/06 <b>ARC 4993B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 9:30 to 10 a.m.
Optometrists—CELMO certification, 181.3(2), 181.4(2) IAB 3/15/06 <b>ARC 4976B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10:30 to 11 a.m.
Physical therapists—overpayments, 199.1 IAB 3/15/06 <b>ARC 4961B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10 to 10:30 a.m.
Occupational therapists— overpayments, 205.1 IAB 3/15/06 <b>ARC 4960B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10 to 10:30 a.m.
Occupational therapists—supervision of OT assistants, 206.1, 206.8 IAB 3/29/06 <b>ARC 4989B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 1:30 to 2 p.m.
Respiratory care practitioners, 260.1 IAB 2/15/06 <b>ARC 4884B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 9 to 9:30 a.m.
Social workers, 279.1, 281.3(2) IAB 3/15/06 <b>ARC 4958B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 20, 2006 9 to 9:30 a.m.
Interpreters for the hearing impaired, 360.1 IAB 3/15/06 <b>ARC 4973B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 9:30 to 10 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Radiologist assistants, 42.1(2), 42.2(3), 42.6, ch 42 appendix A IAB 3/29/06 <b>ARC 5001B</b>	Conference Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 18, 2006 8:30 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Certification of automatic fire extinguishing system contractors, adopt ch 275 IAB 3/29/06 <b>ARC 5022B</b>	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	April 19, 2006 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Motor carrier regulations, 529.1 IAB 3/15/06 <b>ARC 4975B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 6, 2006 10 a.m. (If requested)
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**UTILITIES DIVISION[199]**

Eligibility, certification, and reporting requirements for eligible telecommunications carriers, amendments to chs 1, 22, 39  
IAB 3/15/06 **ARC 4977B**

Hearing Room  
350 Maple St.  
Des Moines, Iowa

April 26, 2006  
9 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CITIZENS’ AIDE[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Division[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
   Iowa Finance Authority[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN INVESTMENT COUNCIL[417]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]  
 HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    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]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

## ARC 5011B

### BANKING DIVISION[187]

#### 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)<sup>b</sup>.

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

Pursuant to the authority of Iowa Code sections 17A.3 and 535B.14, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to adopt Chapter 18, "Mortgage Bankers and Mortgage Brokers," Iowa Administrative Code.

The rules are designed to implement 2005 Iowa Acts, chapter 83, effective July 1, 2006, which requires natural persons acting as mortgage bankers and mortgage brokers to register with the Division and to complete continuing education requirements each year. The rules address the processes and requirements for applying for and renewing mortgage banker or mortgage broker individual registrations. The rules also address continuing education requirements for individual registrants. The rules also address the application and renewal requirements for mortgage banker and mortgage broker licenses, establish administrative fees associated with licenses and registrations administered pursuant to Iowa Code chapter 535B, and establish record-keeping and reporting requirements for licensees. Finally, the rules describe the complaint and disciplinary process that applies to mortgage banker and mortgage broker licensees and individual registrants.

Interested persons may make written comments on the proposed rules on or before April 18, 2006. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

Also, a public hearing will be held on Tuesday, April 18, 2006, at 10 a.m. in the Banking Division Conference Room at 200 East Grand Avenue. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Banking at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code sections 17A.3 and 535B.14 and 2005 Iowa Acts, chapter 83.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **new** chapter is proposed.

#### CHAPTER 18 MORTGAGE BANKERS AND MORTGAGE BROKERS

**187—18.1(17A,535B) Definitions.** For the purposes of this chapter, the definitions in Iowa Code chapter 535B shall apply. In addition, unless the context otherwise requires:

"Criminal background check" means a national criminal history check through the Federal Bureau of Investigation.

"Individual registrant" means a natural person who is registered with the administrator in accordance with the provisions of 2005 Iowa Acts, chapter 83, section 6.

"Individual registration" means a written or electronic registration submitted by a natural person to the administrator to act as a mortgage banker or mortgage broker in this state in accordance with the provisions of 2005 Iowa Acts, chapter 83, section 6. To be considered active, an individual registrant must be an employee of or an exclusive agent of a licensee.

"License application" means a written or electronic application submitted to the administrator for a license to operate as a mortgage banker or mortgage broker in accordance with the provisions of Iowa Code section 535B.4.

"Licensee" means a person who has a license to operate as a mortgage banker or mortgage broker in accordance with the provisions of Iowa Code section 535B.4.

"Makes at least four first mortgage loans," as used in Iowa Code section 535B.1(4)<sup>a</sup>, means the person is listed on loan documents as the lender for at least four first mortgage loans.

"Mortgage application" means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. A completed application has all the information that the creditor regularly obtains and considers in evaluating an application for the amount and type of credit requested.

"Services a loan" or "servicing a loan" means undertaking the direct collection of payments on a loan from the borrower or the right to undertake direct collection of payments on a loan from the borrower.

#### **187—18.2(17A,535B) Application for license.**

**18.2(1)** Application for a license to operate as a mortgage banker or mortgage broker shall be on forms provided by the administrator, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration withdrawn if it does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

**18.2(2)** The license application shall be accompanied by a fee of \$500. The fee is not subject to refund.

**18.2(3)** If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 calendar days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

**18.2(4)** The administrator shall approve or deny a license application in accordance with the provisions of Iowa Code section 535B.5. A person shall not be eligible for licensing unless all individual registrants who are employed by, under contract with, or exclusive agents of the person have successfully completed the registration and background checks required by 2005 Iowa Acts, chapter 83, section 6.

**18.2(5)** Licenses expire on the next June 30 after issuance. However, licenses granted on or after April 1 but before July 1 will not expire until June 30 of the following year. For example, a license granted on April 17, 2007, would not expire until June 30, 2008.

#### **187—18.3(17A,535B) Renewal of license.**

**18.3(1)** To remain authorized to act as a mortgage banker or mortgage broker, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before expiration is not authorized to act as a

## BANKING DIVISION[187](cont'd)

mortgage banker or mortgage broker in Iowa after the expiration date.

**18.3(2)** Application to renew a license shall be submitted to the administrator before June 1 of the year of expiration on forms provided by the administrator. All requested information shall be provided to the administrator on or with the application form. Applications for renewal of a license to transact business solely as a mortgage broker must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. The administrator may assess late fees of up to \$10 per day for applications submitted after June 1.

**18.3(3)** Application forms for renewal of a license may be obtained from the administrator's office or will be available on the administrator's Web site. Licensees may renew electronically or by submitting a written application. While the administrator generally mails renewal application forms or reminders to licensees before May 1 preceding license expiration, the failure of the administrator to mail an application form or the failure of a licensee to receive an application form shall not excuse the licensee from the requirement to timely renew.

**18.3(4)** The administrator shall grant an application to renew a license if:

a. The administrator receives the application by June 1, accompanied by the appropriate renewal fee, or the administrator receives the application after June 1 but before July 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee.

b. The application is fully completed with all necessary information.

c. The application does not reveal grounds to deny a license.

**18.3(5)** A renewal application received by the administrator after June 30 may, at the discretion of the administrator, be rejected for processing or may be treated as a new application for license. A licensee who fails to renew a license before the expiration date is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date.

**187—18.4(17A,535B) Individual registration requirements.**

**18.4(1)** A natural person who applies to register pursuant to 2005 Iowa Acts, chapter 83, section 6, to act as a mortgage banker or mortgage broker in this state shall apply with the administrator on forms provided by the administrator. The administrator may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

**18.4(2)** The fee for an initial individual registration is \$50, plus the actual cost of obtaining the criminal background check. The fee is not subject to refund.

**18.4(3)** An applicant must submit to a criminal background check.

**18.4(4)** The administrator may deny an application for individual registration for any of the following reasons:

a. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the applicant's authorization to act as a mortgage banker or mortgage broker or has denied, suspended, revoked or refused to renew a similar license or registration under the other state or jurisdiction's law. An agreement made between a person and another state or jurisdiction not to operate as a mortgage banker or mortgage broker in that state shall be considered a denial of that person's authorization to act as a mortgage banker or mortgage broker in that state.

b. The applicant has been barred, removed, or prohibited from serving in any capacity in a financial institution by any state or federal regulatory agency including but not limited to the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, or the U.S. Department of Housing and Urban Development.

c. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction. For the purposes of this subrule, "conviction" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

d. The applicant has had a professional license of any kind revoked in any state or jurisdiction. An agreement to surrender a license and not to operate in an occupation in which a professional license is required shall be considered a revocation for the purposes of this rule.

e. The applicant is under 18 years of age.

f. The applicant has failed to pay child support and is identified in a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J.

g. The applicant has failed to pay student loans and is identified in a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261.

**18.4(5)** As required by 2005 Iowa Acts, chapter 83, section 6, an individual registrant must be employed by, under contract with, or an exclusive agent of a licensee under Iowa Code section 535B.4. However, the administrator may consider an application for individual registration from a person not currently employed by, under contract with, or an exclusive agent of a licensee. If the administrator determines the applicant is otherwise eligible for individual registration, the administrator shall approve the registration in "unattached" status.

**18.4(6)** An individual registration expires on the next June 30 after acceptance. However, individual registrations approved on or after April 1 but before July 1 will not expire until June 30 of the following year. For example, an application for individual registration approved on April 17, 2007, would not expire until June 30, 2008.

**187—18.5(17A,535B) Renewal of individual registration.**

**18.5(1)** The individual registration must be renewed before expiration. An individual who fails to renew an individual registration before expiration is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date.

**18.5(2)** An individual registration shall be renewed on forms provided by the administrator, and all requested information shall be provided on or with the registration form. An individual registration renewal must be filed with the administrator before June 1 of the year of expiration and must be accompanied by a fee of \$50. The administrator may assess a late fee of \$5 per day, not to exceed \$100, for an individual registration renewal accepted for processing after June 1.

**18.5(3)** Forms for renewal of an individual registration may be obtained from the administrator's office or will be available on the administrator's Web site. Individual registrants may renew electronically or by submitting a written application. While the administrator generally mails renewal

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application forms or reminders to individual registrants before May 1 preceding expiration of individual registration, the failure of the administrator to mail an individual registration renewal form or the failure of an individual registrant to receive an individual registration renewal form shall not excuse the individual registrant from the requirement to timely renew.

**18.5(4)** The administrator may reject an individual registration renewal if the registration is not complete or all required fees, including late fees, are not remitted.

**18.5(5)** The administrator shall grant an application to renew an individual registration if:

a. The administrator receives the registration by June 1, accompanied by the \$50 renewal fee, or the administrator receives the registration after June 1 but before July 1 and it is accompanied by the \$50 renewal fee and the appropriate late fee.

b. The registration is fully completed with all necessary information, including proper disclosure of completion of required continuing education.

c. The registration does not reveal grounds to deny an individual registration.

**18.5(6)** A registration renewal received by the administrator after June 30 may, at the discretion of the administrator, be rejected for processing or may be treated as a new registration. An individual registrant who fails to renew before the expiration date is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date unless specific written permission is provided by the administrator.

**187—18.6(17A,535B) Unattached status of individual registrant.**

**18.6(1)** An individual registration shall be considered to be in unattached status at any time an individual registrant is not employed by, under contract with, or an exclusive agent of a licensee.

**18.6(2)** Unattached status commences when the licensee or the individual registrant notifies the administrator in writing that an individual registrant ceases to be employed by, under contract with, or an exclusive agent of that licensee and will continue until such time that the administrator receives written verification, from a licensee, that the individual registrant is currently employed by, under contract with, or is an exclusive agent of the licensee.

**18.6(3)** An individual registrant in unattached status must comply with all the requirements applicable to individual registrants, such as timely submission of the individual registration renewal form and completion of the continuing education requirements.

**18.6(4)** An individual registrant in unattached status shall not be authorized to act as a mortgage banker or mortgage broker in Iowa unless the individual registrant is employed by, under contract with, or an exclusive agent of persons listed as exemptions pursuant to Iowa Code section 535B.2 as amended by 2005 Iowa Acts, chapter 83, section 4.

**187—18.7(17A,535B) Notice of significant events.** A licensee or individual registrant shall notify the administrator immediately and in writing within three business days of the occurrence of any of the following events.

**18.7(1)** The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

**18.7(2)** A prosecuting authority files criminal charges against the licensee, the individual registrant or any of a licensee's officers, directors, principal stockholders, or affiliates.

**18.7(3)** Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee, individual registrant, or any of the licensee's officers, directors, principal stockholders, or affiliates.

**18.7(4)** The attorney general of Iowa or enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee, individual registrant, or any of the licensee's officers, directors, principal stockholders, or affiliates.

**18.7(5)** The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association suspends or terminates the licensee or individual registrant's status as an approved seller or seller/servicer.

**187—18.8(17A,535B) Changes in the licensee's business; fees.**

**18.8(1)** No licensee or individual registrant shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B as amended by 2005 Iowa Acts, chapter 83, under any name other than that stated on the license or individual registration certificate.

**18.8(2)** A licensee shall notify the administrator of a change of name of the business in writing within ten days of the change. A filing fee of \$25 shall accompany a notice of change of name, in addition to all other information required by the administrator.

**18.8(3)** An individual registrant shall notify the administrator within ten days of a change in the individual registrant's name.

**18.8(4)** A licensee shall notify the administrator of a change in the location, the addition, or the closing of any office in writing prior to the change, addition, or closure.

**18.8(5)** A licensee shall maintain on file with the administrator a list of all individual registrants who are employed by, under contract with, or exclusive agents of the licensee.

**18.8(6)** When an individual registrant ceases to be employed by, under contract with, or an exclusive agent of a licensee, the licensee shall notify the administrator in writing within five business days. The notification shall include the reasons for the termination of the individual registrant's employment, contract, or agency.

**18.8(7)** A licensee shall notify the administrator of the addition of any individual registrant, owner, officer, partner, or director within five business days of addition.

**18.8(8)** Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee or individual registrant to disciplinary action.

**187—18.9(17A,535B) Administrative fees.**

**18.9(1)** Examination and investigation late fees. A licensee shall pay the administrator the total charge for an examination or investigation within 30 days after the administrator has requested payment. If a licensee fails to pay an examination or investigation fee by the due date, the administrator may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

**18.9(2)** Responses to required information late fees. In the process of administering this chapter, the administrator may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the administrator may assess a penalty of \$10 per day after the initial 30 days.

**18.9(3)** License determination letters. A person who requests written confirmation from the administrator that a li-

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license is not required shall submit a fee of \$100 with the written request.

**18.9(4)** Required financial statements. A licensee who fails to file with the administrator the financial statements required under Iowa Code section 535B.10(1) within 120 days after the end of a licensee's fiscal year shall be subject to a late penalty of \$100 for each day the financial statements are delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The administrator may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

**18.9(5)** Duplicate license. The licensee shall pay a fee of \$25 for each duplicate original license issued.

**187—18.10(17A,535B) Continuing education.**

**18.10(1)** Each individual registrant shall annually complete within the continuing education year at least 12 hours of approved continuing education as a condition of registration renewal. The continuing education year shall begin on the first day of May each year and shall end on April 30 the following year. Because individual registrations accepted between April 1 and June 30 are not subject to renewal until June 1 of the following year, an individual registrant has until April 30 of the following year to comply with the continuing education requirements. For example, an individual registration that is accepted on April 17, 2007, would not expire until June 30, 2008. The registration renewal would be due by June 1, 2008, and continuing education would need to be completed within the continuing education year starting May 1, 2007, and ending April 30, 2008.

**18.10(2)** Each continuing education course shall first be approved by the administrator before the administrator grants continuing education credit.

**18.10(3)** Continuing education courses shall focus on issues of the mortgage business or related industry topics.

**18.10(4)** One continuing education hour shall consist of at least 50 minutes of approved instruction. Time used to test a student is also considered time of instruction.

**18.10(5)** The entity providing the continuing education course shall submit to the administrator evidence of satisfactory completion of approved continuing education. This shall include the name, address, and individual registration number of each individual registrant completing the course.

**18.10(6)** Continuing education hours shall not be carried forward from one year to the next.

**18.10(7)** Continuing education hours will not be approved for any individual registrant for the same course in consecutive renewal periods.

**18.10(8)** Each individual registrant shall ultimately be responsible for maintaining verification records in the form of completion certificates or other documents providing evidence of satisfactory completion of approved continuing education courses. Each individual registrant shall provide with that person's individual registration renewal a report in the format provided by the administrator of the courses completed to fulfill the continuing education requirement. The individual registrant shall retain documentation for a period of three years after the effective date of the registration renewal. The administrator may conduct random audits to verify the continuing education submitted by individual registrants.

**18.10(9)** Failure to provide requested evidence of completion of claimed education within 30 days of the written notice from the administrator shall result in the individual registrant's being placed on lapsed status. Prior to the administrator's activating a registration that has been placed on lapsed status pursuant to this rule, the individual registrant

must submit to the administrator satisfactory evidence that all required continuing education has been completed.

**18.10(10)** Each individual registrant who fails to renew shall complete all delinquent continuing education before being approved as an individual registrant, unless the new registration is issued after one year from the lapse of the prior registration.

**18.10(11)** The requirement for completion of continuing education may be waived, or the deadline for completion may be extended, by the administrator under either of the following circumstances:

a. The individual registrant is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in any continuing education year.

b. The individual registrant experiences physical disability, illness, or any extenuating circumstances that prevent successful completion of continuing education.

**187—18.11(17A,535B) Administrative requirements for courses.**

**18.11(1)** All courses of continuing education must receive advance approval of the administrator.

**18.11(2)** Applications to provide continuing education must be submitted on forms provided by the administrator with a \$100 fee. Courses will be approved for 24-month periods, including the month of approval. Approval must be obtained for each course.

**18.11(3)** Each application for approval shall designate an individual as the coordinator who shall be the primary contact with the administrator. The coordinator is responsible for complying with the administrator's rules relating to providers and for submitting reports and information as may be required by the administrator.

**18.11(4)** Providers must submit the course outline and all required forms to the administrator.

**18.11(5)** Potential participants in approved courses shall be clearly informed of the hours to be credited, policies concerning registration, payment of fees, refunds, and attendance requirements.

**18.11(6)** No part of any approved course shall be used to advertise or solicit orally or in writing any product or service.

**18.11(7)** The provider must show that procedures are in place to ensure that the student who completes an approved course is the student who enrolled in the course.

**18.11(8)** The administrator may at any time reevaluate an approved course and may withdraw approval after a 30-day notice to the provider.

**18.11(9)** No approved provider shall provide any information to the public or to prospective students that is misleading in nature.

**18.11(10)** Each approved provider shall establish and maintain for each individual student a complete, accurate, and detailed record of instruction undertaken and satisfactorily completed in the areas of study prescribed by these rules. The records shall be maintained for a period of not less than five years. The administrator shall assign a number to each approved provider and shall assign a number to each approved course. The provider shall include these reference numbers in correspondence with the administrator and must include these numbers on certificates of attendance issued to course participants.

**18.11(11)** Each provider of an approved course shall provide an individual certificate of completion to each individual registrant upon satisfactory completion of the course. The certificate shall be no larger than 8½" × 11" and shall contain the following information:

a. Provider name and number;

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- b. Program, course or activity name and number;
- c. Name, address, and individual registration number of the individual registrant;
- d. Date program, course or activity completed;
- e. Number of approved credit hours; and
- f. Signature of coordinator or other person authorized by the administrator.

**187—18.12(17A,535B) Nonqualifying courses.** The following course offerings do not qualify as continuing education:

- 1. Sales promotion or other meetings held in conjunction with a licensee's general business or courses of a general business nature.
- 2. Course time devoted to breakfast, lunch, or dinner.
- 3. Meetings which are a normal part of in-house staff or employee training.
- 4. Orientation courses for individual registrants.

**187—18.13(17A,535B) Standards for approval of courses of instruction.** The administrator may approve live classroom instruction, distance education programs, and paper home-study courses, subject to the following conditions:

- 1. The course pertains to mortgage topics that are integrally related to the mortgage industry; and
- 2. The course allows the participants to achieve a high level of competence in serving the objectives of consumers who engage the services of licensees; and
- 3. The course qualifies for at least three credit hours; and
- 4. The course shall have an appropriate means of written evaluation by the participants. Evaluations shall include but not be limited to relevance of the material, effectiveness of the presentation, and course content; and
- 5. The course meets the more specific standards according to the presentation method detailed in rules 187—18.14(17A,535B) through 187—18.16(17A,535B).

**187—18.14(17A,535B) Standards for approval of live classroom courses.** The administrator may approve live classroom courses, subject to the following requirements.

**18.14(1)** The course application shall be accompanied by a comprehensive course outline that includes:

- a. Description of course.
- b. Purpose of course.
- c. Level of difficulty.
- d. Detailed learning objectives for each major topic that specify the level of knowledge or competency the student should demonstrate upon completing the course.
- e. Description of the instructional methods utilized to accomplish the learning objectives.
- f. Copies of all instructor and student course materials.
- g. Course examination(s) or the diagnostic assessment method(s) utilized to achieve the course learning objectives.
- h. A description of the plan in place to periodically review course material with regard to changing federal and state statutes.

**18.14(2)** The provider must agree to provide a certificate of completion only to individual registrants who have satisfactorily completed the course. "Satisfactorily completed the course" means the individual was present for at least 80 percent of instruction time (including test time) and scored 70 percent or better in a test conducted upon completion of the course.

**187—18.15(17A,535B) Standards for approval of distance education courses.** The administrator may approve distance education courses, subject to the following requirements:

**18.15(1)** The provider's purpose or mission statement must be available to the public.

**18.15(2)** The course outline must include clearly stated learning objectives and desired student competencies for each module of instruction and a description of how the program promotes interaction between the learner and the program.

**18.15(3)** The course content must be accurate and up-to-date. The provider must describe the plan in place to periodically review course material with regard to changing federal and state statutes.

**18.15(4)** The course must be designed to ensure that student progress is evaluated at appropriate intervals and that mastery of the material is achieved before a student can progress through the course material.

**18.15(5)** The provider must show that qualified individuals are involved in the design of the course.

**18.15(6)** The provider must list individuals who provide technical support to students and state the specific times when support is available.

**18.15(7)** A manual must be provided to each registered student. The manual shall include, but not be limited to, faculty contact information, student assignments and course requirements, broadcast schedules, testing information, passing scores, resource information, fee schedule, and return policy.

**18.15(8)** The provider must retain a statement signed by the student that affirms that the student completed the required work and examinations.

**18.15(9)** The provider must state in the course material that the information presented in the course should not be used as a substitute for competent legal advice.

**18.15(10)** Courses submitted for approval must be sufficient in scope and content to justify the hours requested by the provider.

**18.15(11)** All computer-based continuing education must be completed within six months of the date of purchase.

**18.15(12)** The provider must agree to provide a certificate of completion only to individual registrants who have satisfactorily completed the course. "Satisfactorily completed the course" means the individual completed the required work and scored 90 percent or better in a test conducted upon completion of the course.

**187—18.16(17A,535B) Standards for approval of paper home-study courses.** The administrator may approve paper home-study courses, subject to the following requirements:

**18.16(1)** Courses must be arranged in chapter format and include a table of contents.

**18.16(2)** Overview statements that preview the content of the chapter must be included for each chapter.

**18.16(3)** Courses must be designed to ensure that student progress is evaluated at appropriate intervals. The assessment process shall measure at regular intervals throughout each module of the course what each student has learned and not learned. The student must complete and return quizzes to the provider to receive credit for the course.

**18.16(4)** Final examinations must contain a minimum of 30 questions for a three-hour course and 60 questions for a six-hour course.

**18.16(5)** A passing score of 90 percent is required for course credit to be granted. There is no limit to the number of times a final examination may be taken to achieve a passing score.

**18.16(6)** An individual registrant has six months from the date of purchase to complete all quizzes and assignments and to pass the final examination.

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**18.16(7)** The provider must include information that clearly informs the student of the course completion deadline, passing score required, chapter quiz completion requirements and any other relevant information regarding the course.

**18.16(8)** The provider shall state in the course materials that the information presented in the course should not be used as a substitute for competent legal advice.

**18.16(9)** The provider shall retain a statement signed by the student that affirms that the student completed the required work and examinations.

**18.16(10)** The provider must be available to answer student questions and provide assistance as necessary during normal business hours.

**18.16(11)** Courses submitted for approval must be sufficient in scope and content to justify the hours requested by the provider.

**18.16(12)** The provider must agree to provide a certificate of completion only to individual registrants who have satisfactorily completed the course. "Satisfactorily completed the course" means the individual completed the required work and scored 90 percent or better in a test conducted upon completion of the course.

**187—18.17(17A,535B) Licensee records.**

**18.17(1)** General record requirements. A licensee must keep records that allow the administrator to determine the licensee's compliance with relevant statutes and regulations.

a. The licensee may keep the records as a hard copy or in an electronic equivalent.

b. The licensee shall keep records for at least 25 months from the date of the final transaction with the borrower.

c. The licensee shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for suspension or revocation of a license or registration.

**18.17(2) Required records.**

a. A mortgage broker shall keep an index, application log, application files, and loan files.

b. A mortgage banker shall keep an index, application log, application files, loan register, and loan files. If the mortgage banker also services loans, the mortgage banker must also keep account ledgers.

c. A mortgage banker who only services loans needs to keep only an index, a loan register, loan files, and account ledgers.

**18.17(3)** Index. All records shall be accessible by the borrower's name (including the name of any endorser, comaker, or surety who is indebted to the lender) and account number.

**18.17(4)** Application log. The application log is a chronological list of applications received. It shall include the name of the applicant, date the application was completed, the loan originator, notes for action taken on applications (such as "approved," "denied," or "withdrawn"), and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender.

**18.17(5)** Loan register. The loan register shall include the following information for every loan that is made: the date of the transaction, name of the borrower, the loan originator, name of the lender, and amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

**18.17(6)** Application file. A licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any re-

quired disclosures. A copy of any adverse action taken on the application shall also be placed in the application file.

**18.17(7)** Loan file. A licensee shall maintain a loan file for each loan made. The loan file consists of the application file and documents from the loan closing. These documents include: note, mortgage, all truth-in-lending disclosures, and all real estate settlement procedures Act disclosures. The loan file should include documentation of how the loan proceeds were distributed.

**18.17(8)** Account ledger. A licensee shall maintain an account ledger for each loan that is serviced.

a. The account ledger shall include the following information: the name and address of the borrower, loan number, loan date, payment terms, maturity date, principal amount of loan, amount financed, total of payments, property listed as security, and distribution of the loan proceeds.

b. The account ledger shall include a transaction history. Payments shall be posted to the account ledger effective the date payments were received. Payment entries will show the date payment was received, the total amount of the payment, and a description of how the payment was applied to the borrower's account (amount applied to principal, interest, escrow, late fees, or additional written description). Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

c. The account ledger shall show remaining balances due from the borrower, including principal, escrow, late fees, and other charges.

d. The account ledger shall show any change to the interest rate and the effective date of that change.

e. The account ledger shall include full descriptions of payments made outside the normal course of business, for example, payments made by the sale of security, insurance claim, or endorser. For any payments made by death claims on credit insurance, the date of death shall be noted in the account ledger.

f. When a loan is prepaid in full, the account ledger shall show the dates and amounts of any rebates made to the borrower including escrow rebates and the refunds of unearned insurance premiums.

**18.17(9)** General business records. A licensee must keep the following general business records for at least 36 months:

a. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the mortgage business of such person.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant.

c. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of mortgage lending business.

d. All correspondence and other matters relating to the maintenance of any surety bond required by Iowa Code chapter 535B.

e. Copies of all contractual arrangements or understandings with third parties in any way relating to the provision of mortgage lending services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any noncompete agreements).

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f. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including but not limited to the administrator or any other regulatory or supervisory authority.

g. Copies of all advertisements and solicitations concerning mortgage business directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed.

**187—18.18(17A,535B) Annual report.** On or before April 15 each year, a licensee shall file with the administrator an annual report for the preceding calendar year on forms prescribed by the administrator. For every day after April 15 that the report is not received, the administrator may assess late fees of \$10 per day.

**187—18.19(17A,535B) Advertising and representations to potential borrowers.**

**18.19(1)** Any advertisement of mortgage loans which are offered by or through a licensee or individual registrant shall conform to the following requirements:

a. An advertisement shall be in compliance with Truth-in-Lending, Regulation Z, and any other applicable state and federal laws and regulations.

b. An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

c. An advertisement shall not make any statement or fail to make any statement the result of which shall present a misleading or deceptive impression to consumers.

**18.19(2)** A licensee or individual registrant receiving a verbal or written inquiry about the licensee's or individual registrant's services shall respond accurately to any questions about the scope and nature of such services and any costs.

**187—18.20(17A,535B) Complaints and investigations.**

**18.20(1)** The administrator may, at any time and as often as the administrator deems necessary, investigate the books, accounts, records, and files used by a licensee whose financial statement certified by an independent accounting firm shows a net worth of less than the minimum net worth requirement necessary to be an approved mortgagee by the United States Department of Housing and Urban Development pursuant to its guidelines. The applicable minimum net worth requirements are the net worth requirements described in 24 CFR Section 202.5(n).

**18.20(2)** The administrator may investigate complaints or alleged violations about any licensee, regardless of the licensee's net worth.

**18.20(3)** The administrator may investigate complaints or alleged violations about any individual registrant.

**18.20(4)** The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee business affiliate, or other governmental agency.

b. Notice to the administrator from any source that the licensee or individual registrant has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the administrator from any source that the licensee or individual registrant has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, or of

any crime involving moral turpitude in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction.

**187—18.21(17A,535B) Disciplinary action.**

**18.21(1)** The administrator has authority pursuant to Iowa Code chapters 535B and 17A to impose discipline for violations of Iowa Code chapter 535B and the rules promulgated thereunder.

**18.21(2)** Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in subrules 18.21(3) and 18.21(4) when the administrator finds any of the following:

a. The licensee or individual registrant has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of mortgage banking or mortgage brokering, including but not limited to Iowa Code chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license or individual registration, would have warranted the administrator to refuse originally to issue the license or individual registration.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee or individual registrant fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's or individual registrant's last-known address on file with the administrator.

e. The licensee or individual registrant has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

f. The licensee or individual registrant fails to comply with an order of the administrator.

g. The licensee or individual registrant continues to operate as a mortgage banker or mortgage broker without an active and current license or individual registration.

h. The individual registrant continues to act as a mortgage banker or mortgage broker without first satisfying the required continuing education, absent an express waiver granted by the administrator.

i. The individual registrant has submitted a false report of continuing education.

j. The licensee or individual registrant fails to notify the administrator within three days of the occurrence of one of the significant events set forth in rule 18.7(17A,535B).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's or the individual registrant's license, registration, or authorization to act as a mortgage banker or mortgage broker under the other state's or jurisdiction's law.

l. The licensee or individual registrant fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule of the administrator.

**18.21(3)** The administrator may impose the following disciplinary sanctions against licensees or individual registrants:

a. Suspension of a license or individual registration issued by the administrator.

b. Revocation of a license or individual registration issued by the administrator.

**18.21(4)** The administrator may stay a suspension of a license or individual registration subject to the licensee's or individual registrant's satisfactory completion of the terms of probation. Terms of probation may include, but are not limit-

## BANKING DIVISION[187](cont'd)

ed to, requiring a licensee to provide additional education or training to its staff, requiring an individual registrant to complete additional education or training, requiring a licensee or individual registrant to submit to additional monitoring or oversight during the period of probation, requiring a licensee or individual registrant to institute business practices designed to prevent violations of law, or such other requirements as may be appropriate under the circumstances of the case.

**18.21(5)** A licensee or individual registrant may surrender a license or individual registration by delivering to the administrator a written notice of surrender.

**18.21(6)** The administrator may issue a cease and desist order ordering a person to cease and desist from violating any provision of Iowa Code chapter 535B or rules adopted thereunder. The process for issuing a cease and desist order is described in Iowa Code section 535B.13.

Rules 187—18.1(17A,535B) to 187—18.21(17A,535B) are intended to implement Iowa Code chapter 535B as amended by 2005 Iowa Acts, chapter 83.

**187—18.22(252J) Nonpayment of child support.** The administrator shall deny the issuance or renewal of an individual registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, this rule shall apply.

**18.22(1)** The notice required by Iowa Code section 252J.8 shall be served upon the individual registrant or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the individual registrant or applicant may accept service personally or through authorized counsel.

**18.22(2)** The effective date of the denial of the issuance or renewal of an individual registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the individual registrant or applicant.

**18.22(3)** The administrator's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the individual registrant or applicant.

**18.22(4)** Individual registrants and applicants shall keep the administrator informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the administrator copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**18.22(5)** All administrator fees for applications or individual registration renewal or reinstatement must be paid by individual registrants or applicants, and all continuing education requirements must be met before an individual registration will be issued, renewed or reinstated after the administrator has denied the issuance or renewal of an individual registration pursuant to Iowa Code chapter 252J.

**18.22(6)** In the event an individual registrant or applicant files a timely district court action following service of an administrator notice pursuant to Iowa Code sections 252J.8 and 252J.9, the administrator shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the administrator to proceed. For purposes of determining

the effective date of the denial of the issuance or renewal of an individual registration, the administrator shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**18.22(7)** The administrator shall notify the individual registrant or applicant in writing through regular first-class mail, or such other means as the administrator deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of an individual registration, and shall similarly notify the individual registrant or applicant when the individual registration is issued or renewed following the administrator's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapter 252J.

**187—18.23(261) Nonpayment of student loan.** The administrator shall deny the issuance or renewal of an individual registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to those procedures, this rule shall apply.

**18.23(1)** The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or individual registrant may accept service personally or through authorized counsel.

**18.23(2)** The effective date of the denial of the issuance or renewal of an individual registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or individual registrant.

**18.23(3)** The administrator's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or individual registrant.

**18.23(4)** Applicants and individual registrants shall keep the administrator informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the administrator copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**18.23(5)** All administrator fees required for application, individual registration renewal or reinstatement must be paid by applicants or individual registrants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the administrator has denied the issuance or renewal of an individual registration pursuant to Iowa Code chapter 261.

**18.23(6)** In the event an applicant or individual registrant timely files a district court action following service of an administrator notice pursuant to Iowa Code sections 261.126 and 261.127, the administrator shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the administrator to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of an individual registration, the administrator shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**18.23(7)** The administrator shall notify the applicant or individual registrant in writing through regular first-class mail, or such other means as the administrator deems appropriate in the circumstances, within ten days of the effective

BANKING DIVISION[187](cont'd)

tive date of the denial of the issuance or renewal of an individual registration, and shall similarly notify the applicant or individual registrant when the individual registration is issued or renewed following the administrator's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 261.126 and 261.127.

## ARC 5006B

### IOWA FINANCE AUTHORITY[265]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(15), 16.5(17), 16.91(7) and 16.91(8), the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

The purpose of these amendments is to include participating abstractors in the issuance of title guaranty commitments and certificates in order to expedite and make the process of obtaining title guaranty easier for the lender and the Division. The proposed amendments in 9.6(1), 9.6(2)“a” and 9.6(2)“h”“3” authorize participating abstractors to process title guaranty commitments and certificates for Division issuance, notify participating attorneys that participating abstractors may also issue title guaranty commitments and certificates for the Division, and prohibit participating attorneys from transferring unissued serialized forms to other participants. Additions are made to subrule 9.6(3) in paragraphs “f,” “g,” “h,” and “i” regarding application for processing, training, use of Division forms, and file retention by participating abstractors for the issuance of title guaranty commitments and certificates. Amended rule 265—9.8(16) clarifies that an application for title guaranty may also be submitted to a participating attorney pursuant to Iowa Code section 16.91 or an approved participating abstractor pursuant to new paragraph “f” of subrule 9.6(3). Further, subrule 9.12(1) is amended to include a serialized forms audit of certificates for all participants.

Chapter 9 does not provide for waivers except as required by Iowa Code section 16.91(5), third paragraph. Persons seeking waivers for other matters must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on April 18, 2006. Comments should be addressed to Mark Thompson, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Mark Thompson at (515) 242-4957 or E-mailed to Mark Thompson at [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov). Persons who wish to comment orally should contact Mark Thompson at (515)242-4990.

These amendments are intended to implement Iowa Code sections 16.5(15), 16.5(17), 16.91(7) and 16.91(8).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 subrule 9.6(1) as follows:

**9.6(1) General.** The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty certificates. Title guaranty certificates may be issued by the division, *by participating abstractors for the division pursuant to subrule 9.6(3), paragraph “f,” herein*, or by participating attorneys pursuant to Iowa Code section 16.91(7).

ITEM 2. Amend subrule **9.6(2)**, paragraph “a,” as follows:

a. Authority of participating attorney. A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney's participating agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating attorneys participants, agents, or representatives of the division to transact the business of opining on titles to real estate or issuing commitments or certificates and is further subject to the right of the division to appoint other participating attorneys participants.

ITEM 3. Amend subrule **9.6(2)**, paragraph “h,” numbered paragraph “3,” as follows:

3. Not transfer or attempt to transfer unissued serialized forms to another participating attorney participant or other person or entity unless authorized in writing by the division.

ITEM 4. Amend subrule **9.6(3)** by adding the following new paragraphs “f,” “g,” “h,” and “i”:

f. Issuing title guaranty. A participating abstractor may be authorized pursuant to a written contract with the division director to issue a title guaranty commitment or certificate for the division when the participating attorney who prepares the opinion allows issuance by the participating abstractor. Written contractual approval by the division director for division issuance will be based upon the completion of a division request form by a participating abstractor and the attachment of all disclosures required by the division. A participating abstractor authorized to process a title guaranty commitment or certificate must comply with the Code of Iowa, these rules, manuals, requirements, and any other written or oral instructions given by the division and in no other manner whatsoever. The rights of the participating abstractor under the preceding sentence are not exclusive and are subject to the rights of the authority, the division and of other participants of the division to issue commitments or certificates and are further subject to the right of the division to appoint other participants. A participating abstractor's right to process commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to the written contract with the division.

g. Training. A participating abstractor authorized to process title guaranty commitments and certificates for division issuance shall complete division forms and procedures training prior to processing title guaranty commitments and certificates for division issuance.

h. Title files. A participating abstractor authorized to process title guaranty commitments and certificates for division issuance shall maintain separate title files or maintain

IOWA FINANCE AUTHORITY[265](cont'd)

client files in such a manner that information pertaining to the preparation of the commitments and certificates and all underwriting determinations made by the participating attorney as an agent and underwriter for the division are readily available for review by the division. A participating abstractor shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate or certificates.

i. Forms. The division may provide forms to a participating abstractor for use in processing commitments and certificates for division issuance. The participating abstractor may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division. A participating abstractor who obtains serialized forms from the division must maintain a forms register, in a format approved or supplied by the division, in which the participating abstractor shall enter a record of and show the disposition of all serialized forms. In addition, the participating abstractor shall:

- (1) Return the original of any damaged, spoiled, or otherwise unusable serialized form to the division;
- (2) Return the original of any unused serialized form to the division at the request of the division;
- (3) Not transfer or attempt to transfer unissued serialized forms to another participant or other person or entity unless authorized in writing by the division.

If the participating abstractor fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participating abstractor and, upon written request from the division, the participating abstractor must deliver immediately all division forms and pending title guaranty files to the division.

The participating abstractor shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participating abstractor to account for any form supplied by the division or by reason of the failure of the participating abstractor to comply with the requirements of this rule.

ITEM 5. Amend rule 265—9.8(16) as follows:

**265—9.8(16) Application for title guaranty certificates.**

The division may authorize entities engaged in the real estate industry to apply directly to the division, *to a participating attorney pursuant to Iowa Code section 16.91(7), or to a participating abstractor approved to issue title guaranty pursuant to subrule 9.6(3), paragraph "f,"* for a title guaranty commitment or certificate ~~to be issued by the division~~. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry which the division may authorize include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(27), and closing and escrow companies.

ITEM 6. Amend subrule 9.12(1) as follows:

**9.12(1)** Serialized forms audit. The division will periodically supply to a ~~participating attorney participant~~ who issues title guaranty certificates a list of all serialized forms that, according to the division's records, are in the custody and control of the ~~participating attorney participant~~. The ~~participating attorney participant~~ shall, within 15 days of receipt of the list of serialized forms, return the list to the division either with a certification that it is correct, or with an ex-

planation of any discrepancies between the records of the division and *those of the participating attorney participant*.

## ARC 5019B

### 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 52, "Wildlife Refuges," Iowa Administrative Code.

This amendment deletes the Iowa River Corridor Wildlife Area in Iowa County from the list of wildlife refuges.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend a 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.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

Amend subrule **52.1(2)**, paragraph "**a**," by rescinding the entry Iowa River Corridor Wildlife Area, Iowa County, from the list of wildlife refuges.

**ARC 5018B**  
**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 91, “Waterfowl and Coot Hunting Seasons,” Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Season dates are adjusted annually to comply with federal law and to ensure that seasons open on a weekend.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau’s Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department’s Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, 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 a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and request specific accommodations.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 subrules 91.1(2) and 91.1(3) as follows:

**91.1(2)** Season dates - north zone. For canvasbacks: October 22 21 through November 20 19. For all other species: September 17 23 through September 24 27 and October 15 14 through December 8 7.

**91.1(3)** Season dates - south zone. For canvasbacks: October 29 28 through November 27 26. For all other species: September 24 23 through September 28 27 and October 22 21 through December 15 14.

ITEM 2. Amend subrules 91.3(2) and 91.3(3) as follows:

**91.3(2)** Season dates - north zone. Canada geese and brant: ~~October 1 September 30~~ through October 9 8, October

15 14 through December 4 3 and December 24 23 through January 2, 2006 1, 2007. White-fronted geese: ~~October 1 September 30~~ through December 11 10. Light geese (white and blue-phase snow geese and Ross’ geese): ~~October 1 September 30~~ through January 15, 2006 14, 2007.

**91.3(3)** Season dates - south zone. Canada geese and brant: ~~October 1 September 30~~ through October 9 8 and October 22 21 through December 4 3 and December 24 23 through January 9, 2006 8, 2007. White-fronted geese: ~~October 1 September 30~~ through December 11 10. Light geese (white and blue-phase snow geese and Ross’ geese): ~~October 1 September 30~~ through January 15, 2006 14, 2007.

ITEM 3. Amend subrule 91.3(7), introductory paragraph, as follows:

**91.3(7)** Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross’ geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January 16, 2006 15, 2007, through April 15, 2006 2007.

ITEM 4. Amend subrule **91.3(8)**, paragraph “b,” as follows:

b. Season dates. September 10 9 through September 11 10.

ITEM 5. Rescind and reserve subrule **91.4(2)**, paragraph “1.”

ITEM 6. Amend rule 571—91.6(481A) as follows:

**571—91.6(481A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held on October 8 and 9, 2005 7 and 8, 2006, in the north duck hunting zone and October 8 and 9, 2005 7 and 8, 2006, in the south duck hunting zone. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in subrule 91.1(1). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

**ARC 5020B**

**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, the Natural Resource Commission hereby gives Notice of Intended Action to adopt new Chapter 95, “Game Harvest Reporting and Landowner-Tenant Registration,” Iowa Administrative Code.

These rules give the regulations for reporting the harvest of deer and wild turkey and the procedures for landowners

## NATURAL RESOURCE COMMISSION[571](cont'd)

and tenants to verify their eligibility for free deer and wild turkey hunting licenses.

Any interested person may make written suggestions or comments on the proposed rules on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, 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 a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and request specific accommodations.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **new** chapter is proposed.

## CHAPTER 95

GAME HARVEST REPORTING AND  
LANDOWNER-TENANT REGISTRATION

**571—95.1(481A) Harvest reporting system.** Deer and turkey hunters must report each deer and wild turkey harvested to the department of natural resources (DNR) harvest reporting system. The hunter whose name is on the transportation tag is responsible for making the report. Hunters who do not bag a deer or wild turkey do not report.

**95.1(1) Reporting deadlines.**

a. Deer. A harvest report must be made by midnight on the day after the day of the kill, before the deer is taken to a locker, before the deer is processed for consumption, or before the hunter leaves the state, whichever occurs first.

b. Wild turkey. A harvest report must be made no later than midnight on the day of the kill, before the turkey is taken to a locker, before the turkey is processed for consumption, or before the hunter leaves the state, whichever occurs first.

**95.1(2) Method of reporting.** Hunters may report the harvest in one of three ways:

a. By calling the DNR toll-free harvest reporting telephone number. The telephone number will be in operation from 6 a.m. to midnight each day during hunting seasons and for the legal reporting period after the season.

b. By reporting through the Internet using the DNR online harvest reporting system. The system will function 24 hours a day, seven days a week during hunting seasons and for the legal reporting period after the season.

c. By visiting an electronic licensing system for Iowa (ELSI) license agent during the license agent's normal business hours. Reports may be made through ELSI whenever

hunting seasons are open and for the legal reporting period after the seasons.

**95.1(3) Report confirmation.** After the report is made, the hunter will be given a coded number to write on the transportation tag to verify that the hunter has reported the kill. The confirmation number must remain on the transportation tag, and the tag must remain attached to the deer or wild turkey until the deer or turkey is processed for consumption.

**571—95.2(481A) Verifying eligibility for free landowner or tenant licenses.** Eligibility for free and reduced-fee deer and wild turkey hunting licenses is defined in Iowa Code section 483A.24, rule 571—98.5(483A) and rule 571—106.12(481A). A landowner or tenant must verify the landowner's or tenant's eligibility prior to obtaining a free or reduced-fee hunting license, or ELSI shall not issue the license. Registering once will enable a landowner or tenant and any eligible family members to receive all the free licenses for which the landowner or tenant is eligible. In order to register, a person must have a customer record in ELSI. A person without an ELSI customer record must call the ELSI online telephone ordering system to establish a customer record before registering.

**95.2(1) Method of registration.** A landowner or tenant may register in one of the following ways:

a. Landowners. A person who qualifies as a landowner on at least one parcel of land may register on the Internet through the ELSI online license sales system, or by calling the ELSI telephone ordering system, or by submitting an application through the mail. The online system and the ELSI telephone ordering system are available 24 hours a day, seven days a week. An online or telephone registrant may immediately obtain a free license once the registration process is complete. A person who registers through the mail may have to wait up to five business days after the form is received by DNR to obtain a free license.

b. Tenants. A person who qualifies as a tenant but does not own any qualifying land shall register through the mail by submitting an application or affidavit obtained from DNR. A tenant may have to wait up to five business days after the application is received by DNR before obtaining a free license.

**95.2(2) Information required to verify eligibility.**

a. Landowners. A landowner shall be required to provide the landowner's ELSI customer number, Iowa driver's license number, or social security number to identify the landowner's ELSI customer record. The landowner shall also provide the county number and taxpayer parcel identification number from the landowner's current property tax statement for one parcel of qualifying land. Qualifying family members must be registered to that same parcel.

b. Tenants. A tenant shall provide an application that contains the tenant's ELSI customer number, Iowa driver's license number, or social security number to identify the tenant's ELSI customer record. The tenant shall attach to the application a copy of the tenant's USDA Farm Services Agency (FSA) Form AD-1026A from one parcel of qualifying land. All persons who qualify as family members must be listed on the application. A qualifying tenant who rents land from an owner who does not participate in USDA farm programs and is not registered with FSA may submit an affidavit which documents that the tenant rents agricultural land and which includes, for verification purposes, the name, telephone number and signature of the owner.

**95.2(3) Forms.** Applications and affidavits may be obtained online at [www.iowadnr.com](http://www.iowadnr.com), at DNR offices, or by calling (515)281-5918.

## NATURAL RESOURCE COMMISSION[571](cont'd)

**95.2(4)** Registration renewal. A landowner or tenant shall renew the landowner's or tenant's registration whenever the landowner's or tenant's eligibility or the eligibility of a family member changes. A landowner or tenant shall renew the landowner's or tenant's registration after three years to retain free-license privileges.

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

**ARC 5021B****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, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkey during the spring and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. The amendments eliminate resident spring turkey hunting zones and license quotas, change the daily bag limit, require reporting of harvested turkeys through the harvest reporting system, and require landowners and tenants to preregister to obtain free turkey hunting licenses.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, 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 a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and request specific accommodations.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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—98.1(483A) as follows:

**571—98.1(483A) General.** Wild turkey may be taken during the spring season subject to the following:

**98.1(1) License.** All hunters must have in possession a wild turkey spring hunting license valid for the current year when hunting wild turkey. No one, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another hunter. A hunter having a license valid for one of the spring turkey seasons may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license for any of the spring seasons in any zone. The hunter who is assisting may not shoot a turkey or carry a firearm or bow unless the hunter has a valid license with an unused tag for the current season and zone. If a turkey is taken, it must be tagged with the tag issued to the hunter who shot the turkey.

a. Two types of licenses will be issued.

(1) Combination shotgun-or-archery license. Combination shotgun-or-archery licenses shall be issued by zone and season and shall be valid in the designated zone and for the designated season only.

(2) Archery-only license. Archery-only licenses shall be valid statewide and shall be valid during all seasons open for spring turkey hunting, except the youth season.

b. Number of licenses. No one may apply for or obtain more than two paid spring wild turkey hunting licenses. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. If two paid combination shotgun-or-archery licenses are obtained, at least one must be for season 4 in any zone. If one paid combination shotgun-or-archery license and one archery-only license are obtained, the combination shotgun-or-archery license must be for season 4 in any zone.

**98.1(2) Daily bag and possession limits limit.** Daily bag limit Season possession limit, including daily bag limit, is one bearded (or male) wild turkey. Possession limit and season limit is one bearded (or male) wild turkey per license.

**98.1(3) Shooting hours.** Shooting hours shall be from one-half hour before sunrise to sunset.

ITEM 2. Amend rule 571—98.3(483A) as follows:

**571—98.3(483A) Procedures to obtain licenses.** All spring wild turkey hunting licenses will be sold or may be applied for using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased through ELSI license agents, by calling the ELSI telephone ordering system, or through the ELSI Internet license sales Web site.

**98.3(1) Spring wild turkey hunting licenses** will be sold beginning December 15 through the last day of the season for which the license is valid, or until quotas (if any) are filled, whichever occurs first. No one may obtain more than one limited quota license.

**98.3(2) License quotas.** Separate quotas will be established for each license type. There will be no quotas for combination shotgun-or-archery licenses or for archery-only licenses for resident hunters.

a. Combination shotgun-or-archery licenses. A limited number of combination shotgun-or-archery hunting licenses will be issued for each season in Zones 1, 2 and 3. There shall be no limit on combination shotgun-or-archery licenses in any season in Zone 4. The same quota shall apply to Zones 1, 2 and 3 in all four seasons. The maximum number of com-

NATURAL RESOURCE COMMISSION[571](cont'd)

combination shotgun-or-archery licenses that will be issued in each zone for each season is as follows:

- (1) Zone 1. 65.
- (2) Zone 2. 125.
- (3) Zone 3. 80.
- (4) Zone 4. No limit.

b. Archery-only licenses. The number of archery-only licenses shall not be limited.

**98.3(3)** Landowner/tenant licenses. An eligible landowner or tenant may obtain a free combination shotgun-or-archery license or a free archery-only license. Nonresident landowners are not eligible for free turkey hunting licenses.

a. Free combination shotgun-or-archery licenses. A free combination shotgun-or-archery license will be issued by season and will be valid only on the farm unit of the landowner or tenant.

b. Free archery-only licenses. A free archery-only license will be valid for all seasons but only on the farm unit of the landowner or tenant.

c. Number of licenses. One paid combination shotgun-or-archery license or one paid archery-only license may be obtained in addition to the free shotgun-or-archery license or the free archery-only license. If a free archery-only license and a paid combination shotgun-or-archery license are obtained, the shotgun-or-archery license must be for season 4 in any zone. If a free shotgun-or-archery license and a paid archery-only shotgun-or-archery license are obtained, the free license must be for season 4 one of the licenses must be for season 4.

ITEM 3. Adopt **new** subrule 98.5(8) as follows:

**98.5(8)** Registration of landowners and tenants. Landowners and tenants and their eligible family members who want to obtain free spring wild turkey hunting licenses must register with DNR before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

ITEM 4. Amend subrule 98.6(1) as follows:

**98.6(1)** Licenses. A special youth spring wild turkey hunting license valid statewide may be issued to any Iowa resident who is 15 years old or younger on the date the youth purchases the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible. Each participating youth must be accompanied by an adult who possesses a valid wild turkey spring hunting license for one of the seasons and a hunting license, and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times. A person may obtain only one youth turkey hunting license but may also obtain one wild turkey spring hunting archery-only license or one combination shotgun-or-archery license for season 4 in any zone.

ITEM 5. Adopt **new** rule 571—98.7(481A) as follows:

**571—98.7(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

ITEM 6. Adopt **new** rule 571—98.15(481A) as follows:

**571—98.15(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

## ARC 5015B

### 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, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

The amendments list license quotas for antlerless deer licenses, remove many restrictions on seasons in which antlerless-only licenses may be used, require landowners and tenants to register before obtaining free deer licenses, and require all hunters who shoot deer to report each kill to the Department.

The Commission gives notice that the final amendments may have to be changed substantially from those published in this Notice of Intended Action depending on pending legislative action and the outcome of deer population surveys currently underway. If surveys indicate that the deer harvest must be substantially increased or reduced in some regions to meet the Department's goals for herd management, additional changes may be made. Such changes could include season dates, bag limits, antlerless-deer-only license quotas, number and type of seasons, license types and other changes that may be deemed necessary.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, 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 a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and request specific accommodations.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend subrule **106.1(1)**, paragraph “**b**,” as follows:

b. Antlerless-deer-only licenses. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as designated on the license selected by the hunter at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons designated on the license selected by the hunter at the time the license is obtained. Free and reduced-fee antlerless-deer-only licenses shall be available only in seasons and counties where paid antlerless-deer-only licenses are available.

ITEM 2. Amend subrules 106.1(6) and 106.1(7) as follows:

**106.1(6)** January antlerless-deer-only licenses. Only antlerless-deer-only licenses, paid or free, will be issued for the January antlerless-deer-only season. Free and reduced-fee antlerless-deer-only licenses shall be available only in counties where paid antlerless-deer-only licenses are available.

**106.1(7)** Free and reduced-fee deer licenses for landowners and tenants. One free any-deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or tenant or eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free any-deer license shall be available for one of the following seasons: the youth/disabled hunter season, bow season, early muzzleloader season, or late muzzleloader season or first or second regular gun season seasons. Persons who obtain a free any-deer license may also obtain one free antlerless-deer-only license and two reduced-fee antlerless-deer-only licenses. The one free antlerless-deer-only license and two reduced-fee antlerless-deer-only licenses shall each be valid for one of the following seasons in any combination: youth/disabled hunter season, bow season, early muzzleloader season, or late muzzleloader season, first or second regular gun season, or November antlerless-deer-only season, or the January antlerless-deer-only season. Licenses for the November antlerless-deer-only season and the January antlerless-deer-only season will be available only if a portion of the farm unit lies within a county open during those seasons. One additional The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and may be obtained only if a portion of the farm unit is located in a county that is open during that season. The reduced-fee antlerless-deer-only licenses shall be valid for the youth/disabled hunter season, bow season, early or late muzzleloader season, first or second regular gun season, or November antlerless-deer-only season.

ITEM 3. Amend subrule 106.2(5) as follows:

**106.2(5)** January antlerless-deer-only season. Antlerless deer may be taken from January 11 through the second following Sunday. The season will be extended seven additional days in the southern two tiers of counties.

ITEM 4. Amend rule 571—106.6(481A) as follows:

**571—106.6(481A) Paid deer license quotas and restrictions.** Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

**106.6(1)** Paid any-deer licenses. Residents may purchase no more than two paid any-deer licenses, one for the bow sea-

son and one for either one of the following seasons: the youth/disabled hunter season, early muzzleloader season, or late muzzleloader season, or first regular gun season or second regular gun season. No more than 7,500 paid statewide any-deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid any-deer licenses issued in the youth/disabled hunter, bow, late muzzleloader, or first regular gun season or second regular gun season.

**106.6(2)** Paid antlerless-deer-only licenses. Paid Quotas of paid antlerless-deer-only licenses will be established by county and deer population management area. have quotas for each county and These licenses will be sold for each county until county or population management area quotas are reached. The season that may be hunted with paid antlerless-deer-only licenses and the number that may be purchased depend on the season for which any-deer licenses have been purchased.

a.—Bow season.—A person who purchases a paid any-deer bow license may purchase antlerless-deer-only licenses, but the type and number that may be purchased depend on the season for which the paid any-deer firearm license is purchased (see paragraphs “b” through “f”). Prior to October 1, if no paid any-deer firearm license is purchased, up to three paid antlerless-deer-only licenses may be purchased for the bow, first or second regular gun, or late muzzleloader season and up to three licenses may be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of antlerless-deer-only licenses may be purchased for these seasons. No person may obtain paid licenses of any type for both regular gun seasons.

b.—First regular gun season.—Prior to October 1, a person who purchases a paid any-deer license for the first regular gun season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow, first regular gun and late muzzleloader seasons and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. No person obtaining a paid license for the first regular gun season may obtain a paid license of any type for the second regular gun season.

c.—Second regular gun season.—Prior to October 1, a person who purchases a paid any-deer license for the second regular gun season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow, second regular gun or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. No person obtaining a paid license for the second regular gun season may obtain a paid license of any type for the first regular gun season.

d.—Early muzzleloader season.—Prior to October 1, a person who purchases an any-deer license for the early muzzleloader season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow or early muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons.

e.—Late muzzleloader season.—Prior to October 1, a person who purchases a paid any-deer late muzzleloader season license may purchase the following paid antlerless-deer-only

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licenses: up to three licenses for the bow, first regular gun or second regular gun, or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of licenses may be purchased for these seasons. No person may obtain paid licenses of any type for both regular gun seasons.

f. Paid any-deer license not purchased. Prior to October 1, a person who does not purchase a paid any-deer license for any season may purchase the following antlerless-deer-only licenses: up to three licenses for the bow, first regular gun or second regular gun, or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of these licenses may be purchased. No person may obtain paid licenses of any type for both regular gun seasons.

a. Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, but such licenses must be used in the season, county or deer population management area selected at the time the license is purchased.

b. Exception. No one may hunt in both the first regular gun season and second regular gun season with paid licenses, whether the licenses are any-deer or antlerless-deer-only.

c. Prior to October 1, a hunter may purchase up to three antlerless-deer-only licenses for any season. Beginning October 1, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season until county or deer population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

~~106.6(3) November antlerless-deer-only season. Beginning the second Saturday prior to the opening of the November antlerless-deer-only season, an unlimited number of paid antlerless-deer-only licenses may be purchased for the November antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained. Licenses will be sold until county quotas are filled.~~

~~106.6(4-3) January antlerless Antlerless-deer-only licenses for the November and January seasons. Antlerless-deer-only licenses for the November antlerless-deer-only season and the January antlerless-deer-only season shall be available in all the following counties: Adair, Adams, Allamakee, Appanoose, Benton, Bremer, Buchanan, Cass, Cedar, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Fremont, Guthrie, Harrison, Henry, Iowa, Howard, Jackson, Jasper, Jefferson, Jones, Johnson, Keokuk, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Winneshiek, and Woodbury. Prior to October 1, a person may purchase up to three antlerless-deer-only licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of licenses may be obtained until quotas are filled. January antlerless-deer-only licenses may be obtained regardless of any other deer licenses that may have been obtained.~~

~~106.6(5 4) Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.12(481A).~~

**106.6(6 5) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available to eligible persons by county as follows:

County	Quota
Adair	1500
Adams	1650
Allamakee	3000
Appanoose	3000
Audubon	200 0
Benton	1000
Black Hawk	150 0
Boone	500
Bremer	500
Buchanan	500
Buena Vista	100 0
Butler	1000
Calhoun	100 0
Carroll	150 0
Cass	600
Cedar	1000
Cerro Gordo	150 0
Cherokee	100 0
Chickasaw	1500
Clarke	1250
Clay	100 0
Clayton	3500
Clinton	1200
Crawford	150 0
Dallas	1500
Davis	3000
Decatur	2500
Delaware	1200
Des Moines	2000
Dickinson	100 0
Dubuque	2000
Emmet	100 0
Fayette	2000
Floyd	500
Franklin	350
Fremont	850
Greene	250
Grundy	100 0
Guthrie	2500
Hamilton	200
Hancock	100 0
Hardin	500
Harrison	700
Henry	1900
Howard	1200
Humboldt	100 0
Ida	100 0
Iowa	1200
Jackson	1600
Jasper	950
Jefferson	1800
Johnson	1900
Jones	1400
Keokuk	1500
Kossuth	300 0
Lee	2500
Linn	1700
Louisa	1500
Lucas	1050
Lyon	100 0
Madison	1500
Mahaska	1100

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County	Quota
Marion	1200
Marshall	500
Mills	850
Mitchell	400
Monona	650
Monroe	2500
Montgomery	800
Muscatine	1500
O'Brien	400 0
Osceola	400 0
Page	1100
Palo Alto	400 0
Plymouth	450 0
Pocahontas	400 0
Polk	750
Pottawattamie	1100
Poweshiek	750
Ringgold	2250
Sac	400 0
Scott	1100
Shelby	200 0
Sioux	450 0
Story	400
Tama	800
Taylor	2100
Union	1500
Van Buren	3500
Wapello	2000
Warren	1150
Washington	1900
Wayne	2500
Webster	250 0
Winnebago	400 0
Winneshiek	2500
Woodbury	750
Worth	250 0
Wright	400 0

ITEM 5. Rescind subrule 106.7(3) and adopt the following **new** subrule in lieu thereof:

**106.7(3)** Muzzleloader seasons. Only muzzleloading rifles and muzzleloading pistols will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun, or bow as described in 571—subrule 94.7(1). Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Legal handgun calibers are listed on the department of natural resources list of “Acceptable Handgun Calibers for Hunting Deer in Iowa.” Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Muzzleloading handguns must be .44 caliber or larger, shooting single projectiles only.

ITEM 6. Amend subrule 106.7(5) as follows:

**106.7(5)** January antlerless-deer-only season. Bows, shotguns, muzzleloaders and handguns as described in this rule may be used during the January antlerless-deer-only season. Centerfire rifles .24 caliber or larger *may be used during the last seven days of the season in the southern two tiers of*

*counties. Semiautomatic rifles may have no more than six rounds in the chamber and magazine combined. and with a capacity of no more than six rounds in the chamber and magazine combined may also be used during the extended portion of the January antlerless-deer-only season that is open only in the southern two tiers of counties.*

ITEM 7. Rescind subrule 106.7(7) and adopt the following **new** subrule in lieu thereof:

**106.7(7)** Discharge of firearms from highway. No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. “Highway” means the way between property lines open to the public for vehicle traffic, including a road ditch, as defined in Iowa Code section 321.1(78).

ITEM 8. Rescind subrule 106.8(3) and adopt the following **new** subrule in lieu thereof:

**106.8(3)** Providing false information.

a. Any person who provides false information about the person’s identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person’s hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year.

b. Any person who provides false information about the person’s personal identity or eligibility for resident deer licenses shall have the person’s hunting license revoked pursuant to the authority of rule 571—15.6(481A), and the person shall not be issued a hunting license for one year.

c. In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

ITEM 9. Amend subrule **106.10(1)**, paragraphs “a” and “b,” as follows:

a. Youth deer hunt. A youth deer license may be issued to any Iowa resident who is at least 12 years old but not over 15 years old on the day the youth obtains the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free any-deer license for which the youth’s family is eligible. ~~The youth must possess a valid hunter education certificate issued by a state wildlife agency to obtain a license.~~

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times.

A person may obtain only one youth paid any-deer license but may also obtain the following additional licenses: ~~prior to October 1, one paid any-deer bow or paid any-deer firearm season license; up to three antlerless-deer-only licenses for the bow, first or second regular gun or late muzzleloader season; and up to three antlerless-deer-only licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of these licenses may be obtained. any other paid or free any-deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner with which other~~

## NATURAL RESOURCE COMMISSION[571](cont'd)

~~hunters obtain them, as described in 106.6(2). No person may obtain a paid license of any type for both the first and second regular gun seasons. Beginning November 12, a youth hunter may purchase an unlimited number of licenses for the November antlerless-deer-only season until quotas fill.~~

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one any-deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). Forms are available online at [www.iowadnr.com](http://www.iowadnr.com), by visiting the DNR central office or any district office, or by calling (515)281-5918. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain ~~one paid any-deer bow license and up to three antlerless-deer-only licenses for the youth/disabled hunter or bow season.~~ *any other paid and free any-deer and antlerless-deer-only licenses that are available to other hunters.*

ITEM 10. Rescind subrule 106.12(7) and adopt the following **new** subrule in lieu thereof:

**106.12(7)** Number of licenses that may be obtained. The maximum number of free any-deer licenses for the youth/disabled hunter season, bow season, first and second regular gun seasons, early muzzleloader season or late muzzleloader season is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). The maximum number of free and reduced-fee antlerless-deer-only licenses that may be issued to the landowner (or family member) is four. One free antlerless-deer-only license and two reduced-fee antlerless-deer-only licenses may be issued in any combination for the following seasons: youth/disabled hunter season (if eligible), bow season, November antlerless-deer-only (if any part of the farm unit is in a county open during this season), first and second regular gun seasons, early muzzleloader season and late muzzleloader season. An additional free antlerless-deer-only license for the January antlerless-deer-only season is available to the landowner (or family member) and tenant (or family member) if any part of the farm unit is in a county open during this season. The tenant (or family member) may obtain the same number and type of licenses as the landowner (or family member). If there is no tenant, the landowner family is restricted to one free any-deer license, one free antlerless-deer-only license, two reduced-fee licenses and one antlerless-deer-only for the January season (if available for the farm unit). The tenant family is restricted to the number of tenant licenses described above even if the tenant farms land for more than one landowner.

ITEM 11. Adopt **new** subrule 106.12(8) as follows:

**106.12(8)** Registration of landowners and tenants. Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

ITEM 12. Adopt **new** rule 571—106.13(481A) as follows:

**571—106.13(481A) Harvest reporting.** Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

**ARC 5016B****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 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

This amendment reduces the bag limit for white-tailed jackrabbits from two daily and four in possession to one daily and two in possession.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. Persons may present their views either orally or in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend a 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.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

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

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

**ARC 5017B****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 108, “Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons,” Iowa Administrative Code.

These amendments add a new trapping season for river otters.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 18, 2006. Written comments may be directed to the Wildlife Bureau’s Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 18, 2006, from 6:30 to 9 p.m. Interested persons should contact the Department at (515)281-5918 or go to the Department’s Web site at [www.iowadnr.com](http://www.iowadnr.com) for a list of hearing locations. At the hearings, persons may present their views either orally or in writing. At the hearings, 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 a 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 481A.5, 481A.6, 481A.8 and 481A.39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **571—Chapter 108**, title, as follows:

CHAPTER 108

MINK, MUSKRAT, RACCOON, BADGER, OPOSSUM,  
WEASEL, STRIPED SKUNK, FOX (RED AND GRAY),  
BEAVER, COYOTE, RIVER OTTER, BOBCAT, GRAY  
(TIMBER) WOLF AND SPOTTED SKUNK SEASONS

ITEM 2. Amend rule 571—108.6(481A) as follows:

**571—108.6(481A) Otter, bobcat Bobcat, gray (timber) wolf, and spotted skunk.** Continuous closed season.

ITEM 3. Renumber rule **571—108.7(481A)** as **571—108.9(481A)** and adopt the following new rules:

**571—108.7(481A) River otter trapping.**

**108.7(1)** License requirements. Each person who traps river otters shall have a valid fur harvester license and pay the habitat fee if normally required to have a license to trap.

**108.7(2)** Areas open to trapping. Trapping for river otters is open statewide.

**108.7(3)** Quotas and seasonal bag limit.

a. Seasonal bag limits. The seasonal bag limit is two river otters per trapper.

b. Quotas. The quota for the number of river otters that may be taken is 400 statewide. The season shall end when the number of river otters trapped, as determined by the harvest reporting system, reaches 400. Trappers shall be allowed a 72-hour grace period after the quota is reached to clear their traps of river otters. River otters found in traps during the grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper’s personal bag limit. River otters trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

**108.7(4)** Season dates. The season for trapping river otters opens on the same date as the trapping seasons described in 571—108.1(481A) and closes when the quota has been reached, as explained in this rule, or on January 31 of the following year, whichever occurs first.

**108.7(5)** Reporting requirements.

a. A trapper, including a landowner or tenant not required to have a fur harvester license, who bags a river otter must report the harvest to a DNR conservation officer within 24 hours. The trapper must arrange to receive a CITES tag or Iowa river otter harvest tag from the officer within 72 hours of the time the harvest is reported or before the river otter is skinned, whichever first occurs.

b. Conservation officer reporting. Upon receiving a telephone report from a trapper that a river otter has been legally taken, conservation officers will call the department’s harvest reporting system. The number of river otters taken will be updated daily, and a message will be recorded on the department’s telephone system. The number taken will be available 24 hours a day. Trappers may check the message daily to determine when the season closes and when the grace period begins and ends. The department will use all practical means to publicize these dates.

**108.7(6)** Tagging requirements. Every river otter that may legally be kept by a trapper must have a CITES tag or Iowa river otter harvest tag attached. Tags will be supplied by the conservation officer. The tag must remain with the pelt until the pelt is sold or used for other purposes that render it no longer available for sale. Persons displaying river otters as taxidermy mounts or other decorative items must keep the tags in their possession as proof of legal harvest.

**571—108.8(481A) Accidental capture of a river otter or bobcat during a closed season.** A person who accidentally captures a river otter or bobcat during a closed season or after the person’s individual bag limit has been reached shall not be penalized provided that:

1. The river otter or bobcat is captured during a legal trapping season or as part of a legal depredation control process; and

2. A conservation officer is contacted within 24 hours and the river otter or bobcat and all parts thereof are turned over to a conservation officer as soon as practical.

**ARC 4990B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.53, the Professional Licensure Division hereby gives Notice of Intended Action to amend Chapter 16, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The proposed amendments remove the requirement that a member of the licensee's board be a member of the Impaired Practitioner Review Committee and add the option for a board member to be invited to attend a meeting of the Committee as needed.

Any interested person may make written comments on the proposed amendments no later than April 18, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 18, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. It is requested that, if possible, oral presentations also be shared in writing; however, this is not required. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 subrule **16.3(7)** and renumber subrule **16.3(8)** as **16.3(7)**.

ITEM 2. Amend subrule 16.4(2) as follows:

**16.4(2)** ~~Each board shall appoint a committee member designated in subrule 16.3(7).~~ *Upon request of the committee, the board chairperson or other licensed designee of the board under which the licensee is regulated may join the committee to provide consultation when a licensee of that board is being reviewed.*

**ARC 4988B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 80, "Administrative and Regulatory Authority for the Board of Dietetic Examiners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than April 18, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 18, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

Amend rule **645—80.1(17A,152A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**ARC 4993B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 130, "Administrative

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

and Regulatory Authority for the Board of Examiners for Massage Therapy,” Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than April 18, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 18, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

Amend rule **645—130.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**ARC 4989B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 206, “Licensure of Occupational Therapists and Occupational Therapy Assistants,” Iowa Administrative Code.

The proposed amendments provide additional flexibility in the supervision of occupational therapy assistants during the screening process.

Any interested person may make written comments on the proposed amendments no later than April 18, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 18, 2006, from 1:30 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record

and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 definition of “occupational therapy screening” in rule **645—206.1(147)** as follows:

“Occupational therapy screening” means a brief process ~~carried out~~ *which is directed by an occupational therapist in order for the occupational therapist to render a decision as to whether the individual warrants further, in-depth evaluation and which includes:*

1. Assessment of the medical and social history of an individual;
2. Observations related by that individual’s caregivers;
- or
3. Observations or nonstandardized tests, or both, administered to an individual by the occupational therapist ~~to render a decision as to whether that individual warrants further, in-depth evaluation by an occupational therapist or an occupational therapy assistant under the direction of the occupational therapist.~~

ITEM 2. Amend subrule 206.8(2) and subrule 206.8(3), introductory paragraph, as follows:

**206.8(2)** Occupational therapy screening shall be ~~conducted~~ *directed by an occupational therapist and shall not be delegated to an occupational therapy assistant or an unlicensed person.*

**206.8(3)** A licensed OTA, OTA limited permit holder or OTA applicant working prior to licensure shall be supervised by a licensed occupational therapist. *The occupational therapist must be involved in the delivery of services during all aspects of service delivery, including screening, evaluation, intervention and outcome evaluation. The occupational therapist may delegate responsibilities to the occupational therapy assistant. The supervisor occupational therapist shall:*

**ARC 5001B****PUBLIC HEALTH  
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 42, “Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists,” Iowa Administrative Code.

The following itemize the proposed changes.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Item 1 amends the definition of “radiologist assistant” by deleting wording that refers to a radiologist practitioner.

Item 2 deletes requirements for continuing education and adds a reference for these requirements.

Item 3 rescinds rule 641—42.6(136C) and replaces it with updated language specific to radiologist assistant requirements.

Item 4 adopts a new appendix which specifies what procedures a radiologist assistant may perform.

These rules are subject to waiver pursuant to the Department’s exemption provision contained in 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular rules.

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on April 18, 2006. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, 321 East 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail [dflater@idph.state.ia.us](mailto:dflater@idph.state.ia.us).

A public hearing will be held on April 18, 2006, at 8:30 a.m. in Conference Room 142, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 136C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 subrule **42.1(2)**, definition of “radiologist assistant,” as follows:

“Radiologist assistant” means an advanced-level radiographer, other than a licensed practitioner, who works under the supervision authority of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment. ~~The radiologist assistant may exercise autonomy in decision making in the role of a primary caregiver with regard to patient assessment and patient management and in providing a broad range of radiology diagnostic and interventional services.~~

ITEM 2. Amend subrule **42.2(3)**, paragraph “a,” subparagraph (8), as follows:

(8) Radiologist assistant: ~~proof of 24.0 clock hours with at least 12.0 hours in the subjects in 42.6(1)“c.” The remaining hours may be in general radiography subjects. See 641—42.6(136C).~~

ITEM 3. Rescind rule 641—42.6(136C) and adopt the following **new** rule in lieu thereof:

**641—42.6(136C) Specific eligibility requirements for a radiologist assistant.**

**42.6(1)** Any person seeking a permit to practice as a radiologist assistant shall:

- a. Hold a current permit to practice as a general radiographer in Iowa under 641—42.3(136C).
- b. Have three years of experience as a general diagnostic radiographer. Experience in ultrasound, MRI, or nuclear medicine does not qualify.
- c. Satisfactorily complete an advanced academic program approved by this agency and encompassing a nationally recognized radiologist assistant curriculum culminating in a baccalaureate degree and which has a radiologist-directed clinical preceptorship.
- d. Satisfactorily complete a proficiency examination for radiologist assistants recognized by this agency.
- e. Upon completion of the above, apply for a permit to practice as a radiologist assistant.

**42.6(2) Performance standards.**

- a. A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.
- b. A radiologist assistant is limited to the clinical activities in Appendix A of this chapter.

**42.6(3) Continuing education.** A radiologist assistant must complete 12.0 hours of continuing education each year that must be specific to the discipline or specialty of the radiologist assistant’s area of practice. Hours earned to meet this requirement shall not be used to satisfy the continuing education requirement for a general permit to practice.

ITEM 4. Amend **641—Chapter 42** by adopting the following **new** appendix:

Appendix A

In order for the radiologist assistant to perform the following procedures, the radiologist must be immediately available to communicate with the radiologist assistant. The radiologist must be able to be physically present and available to the radiologist assistant on one hour’s notice. The radiologist is ultimately responsible for the care provided by the radiologist assistant.

	Clinical Activities
1.	Review the patient’s medical record to verify the appropriateness of a specific examination or procedure and to report significant findings to radiologist.
2.	Determine if patient has followed instructions in preparation for the examination (e.g., diet, premedications).
3.	Assess risk factors that may contraindicate the procedure (e.g., health history, medications, pregnancy, psychological indicators, alternative medicines). The assessment must be reviewed by a radiologist if risk factors contraindicate the procedure.
4.	Perform the following fluoroscopic examinations and procedures including contrast media administration and operation of the fluoroscopic unit. Examinations and procedures must follow written procedures established by the supervising radiologist. <ul style="list-style-type: none"> <li>a. Upper GI.</li> <li>b. Esophagus.</li> <li>c. Small bowel studies.</li> <li>d. Barium enema.</li> <li>e. Cystogram.</li> <li>f. T-tube cholangiogram.</li> <li>g. Nasoenteric and oroenteric feeding tube placement.</li> <li>h. Port injection.</li> <li>i. Swallowing study.</li> </ul>

## PUBLIC SAFETY DEPARTMENT[661]

### Public Notice

The Department of Public Safety hereby gives public notice that the Fire Marshal intends to consider revision of all rules adopted pursuant to Iowa Code sections 100.1 and 100.35 which establish minimum fire safety requirements for various occupancies. The Fire Marshal has appointed a Fire Code Advisory Committee to assist in this effort. The meetings of the Committee will be open to the public. In addition, the Committee will hold one or more public hearings to obtain input from interested parties regarding the adoption of new fire safety standards for the State of Iowa.

Consideration will be given to the revision, repeal, amendment, or replacement of all rules of the State Fire Marshal, except for the following:

- Life safety requirements for licensed health care occupancies (661—Chapter 205),
- Requirements for handling, storage, and use of flammable and combustible liquids (661—Chapter 51),
- Requirements for manufacturing, storage, handling, and use of explosive materials (661—Chapter 231),
- Requirements and procedures for firefighter training and certification, including firefighter training and equipment funds (661—Chapters 53, 251, and 259), and
- Procedures and criteria for line-of-duty death benefits for volunteer emergency services providers (661—Chapter 291).

The Fire Code Advisory Committee will consider complete replacement of the rules currently appearing in 661—Chapter 5 and the adoption of any additional provisions appropriate to implement the statutory provisions of Iowa Code chapter 100 and other statutory provisions which assign authority to the State Fire Marshal.

Dates and locations of meetings and public hearings of the Fire Code Advisory Committee will be posted on the Committee's Web site at the following address:

<http://www.dps.state.ia.us/fm/fcac>

Inquiries about the Fire Code Advisory Committee and its work and comments may be submitted via electronic mail to [fcac@dps.state.ia.us](mailto:fcac@dps.state.ia.us) or by mail to:

Fire Code Advisory Committee  
Fire Marshal Division  
Iowa Department of Public Safety  
401 S.W. 7th Street, Suite N  
Des Moines, Iowa 50309

## ARC 5022B

## PUBLIC SAFETY DEPARTMENT[661]

### Notice of Termination and 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 100C.7, the Department of Public Safety hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 4753B** on December 21, 2005, and gives Notice of Intended Action to adopt new Chapter 275, “Certification of Automatic Fire Extinguishing System Contractors,” Iowa Administrative Code.

Iowa Code chapter 100C was enacted during the 2004 session of the Iowa General Assembly and became effective July 1, 2005. It provides for the certification of automatic fire extinguishing system contractors based on administrative rules adopted by the Fire Marshal pursuant to Iowa Code chapter 17A. The statute provides for the establishment of a Fire Extinguishing System Contractors Advisory Board, appointed by the Commissioner of Public Safety, and provides that the Fire Marshal shall consult with the Board prior to the adoption of the administrative rules for the certification program.

Initially, these rules, which are based upon recommendations developed by the Fire Extinguishing System Contractors Advisory Board, were published in a Notice of Intended Action (**ARC 4753B**) in the Iowa Administrative Bulletin on December 21, 2005. In developing those recommendations, the Board reviewed rules and statutes from other states, material from industry groups, and information from organizations which develop industry standards and codes, such as the National Fire Protection Association (NFPA), and testing organizations, such as the National Institute for Certification in Engineering Technologies (NICET).

In addition to soliciting comment on the rules proposed in the prior Notice of Intended Action, the preamble of the Notice included the following language:

Comment is especially invited on one area which is not addressed in the proposed rules, but which the Fire Marshal and the Board intend to consider for inclusion in the adopted rules: Should there be separate, less stringent criteria for qualifying as a responsible managing employee for a contractor whose work includes only fire extinguishing systems of limited application, such as sprinkler systems for one- or two-family residences or special hazard systems designed for use in smaller hood and duct systems? These systems may be listed for use in limited applications by nationally recognized testing laboratories. The State Fire Marshal and the Board would be interested in hearing comments about whether separate criteria should be established for contractors whose work is limited to these systems and about what these separate criteria should be.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

A public hearing on the rules proposed in the prior Notice of Intended Action was held on January 18, 2006. Numerous comments were received, both on the issue of alternative requirements for contractors whose work is limited to installation of systems of limited application (sometimes called "preengineered systems") and on other items in the proposed rules. Based on the comments received, the Board concluded that extensive revisions would be needed to the rules as previously proposed and that it would therefore be advisable to terminate the previous Notice and issue a new Notice of Intended Action in order to provide an opportunity for public comment on the revised proposed rules.

The following are changes from the rules as proposed in the original Notice of Intended Action:

- Definitions are provided for several terms which were not defined in the original Notice.
- Alternative requirements are provided for qualifications of a responsible managing employee of a contractor whose work is limited to certain preengineered fire suppression systems, or for a contractor whose work is limited to inspection and testing of water-based systems.
- A provision is added for training and testing programs, other than those specifically recognized in the rules, to obtain approval from the Fire Marshal.
- An exception was added to the requirement to maintain current registration with the Labor Services Division of the Iowa Workforce Development Department for fire extinguishing system contractors to which the contractor registration law does not apply.
- Additional clarifying language is added to the insurance coverage requirement.
- What had been a separate application fee is included in the certification fee at the same total cost.

A public hearing on these proposed rules will be held on April 19, 2006, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. 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](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on April 19, 2006, 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 by 4:30 p.m. on April 19, 2006.

These rules are intended to implement Iowa Code chapter 100C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **new** chapter is proposed.

CHAPTER 275  
CERTIFICATION OF AUTOMATIC FIRE  
EXTINGUISHING SYSTEM CONTRACTORS

**661—275.1(100C) Establishment of program.** There is established within the fire marshal division a fire extinguishing

system contractors certification program. The program is established pursuant to Iowa Code chapter 100C.

**275.1(1) Certification required.** No person shall act as a fire extinguishing system contractor without being currently certified as a fire extinguishing system contractor by the fire marshal.

**275.1(2) Endorsement.** The certification of each contractor shall carry an endorsement for:

- a. Automatic sprinkler system layout;
- b. Special hazards suppression systems;
- c. Preengineered dry chemical or wet agent fire suppression systems;
- d. Installation of preengineered water-based fire suppression systems in one- and two-family dwellings;
- e. Testing and inspection of water-based systems; or
- f. Any combination thereof.

Any person acting as a fire extinguishing system contractor shall do so only in relation to systems covered by the endorsement on the contractor's certification.

**275.1(3) Length of certification.** Certification shall normally be for one year and shall expire on March 31 each year. A certification which is effective on a date other than April 1 shall be effective on the date on which the certification is issued and shall expire on the following March 31.

**275.1(4) Inquiries.** Inquires regarding the fire extinguishing system contractors certification program may be addressed to:

Fire Extinguishing System Contractors  
Certification Program  
Fire Marshal Division  
Iowa Department of Public Safety  
401 S.W. 7th Street, Suite N  
Des Moines, Iowa 50309

Inquiries may be addressed by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us), by telephone to (515)281-5821, or by facsimile to (515)242-6299.

**661—275.2(100C) Definitions.** The following definitions apply to rules 661—275.1(100C) through 661—275.7(100C):

"Automatic fire extinguishing system" means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors advisory board.

"Automatic sprinkler system" means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

"Carbon dioxide extinguishing system" means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

"Clean agent" means an electrically nonconducting, volatile, or gaseous fire extinguishing agent that does not leave a residue upon evaporation.

"Deluge system" means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation

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of a detection system installed in the same area as the sprinklers.

“Dry chemical” means a powder composed of very small particles, usually sodium bicarbonate-, potassium bicarbonate-, or ammonium phosphate-based, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption (caking), and the proper flow capabilities.

“Dry pipe sprinkler system” means an extinguishing system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, and the water then flows into the piping system and out the opened sprinklers.

“Fire extinguishing system contractor” or “contractor” means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

“Foam extinguishing system” means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

“Halogenated extinguishing system” means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

“Layout” means drawings, calculations and component specifications for the specifics to achieve the specified system design installation. NOTE: “Layout” does not include design.

“Listed” means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

“Maintenance inspection” means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, “maintenance inspection” does not include an inspection completed by a local building official, fire inspector, or insurance inspector, when acting in an official capacity.

“Preengineered dry chemical or wet agent fire suppression system” means any system having predetermined flow rates, nozzle pressures and limited quantities of either agent. These systems have specific pipe sizes, maximum and minimum pipe lengths, flexible hose specifications, number of fittings and number and types of nozzles prescribed by a nationally recognized testing laboratory. The hazards protected by these systems are specifically limited by the testing laboratory as to the type and size based upon actual fire tests. Limitations on hazards that can be protected by these systems are contained in the manufacturer’s installation manual, which is referenced as part of the listing.

“Preengineered water-based system” means a packaged, water-based sprinkler system including all components connected to a water supply and designed to be installed according to pretested limitations.

“Responsible managing employee” means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who is designated as the responsible managing employee for a fire extinguishing system

contractor and who meets the requirements for a responsible managing employee established in rule 661—275.3(100C).

“Special hazards suppression system” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

“Wet agent” or “wet chemical” means an aqueous solution of organic or inorganic salts or a combination thereof that forms an extinguishing agent.

**661—275.3(100C) Responsible managing employee.** Each fire extinguishing system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees.

**275.3(1)** The responsible managing employee shall be designated in the application for certification, and if the responsible managing employee is no longer acting in that role, the contractor shall notify the fire marshal, in writing, within 30 calendar days, on a form designated by the fire marshal.

**275.3(2)** If the responsible managing employee is no longer acting in that role and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the fire marshal, in writing, within 30 calendar days of the date on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

**275.3(3)** If the responsible managing employee designated by a fire extinguishing system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the fire marshal, in writing, of the designation within six months of the date on which the former responsible managing employee ceased to act in that capacity, on a form designated by the fire marshal. If the fire marshal has not been notified of the appointment of a new responsible managing employee within six months, the fire marshal shall suspend the certification of the fire extinguishing system contractor.

**275.3(4)** A responsible managing employee or an alternate responsible managing employee shall meet one of the following requirements:

a. Current certification by the National Institute for Certification in Engineering Technologies at level III or above in fire protection technology, for automatic sprinkler system layout, special hazards suppression systems, or both.

b. If a contractor’s work subject to these rules is limited to the installation of preengineered dry chemical or wet agent fire suppression systems, the responsible managing employee shall meet the following requirements:

(1) Completion of any training required by the manufacturer of any system or systems which the contractor installs; and

(2) Certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology, for special hazards suppression systems; certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems; or completion of an applicable training or testing program which has been approved by the fire marshal.

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c. The responsible managing employee for a contractor whose work subject to these rules is limited to installation of one- or two-family dwelling preengineered water-based systems shall have completed:

(1) Any training by the manufacturer of any system the contractor installs; and

(2) An applicable training or testing program which has been approved by the fire marshal.

d. The responsible managing employee for a contractor whose work is limited to the inspection and testing of water-based fire extinguishing systems shall have current certification from the National Institute for Certification in Engineering Technologies at level III in fire protection technology, inspection and testing of water-based systems.

e. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design.

EXCEPTION: Prior to April 1, 2008, a fire extinguishing system contractor may receive provisional certification if the person designated as the contractor's responsible managing employee has initiated procedures for obtaining certification by the National Institute for Certification in Engineering Technologies at level III in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both, and has satisfactorily completed testing which is offered by a third party and has been approved by the fire marshal, for competency in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. The contractor shall provide the fire marshal with notification and documentation of the required certification within 30 days after the contractor's provisional certification was initially issued.

After one year of provisional certification of the contractor, the responsible managing employee shall have current certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. Documentation that this requirement has been met shall be provided by the contractor to the fire marshal within 30 days after the one-year anniversary of the effective date of the initial provisional certification.

Provisional certification shall not be recognized on or after April 1, 2009.

**275.3(5)** In any case in which training or testing that is offered to satisfy the requirements of this rule is required to be approved by the fire marshal, such approval is required prior to acceptance of the training or testing to meet certification requirements. Approval by the fire marshal of any training or testing to meet these requirements may only be sought by the individual, firm, or organization providing the testing or training. Any individual, firm or organization seeking to obtain such approval may apply to the fire marshal. An application form for approval of a testing or training program may be obtained by contacting the fire extinguishing system contractors certification program as specified in subrule 275.1(4).

**275.3(6)** Work performed by a contractor subject to these rules shall be limited to areas of competence indicated by the specific certification or certifications or other training requirements met by the responsible managing employee.

**661—275.4(100C) Certification requirements.** A fire extinguishing system contractor shall meet all of the following requirements in order to receive certification from the fire marshal and shall continue to meet all requirements throughout the period of certification. The contractor shall notify the

fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if the contractor fails to meet any requirement for certification.

**275.4(1)** The contractor shall designate a responsible managing employee as provided in rule 661—275.3(100C).

**275.4(2)** The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of a fire extinguishing system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

**275.4(3)** The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

EXCEPTION: A contractor shall not be required to maintain registration with the labor services division of the Iowa workforce development department if the contractor does not meet the definition of "contractor" for purposes of Iowa Code chapter 91C and 875—Chapter 150, Iowa Administrative Code.

**275.4(4)** The contractor shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the contractor is performing work.

**661—275.5(100C) Application and fees.**

**275.5(1)** Application. Any contractor seeking certification as a fire extinguishing system contractor shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which an existing certification expires. An application form may be obtained from the fire marshal or from the Web site of the fire extinguishing system contractor certification program ([www.state.ia.us/government/dps/fm/fescpp](http://www.state.ia.us/government/dps/fm/fescpp)). The application form shall be submitted with all required attachments and the required application fee established in subrule 275.5(2). An application shall not be considered complete unless all required information is submitted, including required attachments, and fees, and shall not be processed until it is complete.

**275.5(2)** Certification fee. The certification fee shall be \$500 per year. If an application is denied, all except \$100 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the certification fee shall be made if the certification is revoked or if the denial of the certification is based on the applicant knowingly including false or misleading information on the application.

EXCEPTION: If a certification is effective after April 1 and no later than June 30, the certification fee shall be \$500. The certification fee for a certification which becomes effective

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between July 1 and September 30 shall be \$400. The certification fee for a certification which becomes effective between October 1 and December 31 shall be \$300. The certification fee for a certification which becomes effective between January 1 and March 31 shall be \$200.

**275.5(3) Payment.** The certification fee shall be submitted by draft, check, or money order in the applicable amount payable to the Fire Extinguishing System Contractor Certification Program. If the application is denied, the certification fee less \$100 shall be returned to the applicant.

**275.5(4) Amended certification fee.** The fee for issuance of an amended certification is \$100. The fee shall be submitted with the request for an amended certification. A contractor shall request and the fire marshal shall issue an amended certificate for any of the following:

- a. A change in the designation of the responsible managing employee;
- b. A change in insurance coverage; or
- c. A change in any other material information included in or with the initial or renewal application.

**275.5(5) Attachments.** Required attachments to the application for certification include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 275.4(2). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the contractor within the scope of certification pursuant to this chapter. The documentation may consist of a letter from the insurance carrier or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable certification requirements.

**661—275.6(100C) Complaints.** Complaints regarding the performance of any certified contractor, failure of a certified contractor to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as a fire extinguishing system contractor without certification may be filed with the fire marshal. Complaints should be addressed as follows:

Fire Extinguishing System Contractors  
Certification Program

Fire Marshal Division  
Iowa Department of Public Safety  
401 S.W. 7th Street, Suite N  
Des Moines, Iowa 50309

Complaints may be submitted by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us) or by facsimile to (515)242-6299.

Complaints should be as specific as possible and shall clearly identify the contractor against whom the complaint is filed. A form which may be used to file complaints is available on the Web site of the fire extinguishing system contractors certification program, at <http://www.state.ia.us/government/dps/fm/fesccp>. Complaints may be filed without using the complaint form provided, but shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

**661—275.7(100C) Denial, suspension, or revocation of certification; civil penalties; and appeals.** The fire marshal may deny, suspend or revoke the certification of a contractor,

or assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as a fire extinguishing system contractor is violated.

**275.7(1) Denial.** The fire marshal may deny an application for certification:

a. If the applicant makes a false statement on the application form or in any other submission of information required for certification. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for certification established in this chapter.

c. If the applicant is currently barred for cause from acting as a fire extinguishing system contractor in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire extinguishing system contractor and if the basis of that action reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have been previously barred for cause from operating as a fire extinguishing system contractor in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

**275.7(2) Suspension.** A suspension of a certification may be imposed by the fire marshal for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as a fire extinguishing system contractor in this state. Failure to provide any notice to the fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the certification even after the period of the suspension.

**275.7(3) Revocation.** A revocation is a termination of a certification. Certifications may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire extinguishing system incorrectly installed by a certified contractor.

A certification which has been revoked shall not be reinstated for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected.

**275.7(4) Civil penalties.** The fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

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**275.7(5)** Suspension or revocation for nonpayment of child support. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the certified contractor by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of certification of a contractor, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor.

c. Contractors shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor before a certificate will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a certification or has suspended or revoked a certification pursuant to Iowa Code chapter 252J.

e. In the event a contractor files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the certification, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 275.7(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a certification program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

**275.7(6)** Appeals. Any denial, suspension, or revocation of a certification, or any civil penalty imposed upon a certified contractor under this rule, other than one imposed pursuant to subrule 275.7(5) may be appealed by the contractor within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement Iowa Code chapter 100C.

## ARC 5013B

### 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 section 423.42(1), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 103, "Hotel and Motel—Administration," Chapter 104, "Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest," Chapter 105, "Hotel and Motel—Imposition of Tax," Chapter 107, "Local Option Sales and Service Tax," Chapter 211, "Definitions," Chapter 219, "Sales and Use Tax on Construction Activities," Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," and Chapter 231, "Exemptions Primarily of Benefit to Consumers," and to adopt new Chapter 241, "Excise Taxes Not Governed by the Streamlined Sales and Use Tax Agreement," Iowa Administrative Code.

The proposed amendments implement a number of sections of 2005 Iowa Acts, chapter 140.

Item 1 amends rules 701—10.110(422A) and 701—10.111(422A) to update the parenthetical implementation and the implementation clause for each rule to reflect the fact that these rules no longer implement Iowa Code chapter 422A but instead implement Iowa Code chapter 423A.

Item 2 amends 701—Chapter 103 extensively to reflect the fact that there is a new tax (state-imposed and locally imposed) on lodging which is a separate tax outside of the Streamlined Sales Tax and Use Agreement. Item 2 also generally updates the chapter.

Item 3 accomplishes the same purposes as those in Item 2 but with respect to 701—Chapters 104 and 105.

Item 4 amends rule 701—107.8(422B) because nexus requirements regarding local option taxes have changed.

Item 5 amends rule 701—107.9(422B,422E), which sets out the exemptions from local option taxes.

Item 6 amends rule 701—211.1(423) to update the definition of "sales price" and the definition of "services" and the implementation clause.

Item 7 amends rule 701—219.21(423) to explain that sales of equipment for subsequent rental to building contractors are now subject to their own separate tax outside of the Streamlined Sales and Use Tax Agreement.

Item 8 amends rule 701—230.2(423) to state that rental of tangible personal property remains the performance of a service and not the sale of that property for the purposes of the services used in processing exemption for food manufacturers.

Item 9 amends rules 701—231.6(423), 231.7(423) and 231.8(423), which deal with exempt sales of medical equipment and drugs to consumers. It is necessary to amend these rules to incorporate new definitions of several types of medical equipment which are required under the Streamlined Sales and Use Tax Agreement.

Item 10 adopts new 701—Chapter 241 to cover excise taxes which are not governed by the Streamlined Sales and Use Tax Agreement.

## REVENUE DEPARTMENT[701](cont'd)

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 May 1, 2006, 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 April 18, 2006. 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 April 21, 2006.

These amendments are intended to implement 2005 Iowa Code Supplement chapters 423, 423A and 423D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 701—10.110(422A) and 701—10.111(422A) as follows:

Amend the parenthetical implementation by striking “422A” and inserting “423A.”

Amend the implementation clause for rule **701—10.110(423A)** as follows:

This rule is intended to implement Iowa Code sections ~~422A.1 and 422.58~~ section 423.40 and 2005 Iowa Code Supplement section 423A.1.

Amend the implementation clause for rule **701—10.111(423A)** as follows:

This rule is intended to implement Iowa Code sections ~~422.58 and 422A.1~~ section 423.40 and 2005 Iowa Code Supplement section 423A.1.

ITEM 2. Amend **701—Chapter 103** as follows:

Amend the title as follows:

CHAPTER 103

STATE-IMPOSED AND LOCALLY IMPOSED HOTEL  
AND MOTEL TAXES—ADMINISTRATION

Rescind rule 701—103.1(422A) and adopt the following **new** rule in lieu thereof:

**701—103.1(423A) Definitions, administration, and imposition.**

**103.1(1) Definitions.** For the purposes of this chapter and 701—Chapters 104 and 105, unless the context otherwise requires:

“Department” means the department of revenue.

“Director” means the director of the department of revenue.

“Lessor” means any person engaged in the business of renting lodging to users. “Lessor” is synonymous with the word “retailer.”

“Locally imposed tax” means the hotel and motel tax levied by Iowa Code section 423A.4.

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

“Person” means the same as the term is defined in rule 701—211.1(423).

“Renting” or “rent” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

“Sales price” means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

“State-imposed tax” means the hotel and motel tax levied by Iowa Code section 423A.3.

“Tax” or “hotel and motel tax” means either the state-imposed or locally imposed hotel and motel tax levied by Iowa Code sections 423A.3 and 423A.4, respectively.

“User” means a person to whom lodging is rented.

All other words and phrases used in this chapter and 701—Chapters 104 and 105 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

**103.1(2) Administration.** The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. Therefore, the term “retailer” will be used interchangeably between the two taxes.

**103.1(3) Imposition.** A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The state-imposed tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

**103.1(4)** A city or county may impose by ordinance of the city council or by resolution of the county board of supervisors a tax on lodging, at a rate not to exceed 7 percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. When imposed by a city, the tax shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county.

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

## REVENUE DEPARTMENT[701](cont'd)

Amend rules 701—103.2(422A) to 701—103.15(422A) as follows:

**701—103.2(422A 423A) Statute of limitations, supplemental assessments and refund adjustments.** Within five *three* years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed five *three* years or more prior to such examination.

Whenever books and records are examined by an employee designated by the director of ~~revenue and finance~~, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the ~~five-year~~ *three-year* period of limitation.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections ~~422.54, 423.37 and 422.70 and 422A.1~~ *2005 Iowa Code Supplement sections 423A.3 and 423A.4.*

**701—103.3(422A 423A) Credentials and receipts.** Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections ~~422.68(1), and 422.70 and 2005 Iowa Code Supplement sections 422A.1 423A.3 and 423A.4.~~

**701—103.4(422A 423A) Retailers required to keep records.** Every retailer shall keep and preserve the following records:

1. A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter ~~422A 423A.~~
2. A record of all deductions and exemptions taken in filing a tax return.

The records required in this rule shall be preserved for a period of ~~five~~ *three* years and open for examination by the department during this period of time.

Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, ~~or~~ district court, or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

Failure to keep and preserve adequate records shall be grounds for revocation of the ~~sales~~ *state-imposed* tax permit.

This rule is intended to implement Iowa Code sections ~~422.50 section 423.41 and 422A.1~~ *2005 Iowa Code Supplement sections 423A.3 and 423A.4.*

**701—103.5(422A 423A) Audit of records.** The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right to examine records includes the right to examine copies of the retailer's state and federal income tax returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the ~~hotel and motel~~ tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections ~~422.50, 422.70 and 423.41 and 422A.1~~ *2005 Iowa Code Supplement sections 423A.3 and 423A.4.*

**701—103.6(422A 423A) Billings.**

**103.6(1) Notice of adjustments.**

a. An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that ~~gross receipts a sales price~~ subject to the ~~hotel and motel~~ tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

b. and c. No change.

**103.6(2) Notice of assessment.** If, after following the procedure outlined in paragraph 103.6(1)“b,” no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A) and Iowa Code ~~sub-section 422.54(2) section 423.37~~, proceedings to collect the

## REVENUE DEPARTMENT[701](cont'd)

tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections ~~422.54, 422.57, 422.70, 423.37, and 423.39~~ and 2005 Iowa Code Supplement sections ~~422A.1 423A.3 and 423A.4~~.

**701—103.7(422A 423A) Collections.** If determined expedient or advisable *to do so*, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of ~~hotel and motel~~ the tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections ~~422.54, 422.57, 422.70, and 422A.1 423.37, and 423.39~~ and 2005 Iowa Code Supplement sections ~~423A.3 and 423A.4~~.

**701—103.8(422A 423A) No property exempt from distress and sale.** The provisions of Iowa Code section 422.26 apply with respect to a ~~hotel-motel~~ tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.

This rule is intended to implement Iowa Code sections ~~422.26, 422.56 and 423.42~~ and ~~422A.1 2005 Iowa Code Supplement sections 423A.3 and 423A.4~~.

**701—103.9(422A 423A) Information confidential.** When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the ~~hotel and motel~~ tax. See rule 701—6.3(17A).

All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.

This rule is intended to implement Iowa Code sections ~~section 422.72 and 422A.1 2005 Iowa Code Supplement sections 423A.3 and 423A.4~~.

**701—103.10(422A 423A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the ~~hotel and motel~~ tax, require any person subject to ~~such~~ the tax to file with the department a bond in ~~such~~ an amount as *which* the director may fix, or in lieu of such

bond, securities approved by the director in ~~such~~ an amount as *which* the director may prescribe.

The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential ~~retail sales state-imposed~~ tax (*see 701—Chapter 241*) and the ~~hotel and motel~~ locally imposed tax liabilities, *plus any applicable local option taxes*. Whether or not the person required to post the bond files a monthly deposit for ~~sales state-imposed~~ tax purposes, the basis for determining the ~~hotel and motel~~ locally imposed tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code sections ~~section 422.52 423.35 and 422A.1 2005 Iowa Code Supplement sections 423.3 and 423A.4~~.

**701—103.11(422A 423A) Sales tax.** The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter ~~422 423~~. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law *except that portion of the law which implements the streamlined sales and use tax agreement*. See 701—Chapters 12 to 14 for details. The computation of the ~~hotel and motel~~ tax shall be based on the *sales* price of the room excluding the sales tax.

This rule is intended to implement 2005 Iowa Code section ~~422A.1 Supplement sections 423.3, 423A.4, and 423A.6~~.

**701—103.12(422A 423A) Judicial review.** Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.

This rule is intended to implement Iowa Code sections ~~section 422.55 423.38 and 422A.1 2005 Iowa Code Supplement sections 423A.3 and 423A.4~~.

**701—103.13(422A 423A) Registration.** All persons who are required to collect and remit the ~~local option hotel and motel~~ locally imposed tax are required to hold an Iowa retail sales tax permit. ~~No hotel-motel tax permit is required although persons may be required to register with the department in the future as a hotel and motel tax collector. Persons shall register as a retailer and hold the retail sales tax permit prior to the time they begin collecting the hotel and motel tax.~~

This rule is intended to implement 2005 Iowa Code sections ~~422.53 and 422A.1 Supplement section 423A.6~~.

**701—103.14(422A 423A) Notification.** Before a city's or county's local option hotel and motel tax can become effective, be revised, or be repealed, ~~60~~ 45 days' notice of such action must be given to the director in writing by mail.

This rule is intended to implement 2005 Iowa Code Supplement section ~~422A.1 423A.4~~.

**701—103.15(422A 423A) Certification of funds.** Within 45 days after the date that the quarterly returns and payments are due, the director of revenue and finance will certify to the treasurer of state the amount of ~~hotel and motel~~ locally imposed tax to be transferred from the general fund to the local transient guest tax fund which is to be distributed to each city and county which has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

## REVENUE DEPARTMENT[701](cont'd)

This rule is intended to implement 2005 Iowa Code sections ~~422A.1, 422A.2(1) and 422A.2(2)~~ *Supplement section 423A.7.*

ITEM 3. Amend **701—Chapters 104 and 105** as follows:

## CHAPTER 104

HOTEL AND MOTEL—FILING RETURNS,  
PAYMENT OF TAX, PENALTY, AND INTEREST

**701—104.1(422A 423A) Returns, time for filing.** On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

The quarterly reports are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, ~~such~~ *the* monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

When the due date falls on a Saturday, Sunday or legal holiday, the return is due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mail, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales and Use Tax Processing, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10412, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections ~~421.14, 422.51, 422.52 and 422A.1~~ *423.31 and 2005 Iowa Code Supplement section 423A.6.*

**701—104.2(422A 423A) Remittances.** The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and sales tax permit number of the sender and amount of tax for the quarterly remittance shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the retailer; and, when feasible, every retailer shall use them when completing and mailing the return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement Iowa Code sections ~~422.51, 422.52 and 422A.1~~ *section 423.31 and 2005 Iowa Code Supplement section 423A.6.*

**701—104.3(422A 423A) Permits.** ~~No permit other than an~~ *An* Iowa sales tax permit will be required under this chapter. However, the director may require all persons responsible for collecting and remitting a hotel-motel tax to register with the department.

~~“Single permit—principal place of business.”~~ Any person not in the business of renting rooms to transient guests, but who regularly rents rooms or residences at varying locations to transient guests, ~~may operate under one sales tax permit may register once under this chapter. The sales tax permit will be issued to the taxpayer’s principal place of business.~~ (See 701—Chapter 13 relating to sales tax permits.)

This rule is intended to implement 2005 Iowa Code sections ~~422.53 and 422A.1~~ *Supplement section 423A.6.*

**701—104.4(422A 423A) Sale of business.** A retailer subject to the provisions of the Iowa Code relating to the hotel and motel tax who sells the business shall file a return within the month following the sale and pay all tax due. Any unpaid tax is due prior to the transfer of title of any personal property to the purchaser and, if unpaid, becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain records for a period of ~~five~~ *three* years from the date of discontinuing business unless a release from the provision is given in writing by the department.

This rule is intended to implement Iowa Code sections ~~422.51(2), 422.52, and 422A.1~~ *423.31, and 423.33 and 2005 Iowa Acts Supplement section 423A.6.*

**701—104.5(422A 423A) Bankruptcy, insolvency or assignment for benefit of creditors.** In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code sections ~~422.51(2) section 423.31(6) and 422A.1~~ *2005 Iowa Code Supplement section 423A.6.*

**701—104.6(422A 423A) Claim for refund of tax.** Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer to collect the tax as an agent for purposes of receiving a refund of tax. Anyone claiming a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department within ~~five~~ *three* years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections ~~422.73 and 422A.1~~ *section 423.47 and 2005 Iowa Code Supplement section 423A.6.*

**701—104.7(422A 423A) Application of payments.** Since a combined hotel and motel tax and quarterly state sales tax return is utilized by the department, all payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)“d.” The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE. No change.

All revenues received under Iowa Code chapter 422A 423A are to be credited to the “local transient guest tax fund.” Revenues include all interest and penalties applicable to any hotel and motel tax report or remittance, whether resulting from delinquencies or audits. All revenues received or moneys refunded 180 days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund. The 180-day limitation applies to actual receipts or disbursements and not to accrued but unpaid tax liabilities or potential refunds.

REVENUE DEPARTMENT[701](cont'd)

This rule is intended to implement 2005 Iowa Code *Supplement* section 422A.1 423A.7.

**701—104.8** and **701—104.9** Reserved.

**701—104.10(422A 423A) Extension of time for filing.** Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code sections ~~422.51~~ section 423.31 and ~~422A.1~~ 2005 Iowa Code *Supplement* section 423A.6.

**701—104.11(421,422A 423A) Personal liability of corporate officers and partners for unpaid tax.** If a retailer fails to pay hotel or motel tax due and unpaid on or after July 1, 1990, any officer of a corporation or association or any partner of a partnership who has control of, supervision of, or the authority for remitting the hotel or motel tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. ~~This personal liability is not applicable to tax due and unpaid on accounts receivable.~~ The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. Rule 701—12.15(422,423) describes this liability in more detail and also characterizes the term "accounts receivable." The statements of the rule are made with reference to sales tax, but are also applicable to personal liability for hotel and motel tax.

This rule is intended to implement Iowa Code section 421.26 and 2005 Iowa Code *Supplement* chapter 422A 423A.

**701—104.12(421,422A 423A) Good faith exception for successor liability.** For taxes due and unpaid on and after July 1, 1990, an immediate successor's liability for unpaid hotel and motel tax is extinguished if the immediate successor can show that its purchase of the business owing the hotel and motel tax was done "in good faith." See rule 701—12.14(422,423) for a detailed analysis of immediate successor liability and the "good faith" exception to that liability.

This rule is intended to implement Iowa Code section 421.28 and 2005 Iowa Code *Supplement* chapter 422A 423A.

#### CHAPTER 105

#### LOCALLY IMPOSED HOTEL AND MOTEL— IMPOSITION OF TAX

**701—105.1(422A 423A) Local option.** A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax subject to the approval of its citizens. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within the county. A city or county can impose the tax only after an election at which a majority of those voting on the question favors imposition.

This rule is intended to implement 2005 Iowa Code *Supplement* section 422A.1 423A.4.

**701—105.2(422A 423A) Tax rate.** The hotel and motel tax rate cannot exceed 7 percent and must be imposed in increments of one or more full percentage points. ~~Effective July 1, 2001, if~~ If a jurisdiction seeks to impose, repeal or change the tax rate, the jurisdiction must hold an election. Within ten days of an election favoring the imposition of the tax, repeal of the tax or change in the tax rate, the county auditor must notify the director in writing of the favorable vote by sending a copy of the abstract of votes from the favorable election to the director.

This rule is intended to implement 2005 Iowa Code *Supplement* section 422A.1 as amended by 2001 Iowa Acts, House File 715, section 12 423A.4.

**701—105.3(422A 423A) Tax base.** The hotel and motel tax is imposed upon the ~~gross receipts~~ sales price from the renting of any and all sleeping rooms, apartments or sleeping quarters lodging in a facility covered by Iowa Code chapter 422A 423A. ~~Facilities which are covered are defined as any hotel, motel, inn, public lodging house, rooming house, tourist court or any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.~~ Gross receipts ~~The sales price from renting include~~ includes any direct or indirect charge for the rooms.

**105.3(1)** The hotel-motel tax shall not apply: (a) when rooms are lodging is furnished to a person if that person rents any rooms or facility other lodging for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of a room to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

**105.3(2)** The tax base shall include the entire cost directly or indirectly related to the renting of a room lodging. If a person is charged for items other than "rent" in connection with the renting of a room lodging (e.g., food, telephone, laundry or recreation facility use), such charges must be stated separately or the entire charge will be considered "rent."

This rule is intended to implement 2005 Iowa Code *Supplement* section 422A.1 423A.4.

**701—105.4(422A 423A) Imposition dates.** A local hotel and motel tax shall be imposed on the first day of a quarter January 1 or July 1 following the notification to the director of revenue and finance. ~~The first day of the quarter shall be January 1, April 1, July 1, and October 1.~~ Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. See rule 701—103.14(422A 423A) regarding notification.

This rule is intended to implement 2005 Iowa Code *Supplement* section 422A.1 423A.4.

**701—105.5(422A 423A) Adding or absorbing tax.** It is unlawful for any retailer responsible for collecting and remitting the hotel and motel tax to advertise or hold out, or state to the public or to any person, that the tax imposed will be assumed or absorbed by the retailer, or that the tax will not be considered as an element in the price to the public or the person renting a facility subject to the hotel-motel tax. When a retailer advertises in a manner so that it may be readily seen and read by the public that the price "includes tax," the retailer may charge a lump sum for renting the facility without making a separate charge for the hotel and motel tax. It is the responsi-

REVENUE DEPARTMENT[701](cont'd)

bility of the retailer to provide proof that the retailer has complied with the method of advertising or displaying the price.

This rule is intended to implement Iowa Code sections ~~422.49 423.24~~ and ~~422A.4 423.6~~.

**701—105.6(422A 423A) Termination dates.** A local hotel and motel tax may be terminated only on ~~March 31, June 30, September 30, or December 31~~. See rule 701—103.13(422A 423A) regarding notification.

This rule is intended to implement 2005 Iowa Code Supplement section ~~422A.4 423A.4~~.

ITEM 4. Amend rule 701—107.8(422B) as follows:

Amend the introductory paragraph as follows:

**701—107.8(422B 423B) Contacts with county necessary to impose collection obligation upon a retailer.**

Amend subrule 107.8(1), catchwords, as follows:

**107.8(1)** Nexus requirements for retailers prior to July 1, 1999, and after June 30, 2005.

Amend subrule 107.8(2) as follows:

**107.8(2)** Nexus requirements for retailers effective ~~on and after~~ from July 1, 1999, through and including June 30, 2005. Effective ~~on and after~~ from July 1, 1999, through and including June 30, 2005, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and “delivery,” as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information, see the definition of “retailer” as provided in 2003 Iowa Code sections 422.42(13) and 423.1(8) and the definition of “retailer” set out in 2005 Iowa Code section 423.1(42). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 107.1(422B) to 107.8(422B) are intended to implement Iowa Code section 422.53 and 2005 Iowa Code Supplement chapter 422B as amended by 1999 Iowa Acts, chapter ~~156 423B~~.

ITEM 5. Amend rule 701—107.9(422B,422E) as follows:

**701—107.9(422B,422E 423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with ~~ten~~ six exceptions:

1.—The sale of Iowa lottery tickets or shares is not subject to local option sales tax.

2 1. Prior to June 30, 2001, all gross receipts from the sale of motor fuel and special fuel as defined in Iowa Code chapter 452A. Effective July 1, 2001, the gross receipts *The sales price* from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A are subject to local option tax. However, the gross receipts *sales price* from the sale or service of these types of fuels are exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;
- Fuel tax must have been paid on the transaction; and
- A refund has not been or will not be allowed.

3.—~~For the period beginning July 1, 1985, and ending June 30, 1987, the sale or rental of farm machinery and equipment and industrial machinery, equipment, and certain computers is not subject to local option sales or service tax.~~

4 2. For taxes imposed ~~on and after January 1, 1986 prior to July 1, 2005~~, the gross receipts *sales price* from the rental of rooms, apartments, or other sleeping quarters *lodging* which ~~are~~ was taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax ~~is~~ was imposed *under that chapter* shall be exempt from local option sales tax. *As of July 1, 2005, the sales price of lodging is no longer subject to the sales tax imposed by Iowa Code chapter 423; thus, the sales price of lodging is not subject to the local option sales tax. Also, as of July 1, 2005, Iowa Code chapter 422A is repealed. See 701—Chapter 241 for a description of the new state-imposed tax on lodging; see 701—Chapters 103, 104, and 105 for a description of the new local option hotel and motel tax.*

5 3. For taxes imposed ~~on or after January 1, 1986~~, the gross receipts *The sales price* from the sale of natural gas or electricity in a city or county ~~shall be~~ is exempt from tax if the gross receipts ~~are~~ *sales price* is subject to a franchise or user fee during the period the franchise or user fee is imposed.

6 4. ~~On and after February 8, 1996~~, a local taxing jurisdiction is prohibited from taxing the gross receipts *sales price* from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government’s Telecommunications Act of 1996 defines a “direct-to-home satellite service” as “only programming transmitted or broadcast by satellite directly to the subscribers’ premises or in the uplink process to the satellite.” A “local taxing jurisdiction” is “any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.”

7 5. ~~On and after July 1, 1989~~, the gross receipts *The sales price* from sales of equipment by the Iowa state department of transportation ~~are~~ is exempt from local option sales tax.

8 6. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The gross receipts *sales price* from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures ~~are~~ is exempt from local option sales tax. *As of July 1, 2005, taxation of the above-mentioned machinery and equipment is removed from Iowa Code chapter 423 and thus is not subject to the local option sales tax. See 701—Chapter 241, division II, for an explanation of the new state excise tax imposed on sales of construction machinery and equipment.*

[Definitions that include “Directly used” through “Self-propelled building equipment.” No change.]

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax. However, effective May 1, 1999, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under

## REVENUE DEPARTMENT[701](cont'd)

Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, ~~gross receipts the sales price~~ from the sale ~~are~~ is exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 422.45(46) 423.3(43)). Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

Any limitation upon the right of a subdivision of the state to impose a sales or service tax upon a transaction is not applicable to the local option sales and service tax if the statute which contains the limitation has an effective date prior to July 1, 1985. As a nonexclusive example, a county is not prohibited from imposing a local option sales tax upon the gross receipts from sales of cigarettes or tobacco products which are subject to state sales tax.

9. Effective February 5, 2001, the gross receipts from the sale of metered gas to residential customers for energy for a residential dwelling, individually metered apartment unit, or individually metered condominium, with a billing date of March 2001 or April 2001, are exempt from local option taxes. For more detail regarding this exemption see 701—17.37(422,423).

10. Effective February 5, 2001, the gross receipts from the sale of propane, heating fuel and kerosene for the purposes of heating a residential dwelling, apartment unit or condominium which is delivered to the customer beginning February 5, 2001, through March 31, 2001, are exempt from local option taxes. For more detail regarding this exemption see 701—17.37(422,423).

This rule is intended to implement 2005 Iowa Code Supplement section 422B.8 as amended by 2001 Iowa Acts, House File 715, section 13, section 422E.3 as amended by 2001 Iowa Acts, House File 715, section 16, and section 422.45 as amended by 2001 Iowa Acts, House File 1 sections 423B.5 and 423E.3.

ITEM 6. Amend rule 701—211.1(423) as follows:

Amend the definition of “sales price,” paragraph “b,” numbered paragraph “4,” as follows:

4. The amounts received for charges included in paragraph “a,” paragraphs “3” through “7,” if they are separately contracted for and separately stated on the invoice, billing, or similar document given to the purchaser and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

Amend the definition of “services” as follows:

“Services” means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer, as defined in Iowa Code section 422.4, subsection 3, who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in 2005 Iowa Code section 423.2. The tax shall be due and collectible when the service is ren-

dered, furnished, or performed for the ultimate user of the service.

Amend the implementation clause as follows:

This rule is intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, division XIV 2005 Iowa Code Supplement chapter 423.

ITEM 7. Amend rule 701—219.21(423) and the implementation clause for 701—Chapter 219 as follows:

**701—219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.**

**219.21(1) Exempt lease or rental of machinery and equipment.** On and after July 1, 2004, the sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: ~~self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are all machinery, equipment, and replacement parts~~ directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor’s, subcontractor’s, or builder’s purchases of this equipment would continue to be taxable, as would a lessor’s purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder. A contractor’s, subcontractor’s, or builder’s rental of equipment is not exempt from tax under rule 219.13(423) because the rental of equipment is now the sale of that equipment and no longer the performance of a taxable service. Reference rule 701—26.18(422,423) for an extensive explanation of this matter.

**219.21(2) Exempt sales including lease or rental of equipment.** Beginning July 1, 2005, the sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: ~~self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.~~ The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax. See 701—Chapter 241, division II, for an explanation of the new excise tax imposed on these transactions as of July 1, 2005.

These rules are intended to implement 2005 Iowa Code subsections 423.1(42), 423.2(1)“b” and “c,” 423.2(6), 423.3(37), 423.3(63 64), and 423.5(2), and 2005 Iowa Code Supplement subsections 423.3(37) and 423.3(85).

ITEM 8. Amend rule 701—230.2(423), introductory paragraph and the implementation clause, as follows:

**701—230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing.** An expanded definition of “processing” is allowed to manufacturers of food products for human con-

REVENUE DEPARTMENT[701](cont'd)

sumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. *For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.*

This rule is intended to implement 2005 Iowa Code section Supplement subsection 423.3(48)(49).

ITEM 9. Amend rules 701—231.6(423), 701—231.7(423), and 701—231.8(423) as follows:

**701—231.6(423) Prescription drugs, medical devices, and oxygen, and insulin.** Sales of prescription drugs and medical devices as defined in subrule 231.6(1) and dispensed for human use or consumption in accordance with subrules 231.6(3) and 231.6(4) shall be exempt from sales tax. Rentals of medical devices as defined in subrule 231.6(1) are also exempt from tax. The sales price from the sales of any oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax.

**231.6(1) Definitions.**

“Medical device” means *durable medical equipment or mobility enhancing equipment supplies, including orthopedic or orthotic devices*, intended to be prescribed by a practitioner for human use to an ultimate user. *See rule 701—231.8(423) for definitions of those terms.*

“Prescription drug” means a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner *drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.*

“Ultimate user” means any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

**231.6(2) Tax exemption.** The sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

~~EXAMPLE A: A sports medicine clinic purchases a new type of device which scans the inside of the human body to disclose injured soft tissue. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its purchase is not exempt from tax.~~

~~EXAMPLE B: Pursuant to a practitioner’s prescription, a pacemaker is inserted in a patient’s body. The pacemaker is dispensed to an ultimate user, and its sale is exempt from tax.~~

EXAMPLE C A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a device or drug exempt from tax if

a prescription is required or permitted under Iowa state or federal law.

EXAMPLE D B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE E C: A federal law permits but does not require the painkiller mentioned in Example D B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 701—231.7(423) and 701—231.8(423) for examples of medical devices sold without a prescription but exempt from tax.

**231.6(3)** Persons authorized to dispense prescription drugs or prescription devices. In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. to g. No change.

h. *Persons licensed as advanced registered nurse practitioners by the board of nursing when prescribing and dispensing in accordance with Iowa Code subsection 147.107(8).*

h i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

i j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

**231.6(4) and 231.6(5)** No change.

**231.6(6)** Prescription drugs and devices purchased by hospitals for resale. This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (a) the drug or device is actually transferred to the patient; (b) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (c) the hospital and the patient intend the transfer to be a sale; and (d) the sale is evidenced in the patient’s bill by a separate charge for the identifiable drug or device. Reference rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also reference rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A and EXAMPLE B. No change.

A hospital’s purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital’s use of the drug or device is otherwise exempt under 231.6(1).

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(59 60).

**701—231.7(423) Exempt sales of nonprescription other medical devices, other than which are not prosthetic devices.** A prescription is not required for sales of the medical devices listed in subrule 231.7(1) to be exempt from tax if those devices are purchased for human use or consumption.

**231.7(1) Definitions.**

“Anesthesia trays” to “Insulin.” No change.

“Intraocular lens” means a lens located inside the eye.

REVENUE DEPARTMENT[701](cont'd)

“Kit” means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

“Medical Other medical device,” for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

“Myelogram” to “Tray.” No change.

**231.7(2)** Sales of the following *other* medical devices are exempt from tax:

a. Sales of insulin, hypodermic syringes, and diabetic testing materials.

b. Sales and rentals of oxygen equipment.

c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, ~~intraocular lenses~~, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are ~~no longer~~ *not* taxable.

**231.7(3)** No change.

This rule is intended to implement 2005 Iowa Code *Supplement* subsection 423.3(59 60).

**701—231.8(423) Prosthetic, orthotic and orthopedic devices, durable medical equipment, and mobility enhancing equipment.**

**231.8(1)** Prosthetic devices. Sales or rental of prosthetic devices shall be exempt from sales tax.

**231.8(2)** ~~Orthotic and orthopedic devices~~ *Durable medical equipment and mobility enhancing equipment.* Sales or rental of ~~orthotic and orthopedic devices~~ *durable medical equipment and mobility enhancing equipment* prescribed for human use which meet the provisions of subrules 231.8(3) and 231.8(4) shall be exempt from sales tax. “Prescribed” refers to a ~~written prescription, or an oral prescription later reduced to writing~~, issued in any form of oral, written, electronic, or other means of transmission by any of the persons described in paragraphs “a” through “i” of subrule 231.6(3).

**231.8(3)** Definitions.

a. “*Durable medical equipment*” means equipment, including repair and replacement parts, but does not include mobility enhancing equipment, to which all of the following apply:

1. Can withstand repeated use.

2. Is primarily and customarily used to serve a medical purpose.

3. Generally is not useful to a person in the absence of illness or injury.

4. Is not worn in or on the body.

5. Is for home use only.

6. Is prescribed by a practitioner.

b. “*Mobility enhancing equipment*” means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

2. Is not generally used by persons with normal mobility.

3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

4. Is prescribed by a practitioner.

a c. “Prosthetic device” means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 231.6(1) for a definition of the term “ultimate user.” *a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:*

1. Artificially replace a missing portion of the body.

2. Prevent or correct physical deformity or malfunction.

3. Support a weak or deformed portion of the body.

The term “prosthetic device” includes, *but is not limited to*, ~~ostomy, urological, and tracheostomy devices and supplies~~ *orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.*

The following is a nonexclusive list of prosthetic devices:

[List of prosthetic devices. No change.]

b d. “Orthotic device” means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

e e. “Orthopedic device” means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

[List of orthopedic devices. No change.]

f f. “Related devices.” Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States*, 714 F.2d 1140 (Fed. Cir. 1983).

g g. “Medical equipment and supplies.” The scope of the term “medical equipment and supplies” is broader than the terms “prescription drugs” or “medical devices.” While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 231.6(1), 231.8(1), and 231.8(2) and rule 701—231.7(423). Sales of the ~~below-listed~~ *following* items are generally taxable.

[List of medical equipment and supplies. No change.]

**231.8(4)** Power devices. Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement 2005 Iowa Code *Supplement* subsection 423.3(59 60).

ITEM 10. Adopt the following new chapter:

CHAPTER 241

EXCISE TAXES NOT GOVERNED BY THE  
STREAMLINED SALES AND USE TAX AGREEMENT

**701—241.1(423A,423D) Purpose of the chapter.** This chapter sets out the excise taxes the collection of which is governed in all aspects by the provisions of Iowa Code chapter 423 except that portion of the chapter which implements the streamlined sales and use tax agreement.

REVENUE DEPARTMENT[701](cont'd)

**701—241.2(423A,423D) Director's administration.** The director of revenue shall administer the excise taxes set out in this chapter as nearly as possible in conjunction with the administration of the state sales and use tax law, except that portion of the law which implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting the sale and use of excise tax liability. All moneys received shall be deposited in or all refunds shall be withdrawn from the general fund of the state. The director may require all persons who are engaged in the business of deriving any sales price or purchase price subject to tax under this chapter to register with the department. The director may also require a tax permit applicable only to taxes imposed under this chapter for any retailer not collecting, or any user not paying, taxes under Iowa Code chapter 423.

Iowa Code section 422.25, subsection 4, sections 422.30, 422.67, and 422.68; section 422.69, subsection 1; sections 422.70, 422.71, 422.72, 422.74, and 422.75; section 423.14, subsection 1; and sections 423.23, 423.24, 423.25, 423.31 to 423.35, 423.37 to 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the excise taxes authorized under this chapter, in the same manner and with the same effect as if those excise taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in Iowa Code section 423.31. All taxes collected under this chapter by a retailer or any user are deemed to be held in trust for the state of Iowa.

DIVISION I  
STATE-IMPOSED HOTEL AND MOTEL TAX

**701—241.3(423A) Definitions.** For the purposes of this division, unless the context otherwise requires:

“Department” means the department of revenue.

“Lessor” means any person engaged in the business of renting lodging to users.

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

“Person” means the same as the term is defined in rule 701—211.1(423).

“Renting” or “rent” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

“Sales price” means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

“User” means a person to whom lodging is rented.

For the purposes of this division, all other words and phrases used in this chapter and defined in rule 701—211.1(423) have the meaning set forth in that rule.

**701—241.4(423A) Imposition of tax.** A tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

**701—241.5(423A) Exemptions.** The tax described in this division shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or facility for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of lodging to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

This division is intended to implement 2005 Iowa Code Supplement chapter 423A.

DIVISION II  
EXCISE TAX ON SPECIFIC  
CONSTRUCTION MACHINERY AND EQUIPMENT

**701—241.6(423D) Definitions.** For the purposes of this division, unless the context otherwise requires:

“Construction” means new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

“Contractor” includes contractors, subcontractors, and builders, but not owners.

“Department” means the department of revenue.

“Equipment” means self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

“Sales price” or “purchase price” means the same as these terms are defined in rule 701—211.1(423).

For the purposes of this division, all other words and phrases used in this division and defined in rule 701—211.1(423) have the meaning set forth in that rule.

**701—241.7(423D) Tax imposed.** A tax of 5 percent is imposed on the sales price or purchase price of all equipment sold or used in the state of Iowa. This tax shall be collected and paid over to the department by any retailer, retailer maintaining a place of business in this state, or user who would be responsible for collection and payment of the tax if it were a sales or use tax imposed under Iowa Code chapter 423.

**701—241.8(423D) Exemption.** The sales price on the lease or rental of equipment to contractors for direct and primary use in construction is exempt from the tax imposed by this chapter.

This division is intended to implement 2005 Iowa Code Supplement chapter 423D.

**ARC 5012B**

**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 42, "Adjustments to Computed Tax," Iowa Administrative Code.

These amendments are proposed as a result of 2005 Iowa Acts, chapter 148.

Item 1 amends subrule 42.9(1) to provide for the Iowa child and dependent care credit for taxpayers with adjusted gross income of \$40,000 or more, but less than \$45,000, equal to 30 percent of the federal child and dependent care credit, starting with the 2006 tax year.

Item 2 amends the implementation clause for rule 701—42.9(422).

Item 3 adopts new rule 701—42.29(422), which provides for an early childhood development tax credit equal to 25 percent of the first \$1,000 which the taxpayer has paid to others for each dependent aged three to five for early childhood development expenses.

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

ITEM 1. Amend subrule 42.9(1) as follows:

**42.9(1)** Computation of the child and dependent care credit. The child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes). The following is a schedule showing the percentages of federal child and dependent credits allowed on the taxpayers' state returns on the basis of the federal adjusted gross incomes (or net incomes) of the taxpayers *for tax years beginning on or after January 1, 1993.*

*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or After January 1, 1991-1993)	Percentage of Federal Child and Dependent Credit Allowed on 1991 or 1992 for 1993 through 2005 Iowa Return Returns	Percentage of Federal Credit Allowed for 1993 2006 and Later Tax Years
Less than \$10,000	75 %	75 %
\$10,000 or more but less than \$20,000	65 %	65 %
\$20,000 or more but less than \$25,000	55 %	55 %
\$25,000 or more but less than \$35,000	50 %	50 %
\$35,000 or more but less than \$40,000	40 %	40 %
\$40,000 or more but less than \$45,000	30% No Credit	No-Credit 30 %
\$45,000 or more but less than \$50,000	20% No Credit	No Credit
\$50,000 or more	10% No Credit	No Credit

\*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

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 May 1, 2006, 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 April 18, 2006. 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 April 21, 2006.

These amendments are intended to implement Iowa Code section 422.12C as amended by 2005 Iowa Acts, chapter 148.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend the implementation clause for rule **701—42.9(422)** as follows:

This rule is intended to implement Iowa Code section ~~422.11B~~ **422.12C** as amended by ~~1993~~ **2005** Iowa Acts, chapter ~~172~~ **148**.

ITEM 3. Amend 701—Chapter 42 by adopting the following **new** rule:

**701—42.29(422) Early childhood development tax credit.** Effective for tax years beginning on or after January 1, 2006, taxpayers may claim a tax credit equal to 25 percent of the first \$1,000 of expenses paid to others for early childhood development for each dependent from the ages of three to five. The credit is available only to taxpayers whose net income is less than \$45,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.9(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability.

**42.29(1)** Expenses eligible for the credit. The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four or five years of age:

a. Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

b. Books that improve child development, including textbooks, music books, art books, teacher editions and reading books.

c. Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

d. Expenses paid for lesson plans and curricula.

e. Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music and museum activities, including the entrance fees for such activities.

**42.29(2)** Expenses not eligible for the credit. The following expenses do not qualify for the early childhood development tax credit:

a. Any expenses paid to a preschool once a dependent reaches the age of six.

b. Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

c. Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

**42.29(3)** Application for the early childhood development tax credit.

a. In order to claim the early childhood development tax credit, the taxpayer must submit an application to the department no later than November 1 of the tax year to which the credit applies. The expenses eligible for the credit include those paid between November 1 of the previous tax year through October 31 of the tax year to which the credit applies. For example, a taxpayer who wants to claim the credit for the 2006 tax year must apply to the department by November 1, 2006, and the expenses paid from November 1, 2005, through October 31, 2006, for early childhood devel-

opment would be eligible for the credit for the 2006 tax year. The following information must be submitted in the application:

(1) Name, address and social security number of the taxpayer.

(2) Name, date of birth, and age of the dependent(s) for which expenses were paid for early childhood development.

(3) If expenses are paid to a preschool, the name of the preschool and the amount paid to the preschool during the applicable period.

(4) A summary listing of the amounts paid for books, instructional materials, lesson plans and curricula, and child development and educational activities outside the home.

b. Upon receipt of the application, the department has until January 1 following the deadline for applications to notify the taxpayer of the amount of the tax credit. The total amount of credits that can be approved is limited to \$2.5 million for each year. If tax credit applications exceed \$2.5 million, each taxpayer shall receive a pro-rata share of the approved tax credits. For example, if tax credit applications total \$4 million, each taxpayer will receive 62.5 percent (\$2.5 million divided by \$4 million) of the taxpayer's requested amount as the taxpayer's tax credit. When notifying each taxpayer of their tax credit amount, the department will state that the credit will not be allowed if the taxpayer's income is \$45,000 or more.

c. For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less than \$45,000 to be eligible for the credit. If the income is less than \$45,000, the early childhood development tax credit in these cases shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined income.

This rule is intended to implement Iowa Code section 422.12C as amended by 2005 Iowa Acts, chapter 148.

**ARC 5005B**

## SECRETARY OF STATE[721]

### 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 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

2006 Iowa Acts, House File 2050, section 3, grants county commissioners of elections the option to print the voter's declaration of eligibility on each page of the election register and to have voters sign the register in lieu of a separate form. The newly adopted law requires the state commissioner of elections to prescribe by rule an alternate method for the affected precinct election officials to provide the information contained in the eligibility declaration to observers who are legally present at the polling place. Item 2 addresses the required procedure. The commissioner is required to provide a sign-in sheet, or voter roster, for voters to print the information that is contained on the voter's declaration of eligibility.

## SECRETARY OF STATE[721](cont'd)

Item 1 addresses a situation not mentioned in 2006 Iowa Acts, House File 2050. Voters who have moved into a new precinct and are reporting changes of address at the polls on election day will not be listed in the election register. These voters are required by Iowa Code section 48A.27 to complete a voter registration form. In order to collect all the required information, this proposed amendment to the agency's existing rules governing election day address changes requires the voter to complete a form that includes both the voter registration form and the eligibility declaration.

Any interested person may make written suggestions or comments on the proposed amendments through April 18, 2006. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by 4:30 p.m. on April 18, 2006.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5004B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

**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:

April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%
June 1, 2005 — June 30, 2005	6.25%
July 1, 2005 — July 31, 2005	6.25%
August 1, 2005 — August 31, 2005	6.00%
September 1, 2005 — September 30, 2005	6.25%
October 1, 2005 — October 31, 2005	6.00%
November 1, 2005 — November 30, 2005	6.25%
December 1, 2005 — December 31, 2005	6.50%
January 1, 2006 — January 31, 2006	6.50%
February 1, 2006 — February 28, 2006	6.50%
March 1, 2006 — March 31, 2006	6.50%
April 1, 2006 — April 30, 2006	6.50%

**ARC 4994B****ELDER AFFAIRS  
DEPARTMENT[321]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 21, "Case Management Program for Frail Elders," Iowa Administrative Code.

The chapter was Adopted and Filed Emergency to create the policy framework to facilitate Medicaid approval of the state plan amendment to add case management as a waiver-covered service. Approval from Centers for Medicare and Medicaid Services has been delayed to the point that there is no longer the need for emergency enactment of the rules.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to adoption are unnecessary since approval by the Centers for Medicare and Medicaid Services of the application to add case management as an elderly waiver service has been delayed to the point that there is no longer the need for emergency enactment of these rules and an identical chapter was filed as a Notice of Intended Action and is proceeding through the rule-making process.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and it should be made effective upon filing. An identical chapter, which was filed as a Notice of Intended Action at the same time as the emergency filing, is proceeding through the rule-making process.

The Commission adopted the amendment during the telephonic Commission meeting held on March 3, 2006.

This amendment became effective March 8, 2006.

This amendment is intended to implement 2005 Iowa Acts, House File 841, and Iowa Code section 231.23A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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.

Rescind and reserve **321—Chapter 21.**

[Filed Emergency 3/8/06, effective 3/8/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 5009B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 182, "Family-Centered Services," Iowa Administrative Code.

This amendment restores psychosocial evaluation as an allowable nonrehabilitative family-centered service. "Non-rehabilitative" services are offered to children who do not have a rehabilitative treatment need (i.e., a medical-

behavioral health need of a child with a deficit in function or skill that the child lost or never gained as a result of interference in the normal maturational and learning process due to child or parental dysfunction). For example, a child who is too young to have gained a particular skill may still require service due to child or parental dysfunction.

Nonrehabilitative family-centered services were not specifically listed in Chapter 182 until the chapter was amended effective May 1, 2005. (Those amendments were published in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4135B**.) Psychosocial evaluation was inadvertently omitted.

The amendment also clarifies that the definitions for non-rehabilitative family-centered services are identical to the definitions for the corresponding rehabilitative treatment services.

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

The Council on Human Services adopted this amendment on March 8, 2006.

The Department finds that notice and public participation are unnecessary because this amendment merely restores a provision that was previously in effect and was not intentionally rescinded. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit by making psychosocial evaluation services available to children who do not have a rehabilitative treatment need. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code section 234.6.

This amendment became effective March 10, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 subrule 182.2(4) as follows:

**182.2(4)** Nonrehabilitative treatment. Nonrehabilitative treatment services address a child's needs related to child abuse or neglect that are not being met through rehabilitative treatment services. Family-centered nonrehabilitative service components include:

a. ~~Skill~~ *Restorative living skills development, family skill development, and social skills development as defined in 441—185.1(234).*

b. *Therapy and counseling services as defined in 441—185.1(234).*

c. *Psychosocial evaluation as defined in 441—185.1(234).*

[Filed Emergency 3/10/06, effective 3/10/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 5004B****SECRETARY OF STATE[721]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby adopts amendments to Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

2006 Iowa Acts, House File 2050, section 3, grants county commissioners of elections the option to print the voter's declaration of eligibility on each page of the election register and to have voters sign the register in lieu of a separate form. The newly adopted law requires the state commissioner of elections to prescribe by rule an alternate method for the affected precinct election officials to provide the information contained in the eligibility declaration to observers who are legally present at the polling place. Item 2 addresses the required procedure. The commissioner is required to provide a sign-in sheet, or voter roster, for voters to print the information that is contained on the voter's declaration of eligibility.

Item 1 addresses a situation not mentioned in 2006 Iowa Acts, House File 2050. Voters who have moved into a new precinct and are reporting changes of address at the polls on election day will not be listed in the election register. These voters are required by Iowa Code section 48A.27 to complete a voter registration form. In order to collect all the required information, this amendment to the agency's existing rules governing election day address changes requires the voter to complete a form that includes both the voter registration form and the eligibility declaration.

The agency finds, in compliance with Iowa Code section 17A.4(2), that notice and public participation are impracticable because 2006 Iowa Acts, House File 2050, which authorizes this practice, became effective upon enactment on March 2, 2006.

The agency also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on March 10, 2006, as they confer a benefit upon county commissioners of elections by providing them with guidance for implementing this new practice.

The Secretary of State adopted these amendments on March 9, 2006.

These amendments are also published herein under Notice of Intended Action as **ARC 5005B** to allow public comment. This emergency filing permits county commissioners of elections to begin to implement the new provisions of the law.

These amendments became effective March 10, 2006.

These amendments are intended to implement Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 721—21.4(49) by adding the following **new** subrule:

**21.4(3)** In precincts where the voter's declaration of eligibility is included in the election register pursuant to rule 21.5(49) and Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3, the voter shall be provided with a form that includes both the eligibility declaration and the voter registration form. The instructions for the voter registration form shall be printed in large type on a separate sheet of paper and shall be provided to each person who completes a voter registration form at the polls. In lieu of signing in the election register, the voter who is reporting a change of address shall complete the required fields on both the eligibility declaration and the registration forms.

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

**721—21.5(49) Eligibility declarations in the election register.**

**21.5(1)** Voter roster. To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address and, at the voter's option, telephone number. The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If the multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

**21.5(2)** Primary elections—change of party declarations. The commissioner shall provide for appropriate preservation of records of voters' changes in party declaration. One of these methods shall be followed:

a. In addition to instructing the precinct election officials to record voters' party changes in the election register, the commissioner shall provide a separate document in substantially the form required by Iowa Code section 43.43. The change of party forms shall be kept with other voter registration records and shall be retained for the period required by Iowa Code section 48A.32.

b. If changes in party are recorded only in the election registers, the election registers shall be retained for the period required by Iowa Code section 48A.32 for voter registration records: 22 months after the next general election following the cancellation of voter registration record of each person who changed party affiliation at the polls on primary election day.

This rule is intended to implement Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3.

[Filed Emergency 3/10/06, effective 3/10/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

## ARC 5010B

### BANKING DIVISION[187]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby amends Chapter 2, "Application Procedures," and Chapter 8, "General Banking Powers," Iowa Administrative Code.

The amendments address requirements for establishing mobile bank offices, bank-owned courier services, and convenience offices. The amendments also address the permissibility of state-chartered banks providing third-party courier services to their customers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4849B**. No public comment was received on the amendments. These amendments are identical to those published under Notice of Intended Action.

The Superintendent of Banking adopted these amendments on March 8, 2006.

These amendments will become effective on May 3, 2006.

These amendments are intended to implement Iowa Code sections 17A.3 and 524.213.

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 [2.4(3), 2.12(2), 2.17, 8.10] is being omitted. These amendments are identical to those published under Notice as **ARC 4849B**, IAB 2/1/06.

[Filed 3/10/06, effective 5/3/06]  
[Published 3/29/06]

[For replacement pages for IAC, see IAC Supplement 3/29/06.]

## ARC 4986B

### EDUCATION DEPARTMENT[281]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education adopts amendments to Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

The amendments are adopted to implement statutory language and to make the enforcement of the athletic rules more uniform for all students participating in extracurricular activities. 2005 Iowa Acts, House File 423, amended Iowa Code section 256.46 and Iowa Code subsection 282.18(13). Items 6 through 8 are adopted to implement statutory language. All other amendments are pursuant to the authority granted the State Board of Education in Iowa Code section 280.13 to set eligibility requirements for students who participate in interscholastic athletics.

No waiver provision is included because the Board of Education has adopted agencywide waiver rules in 281—Chapter 4.

Notice of Intended Action was published in the December 7, 2005, Iowa Administrative Bulletin as **ARC 4731B**. Public hearings were held on January 11, 2006, and on January 26, 2006. Approximately 130 persons attended the public

hearings. Of the 68 individuals who commented, only one supported the changes. However, many of the individuals who opposed the changes did not oppose the concept of a more rigorous rule. They objected to the details of the rule as summarized below. There were 194 written comments received. The vast majority was received via E-mail. Sixty percent of the writers opposed the proposed rule; 40 percent favored it. Again, many of the individuals who wrote in opposition to the proposed rule do not oppose the concept of a more rigorous standard.

Concerns raised in the comments included the following:

1. What evidence is there that the current rule is not working; that is, "Where is the data that shows that there was a problem that needed to be fixed?"
2. The new rule is a setback for students and schools because students may do any combination of the following:
  - Not take rigorous, challenging, college-prep courses;
  - Quit sports (and disengaged students are poorer performing students);
  - Drop out of school.
3. At-risk students and freshmen need a more flexible rule.
4. Eligibility should be linked more to graduation, which just requires "x" number of credits.
5. The checking of grades should coincide with local grading periods.
6. Twenty days is too long a period of disciplinary action if the desired outcome is to change students' behaviors.
7. This should be left exclusively to local control.

As a result of public comment received, subrule 36.15(2) was changed as follows:

1. The proposed four-week check of grades was deleted; schools will be required to check grades only at the end of each grading period, defined as the period of time at the the of which a final grade is given for the coursework.
2. Students who compete in softball or baseball and who are ineligible at the end of the school year will be ineligible for four weeks during that sport, but will be eligible again in the fall. The proposed rule had such students ineligible for summer sports and 20 days in the fall.

These amendments implement Iowa Code section 280.13 and sections 256.46 and 282.18(13) as amended by 2005 Iowa Acts, House File 423.

These amendments will become effective July 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule **281—36.1(280)**, definition of "coach," as follows:

"Coach" means an individual, with coaching endorsement or authorization as required by Iowa law, employed by a school district under the provisions of an extracurricular athletic contract or employed by a nonpublic school in a position responsible for an extracurricular athletic activity. "Coach" also includes an individual who instructs, diagnoses, prescribes, evaluates, assists, or directs student learning of an interscholastic athletic endeavor on a voluntary basis on behalf of a school or school district.

ITEM 2. Amend subrule 36.4(3) as follows:

**36.4(3)** Organization elections. The election procedure for each organization shall be conducted as provided by ~~the~~ *the organization's* constitution. All criteria for protecting the voter's anonymity and ensuring adequate notice of elections shall be maintained in the election procedures. In addition, there shall be one representative designated by the ~~state board of education~~ *department director* present at the counting of all ballots. That representative shall also validate election results.

## EDUCATION DEPARTMENT[281](cont'd)

ITEM 3. Amend subrule 36.14(2) as follows:

**36.14(2) Sportsmanship.** It is the clear obligation of *member and associate member schools to ensure that their contestants, and coaches, and spectators in all interscholastic competitions to practice the highest principles of sportsmanship, conduct, and ethics of competition.* The governing organization shall have authority to penalize any *member school, associate member school, contestant, or coach in violation of this obligation.*

ITEM 4. Amend subrule 36.14(7) as follows:

**36.14(7) Ineligible player participation.** Member or associate member schools that permit or allow participation in any event by a person in violation of the eligibility rules or by a student who has been suspended shall be subject to sanctions the executive board may, in the best interests of interscholastic competition, impose, including forfeiture of contests. The sanctions may include, but are not limited to, the following: forfeiture of contests or events or both, involving any ineligible student(s); adjustment or relinquishment of conference/district/tournament standings; and return of team awards or individual awards or both.

If a student who has been declared ineligible or who has been suspended is permitted to participate in an interscholastic competition because of a current restraining order or injunction against the school, registered organization, or department of education, and if such restraining order or injunction subsequently is voluntarily vacated, stayed, reversed, or finally determined by the courts not to justify injunctive relief, the sanctions listed above may be imposed.

ITEM 5. Amend subrule 36.15(2) as follows:

**36.15(2) Scholarship rules.**

a. All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants must be under 20 years of age.

c. All contestants shall be enrolled students of the school in good standing; they shall have earned 20 semester hours' credit toward graduation in the preceding semester and shall be making passing grades in subjects for which 20 semester hours' credit is given for the current semester as determined by local policy. They shall receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times.

The term "preceding semester" means that semester immediately preceding the semester the student wishes to participate in athletics. Twenty semester hours means four subjects of one period or "hour" each, daily, five times a week for one semester or the equivalent. To qualify under this rule, a "subject" must meet the requirements of 281—subrules 12.5(18), 12.5(19) and 12.5(29) 281—Chapter 12. Coursework taken under the provisions of Iowa Code chapter 261C, postsecondary enrollments enrollment options, for which a school district or accredited nonpublic school grants academic credit toward high school graduation shall be used in determining eligibility. *No student shall be denied eligibility if the student's school program deviates from the traditional two-semester school year.*

(1) *Each contestant shall be passing all coursework for which credit is given and shall be making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" shall mean the period of time at the end of which a student in*

*grades 9 through 12 receives a final grade and course credit is awarded for passing grades.*

(2) *Subject to the provision below regarding contestants in interscholastic baseball or softball, if at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a bona fide contestant for 20 consecutive school days. For purposes of this subrule, a "bona fide contestant" means a student who presently is or previously has competed in the interscholastic athletic activity to which the student's period of ineligibility herein applies. This definition shall not apply to a student in the ninth grade.*

(3) *At the end of a grading period that is the final grading period in a school year, a bona fide contestant in interscholastic baseball or softball who receives a failing grade in any course for which credit is awarded is ineligible to dress for and compete in interscholastic baseball or softball for the four consecutive weeks following the end of the final grading period.*

d. ~~Special education students~~ *A student with a disability who has an individualized education program shall not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, towards the goals and objectives on the student's individualized education program.*

~~No student of an "accredited school," within the meaning of Iowa Code section 256.11(10), shall be denied eligibility if the student's school program deviates from the traditional two-semester school year.~~

d e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board which may extend the eligibility of a student when it ~~the executive board~~ finds that the interests of the student and interscholastic athletics will be benefited.

e f. ~~If, for any reason, it is impossible for the student to make up incomplete work at the same school where the work was taken to meet the 20-semester-hour requirement, upon request by the local superintendent, the executive board can rule on the student's eligibility. All member schools shall provide appropriate interventions and necessary academic supports for students who fail or who are at risk to fail, and shall report to the department regarding those interventions on the comprehensive school improvement plan.~~

f g. A student is academically eligible upon entering the ninth grade. No student shall be eligible to participate in any given interscholastic athletic sport if the student has engaged in that sport professionally.

g h. No student who has been a member of a college squad or who has trained with a college squad or participated in a college contest shall be eligible for any athletic contest.

h i. A student who is eligible at the close of a semester is academically eligible until the beginning of the subsequent semester.

i. ~~A student may earn up to the equivalent of ten semester hours for interscholastic eligibility purposes in a summer program operated by an accredited school; or with approval of a local board of education, by correspondence work recognized by national accreditation agencies; or voluntary~~

## EDUCATION DEPARTMENT[281](cont'd)

courses of study provided by a member school. To utilize summer coursework for the purpose of eligibility, the student must have been enrolled in the school in which the student wishes to participate in the sports program during the spring semester or quarter immediately preceding the summer session. In the spring semester or quarter, the student must have been charged with a semester of eligibility attendance, but will not be charged with a semester of eligibility, or any part thereof, by reason of having taken such summer school work.

j. The local superintendent of schools, with the approval of the local board of education, may give permission to a dropout student to participate in athletics upon return to school if the student is otherwise eligible under these rules.

ITEM 6. Amend the introductory paragraph of subrule 36.15(3) as follows:

**36.15(3)** General transfer rule. A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in ~~281—subrule 12.1(8) rule 281—12.1(256)~~, exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.15(3)“a” applies. *The period of ineligibility applies only to varsity level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)* In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

ITEM 7. Amend the introductory paragraph of subrule 36.15(4) as follows:

**36.15(4)** Open enrollment transfer rule. A student in grades ~~10~~ 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student’s parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer *except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)* This period of ineligibility does not apply if the student:

ITEM 8. Amend subrule **36.15(5)**, paragraphs “b” and “c,” as follows:

b. Dual enrollment. A student who receives competent private instruction, not in an accredited nonpublic or public school, may seek dual enrollment in the public school of the student’s resident district and is eligible to compete in interscholastic athletic competition in the resident school district provided the student meets the eligibility requirements of these rules and those set by the public school of attendance.

If a student seeking such dual enrollment is enrolled in an associate member school of the Iowa Girls’ High School Athletic Union or Iowa High School Athletic Association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school

or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by 281 IAC 36.1(280).)

Any ineligibility imposed under this chapter shall begin with the first day of participation under dual enrollment. *Any period of ineligibility applies only to varsity level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)*

c. Competent private instruction. A student who receives competent private instruction, and is not dual-enrolled in a public school, may participate in and be eligible for interscholastic athletics at an accredited nonpublic school if the student is accepted by that school and the student meets the eligibility requirements of this chapter and those set by the accredited nonpublic school where the student participates. Application shall be made to the accredited nonpublic school on a form provided by the department of education.

If a student seeking such participation is enrolled in an associate member school of the Iowa Girls’ High School Athletic Union or Iowa High School Athletic Association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by 281 IAC 36.1(280).)

Any ineligibility imposed under this chapter shall begin with the first day of participation with the accredited nonpublic school. *Any period of ineligibility applies only to varsity level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)*

ITEM 9. Amend rule 281—36.16(280) as follows:

**281—36.16(280) Executive board review.** A student, parent of a minor student, or school contesting the ruling of a student’s eligibility based on these rules, other than subrule 36.15(1), or a school contesting a penalty imposed under subrule 36.15(6), paragraph “b,” shall be required to state the basis of the objections in writing and may also request an oral hearing, addressed to the executive officer of the board of the governing organization. The executive officer shall schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board, but not later than 20 days following the receipt of the objections unless a later time is mutually agreeable. The executive board shall give at least 5 days’ written notice of the hearing. The executive board shall consider the evidence presented and issue findings and conclusions in a written decision within 5 days of the hearing, ~~mailing~~ *and shall mail* a copy to appellant.

[Filed 3/3/06, effective 7/1/06]

[Published 3/29/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 5007B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 249A.4 and 234.6, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People with Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

These amendments implement a new category of Medicaid waiver services, the children's mental health services waiver, as directed by 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3. The waiver was approved at the federal level as a demonstration waiver under Section 1115a of the Social Security Act, but is being administered as a Medicaid home- and community-based services (HCBS) waiver.

The children's mental health services waiver covers environmental modifications, adaptive devices, and therapeutic resources; family and community support services; in-home family therapy; and respite care for up to 300 children under the age of 18. Eligible children must have a diagnosis qualifying as a "severe emotional disturbance" and have service needs that qualify for the level of care offered in a psychiatric hospital for children. As with other HCBS waivers, consumers must meet the requirements of a Medicaid coverage group except for the consumer's institutional status, and must choose waiver services over institutional services.

Consumers approved for the children's mental health waiver must also receive Medicaid targeted case management services. These amendments revise definitions in Chapter 90 to add waiver-eligible children to the targeted population for case management services.

The amendments also include technical changes to remove an obsolete reference to child welfare targeted case management and to correct a form number.

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

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 12, 2005, as **ARC 4562B**. Notice of Intended Action to solicit comment on those amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 4561B**. The Department scheduled nine public hearings on the Notice of Intended Action. No one attended the public hearings, and no written comments were submitted.

In response to issues identified during implementation of the waiver, the Department has made the following changes to Items 2, 4, 5, and 8 of the amendments Adopted and Filed Emergency and published in the Notice of Intended Action:

- Remove references to the Bureau of Long-Term Care in relation to the Department's quality assurance staff. Quality assurance for children's mental health waiver providers will be done by staff under contract to the Department's Division of Behavioral, Developmental, and Protective Services for Families, Adults, and Children (the same staff who do

quality assurance for rehabilitative treatment service providers).

- Add family and community supports providers enrolled in the children's mental health waiver as allowable providers of environmental modifications, adaptive devices, and therapeutic resources in subrule 77.46(2).

- Amend rules on staff training for family and community supports providers at 77.46(3)"b"(2) and for respite care providers at 77.46(5)"b"(2) to extend the deadline for receipt of training from three months to four months after employment. The same rules are amended to add a requirement for training in professional ethics and to clarify that training on medication provision shall be done according to agency policy. Training shall address all appropriate behavioral interventions, not just restraints; and only training on child abuse is required, not training on dependent adult abuse.

- Add in subrule 77.46(4) training and crisis intervention for in-home family therapy providers identical to the requirements for family and community supports providers in subrule 77.46(3). Both services are provided either by community mental health centers or by rehabilitative treatment providers.

- Add requirements in paragraphs 77.46(3)"d" and 77.46(4)"d" that providers of in-home family therapy and family and community supports have policies on intake, admission, and discharge.

- Clarify in subparagraph 77.46(5)"b"(3) that respite care staff in their early months of employment who have not completed all of the required training do not have to have other staff present, but must be overseen by supervisory staff and receive feedback from the family within 24 hours after service provision.

- Add to subrule 78.52(2) a requirement that a mental health professional on the consumer's interdisciplinary team must provide a statement that purchase of an environmental modification or adaptive device has a direct relationship to the consumer's diagnosis of serious emotional disturbance.

- Remove provisions on therapeutic resources from subrule 78.52(2) and add them to paragraph 78.52(3)"d" as individual supports (along with transportation expenses). In compliance with the waiver terms and conditions approved by the Centers for Medicare and Medicaid Services, the cap on expenditures for individual supports is lowered from \$1570 to \$1500 and documentation requirements are added. The individual support must be beyond the family's ability to pay and must not be available from another community resource or through the Medicaid program. Corresponding changes are made in subrule 79.1(2) and in subparagraph 79.1(15)"b"(8).

- Clarify in paragraph 78.52(3)"b" that family and community support services must be provided under the direction of a mental health professional who is a member of the consumer's interdisciplinary team.

- Add "developing positive socialization and citizenship skills" to the allowable family and community support service activities listed in paragraph 78.52(3)"c."

- Add in paragraph 78.52(3)"d" documentation requirements for the transportation component of family and community support services.

- Add language to subrule 78.52(4) to clarify the focus of in-home family therapy and the exclusion of therapy that may be obtained through the Iowa Plan or other funding sources.

- Correct a reference to the "individual comprehensive plan" in subparagraph 79.1(15)"b"(1) to read "service plan" to correspond to previous changes in 441—Chapter 83.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Add the following definitions to 441—83.121(249A): “Case manager” means the person designated to provide Medicaid targeted case management services for the consumer.

- “Skill development” means that the service provided is habilitative and is intended to impart an ability or capacity to the consumer. Supervision without habilitation is not skill development.

- Remove from 441—83.123(249A) language on implementation priorities and dates that is no longer needed.

- Clarify in subrule 83.123(1) the processes for determining whether a waiver slot is available and operating the waiting list.

- Update the implementation statements for rules 441—77.46(249A) and 78.52(249A) and 441—Chapter 83, Division VII, to reflect the publication of 2005 Iowa Acts and to reference Iowa Code section 249A.4.

The Council on Human Services adopted these amendments on March 8, 2006.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

These amendments shall become effective May 3, 2006, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.29(249A) by rescinding and reserving subrule **77.29(2)**.

ITEM 2. Adopt **new** rule 441—77.46(249A) as follows:

**441—77.46(249A) HCBS children’s mental health waiver service providers.** HCBS children’s mental health waiver services shall be rendered by provider agencies that meet the general provider standards in subrule 77.46(1) and also meet the standards in subrules 77.46(2) to 77.46(5) that are specific to the waiver services provided. A provider that is approved for the same service under another HCBS Medicaid waiver shall be eligible to enroll for that service under the children’s mental health waiver.

**77.46(1) General provider standards.** All providers of HCBS children’s mental health waiver services shall meet the following standards:

a. Fiscal capacity. Providers must demonstrate the fiscal capacity to provide services on an ongoing basis.

b. Direct care staff.

(1) Direct care staff must be at least 18 years of age.

(2) Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 249A.29 before employment of a staff member who will provide direct care.

(3) Direct care staff may not be the spouse of the consumer or the parent or stepparent of the consumer.

c. Outcome-based standards and quality assurance.

(1) Providers shall implement the following outcome-based standards for the rights and dignity of children with serious emotional disturbance:

1. Consumers are valued.
2. Consumers are a part of community life.
3. Consumers develop meaningful goals.
4. Consumers maintain physical and mental health.
5. Consumers are safe.
6. Consumers and their families have an impact on the services received.

(2) The department’s quality assurance staff shall conduct random quality assurance reviews to assess the degree to which the outcome-based standards have been implemented

in service provision. Results of outcome-based quality assurance reviews shall be forwarded to the certifying or accrediting entity.

(3) A quality assurance review shall include interviews with the consumer and the consumer’s parents or legal guardian, with informed consent, and interviews with designated targeted case managers.

(4) A quality assurance review may include interviews with provider staff, review of case files, review of staff training records, review of compliance with the general provider standards in this subrule, and review of other organizational policies and procedures and documentation.

(5) Corrective action shall be required if the quality assurance review demonstrates that service provision or provider policies and procedures do not reflect the outcome-based standards. Technical assistance for corrective action shall be available from the department’s quality assurance staff.

d. Incident reporting. The provider shall document major and minor incidents and make the incident reports and related documentation available to the department upon request. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.

(1) Major incident defined. A “major incident” means an occurrence involving a consumer that:

1. Results in a physical injury to or by the consumer that requires a physician’s treatment or admission to a hospital;
2. Results in a consumer’s death or the death of another person;

3. Requires emergency mental health treatment for the consumer;

4. Requires the intervention of law enforcement;

5. Requires a report of child abuse pursuant to Iowa Code section 232.69; or

6. Constitutes a prescription medication error or a pattern of medication errors that could lead to the outcome in numbered paragraph “1,” “2,” or “3.”

(2) Minor incident defined. A “minor incident” means an occurrence involving a consumer during service provision that is not a major incident and that:

1. Results in the application of basic first aid;

2. Results in bruising;

3. Results in seizure activity;

4. Results in injury to self, to others, or to property; or

5. Constitutes a prescription medication error.

(3) Report form. Each major or minor incident occurring during service provision shall be recorded on an incident report form. The form shall be completed and signed by the provider staff who were directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

1. The name of the consumer involved.

2. The date and time the incident occurred.

3. A description of the incident, including designation of the incident as a major or minor incident.

4. The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other waiver-eligible or non-waiver-eligible consumers who were involved in the incident must be maintained by the use of initials or other means.

5. The action that the staff took to manage the incident.

6. The resolution of or follow-up to the incident.

(4) Reporting procedure for major incidents. When a major incident occurs or when staff becomes aware of a major incident, the procedure shall be as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

1. Provider staff shall notify the supervisor immediately.

2. The supervisor shall immediately notify the consumer's case manager and the consumer's parents or legal guardian, unless the parent or legal guardian is suspected as the perpetrator. If a parent or legal guardian is suspected as the perpetrator, the supervisor shall follow the procedure for reporting child abuse according to Iowa Code section 232.69.

3. Provider staff shall complete the incident report and forward the report to the supervisor within 24 hours of the incident.

4. Within 72 hours of the incident, the supervisor shall send a copy of the incident report to the consumer's case manager, the department's quality assurance staff, and the consumer's parents or legal guardian.

5. The provider shall file a copy of the incident report in a centralized location and make a notation in the consumer's case file.

(5) Reporting procedure for minor incidents. When a minor incident occurs:

1. Provider staff shall notify the consumer's parents or legal guardian immediately.

2. Provider staff shall complete an incident report and submit the report to the supervisor within 24 hours of the minor incident.

3. Provider staff shall make a notation in the consumer's case file.

4. The supervisor shall file the incident report in a centralized location.

**77.46(2)** Environmental modifications, adaptive devices, and therapeutic resources providers. The following agencies may provide environmental modifications, adaptive devices, and therapeutic resources under the children's mental health waiver:

a. A community business that:

(1) Possesses all necessary licenses and permits to operate in conformity with federal, state, and local statutes and regulations, including Iowa Code chapter 490; and

(2) Submits verification of current liability and workers' compensation insurance.

b. A retail or wholesale business that otherwise participates as a provider in the Medicaid program.

c. A home and vehicle modification provider enrolled under another HCBS Medicaid waiver.

d. A provider enrolled under the HCBS mental retardation or brain injury waiver as a supported community living provider.

e. A provider enrolled under the HCBS children's mental health waiver as a family and community support services provider.

**77.46(3)** Family and community support services providers.

a. Qualified providers. The following agencies may provide family and community support services under the children's mental health waiver:

(1) Rehabilitative treatment services skill development providers certified in good standing under 441—185.10(234).

(2) Community mental health centers accredited in good standing as providers of outpatient psychotherapy and counseling under 441—Chapter 24.

b. Staff training. The agency shall meet the following training requirements as a condition of providing family and community support services under the children's mental health waiver:

(1) Within one month of employment, staff members must receive the following training:

1. Orientation regarding the agency's mission, policies, and procedures; and

2. Orientation regarding HCBS philosophy and outcomes for rights and dignity found in 77.46(1)“c” for the children's mental health waiver.

(2) Within four months of employment, staff members must receive training regarding the following:

1. Serious emotional disturbance in children and provision of services to children with serious emotional disturbance;

2. Confidentiality;

3. Provision of medication according to agency policy and procedure;

4. Identification and reporting of child abuse;

5. Incident reporting;

6. Documentation of service provision;

7. Appropriate behavioral interventions; and

8. Professional ethics.

(3) Until a staff member receives the training identified in subparagraphs (1) and (2), the staff member shall not provide any direct service without the presence of experienced staff.

(4) Within the first year of employment, staff members must complete 24 hours of training in children's mental health issues.

(5) During each consecutive year of employment, staff members must complete 12 hours of training in children's mental health issues.

c. Support of crisis intervention plan. As a condition of providing services under the children's mental health waiver, a family and community support provider shall develop and implement policies and procedures for maintaining the integrity of the individualized crisis intervention plan as defined in 441—24.1(225C) that is developed by each consumer's interdisciplinary team. The policies and procedures shall address:

(1) Sharing with the case manager and the interdisciplinary team information pertinent to the development of the consumer's crisis intervention plan.

(2) Training staff before service provision, in cooperation with the consumer's parents or legal guardian, regarding the consumer's individual mental health needs and individualized supports as identified in the crisis intervention plan.

(3) Ensuring that all staff have access to a written copy of the most current crisis intervention plan during service provision.

(4) Ensuring that the plan contains current and accurate information by updating the case manager within 24 hours regarding any circumstance or issue that would have an impact on the consumer's mental health or change the consumer's crisis intervention plan.

d. Intake, admission, and discharge. As a condition of providing services under the children's mental health waiver, a family and community support provider shall have written policies and procedures for intake, admission, and discharge.

**77.46(4)** In-home family therapy providers.

a. Qualified providers. The following agencies may provide in-home family therapy under the children's mental health waiver:

(1) Community mental health centers accredited in good standing as providers of outpatient psychotherapy and counseling under 441—Chapter 24.

(2) Rehabilitative treatment services therapy and counseling providers certified in good standing under 441—185.10(234).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Staff training. The agency shall meet the following training requirements as a condition of providing in-home family therapy under the children's mental health waiver:

(1) Within one month of employment, staff members must receive the following training:

1. Orientation regarding the agency's mission, policies, and procedures; and
2. Orientation regarding HCBS philosophy and outcomes for rights and dignity found in 77.46(1)"c" for the children's mental health waiver.

(2) Within four months of employment, staff members must receive training regarding the following:

1. Serious emotional disturbance in children and service provision to children with serious emotional disturbance;
2. Confidentiality;
3. Provision of medication according to agency policy and procedure;
4. Identification and reporting of child abuse;
5. Incident reporting;
6. Documentation of service provision;
7. Appropriate behavioral interventions; and
8. Professional ethics.

(3) Until a staff member receives the training identified in subparagraphs (1) and (2), the staff member shall not provide any direct service without the presence of experienced staff.

(4) Within the first year of employment, staff members must complete 24 hours of training in children's mental health issues.

(5) During each consecutive year of employment, staff members must complete 12 hours of training in children's mental health issues.

c. Support of crisis intervention plan. As a condition of providing services under the children's mental health waiver, an in-home family therapy provider shall develop and implement policies and procedures for maintaining the integrity of the individualized crisis intervention plan as defined in 441—24.1(225C) that is developed by each consumer's interdisciplinary team. The policies and procedures shall address:

(1) Sharing with the case manager and the interdisciplinary team information pertinent to the development of the consumer's crisis intervention plan.

(2) Training staff before service provision, in cooperation with the consumer's parents or legal guardian, regarding the consumer's individual mental health needs and individualized supports as identified in the crisis intervention plan.

(3) Ensuring that all staff have access to a written copy of the most current crisis intervention plan during service provision.

(4) Ensuring that the plan contains current and accurate information by updating the case manager within 24 hours regarding any circumstance or issue that would have an impact on the consumer's mental health or change the consumer's crisis intervention plan.

d. Intake, admission, and discharge. As a condition of providing services under the children's mental health waiver, an in-home family therapy provider shall have written policies and procedures for intake, admission, and discharge.

**77.46(5) Respite care providers.**

a. Qualified providers. The following agencies may provide respite services under the children's mental health waiver:

(1) Providers certified or enrolled as respite providers under another Medicaid HCBS waiver.

(2) Group living foster care facilities for children licensed in good standing by the department according to 441—Chapters 112 and 114 to 116.

(3) Child care centers licensed in good standing by the department according to 441—Chapter 109 and child development homes registered according to 441—Chapter 110.

(4) Camps certified in good standing by the American Camping Association.

(5) Home health agencies that are certified in good standing to participate in the Medicare program.

(6) Home care agencies that meet the requirements set forth in department of public health rule 641—80.7(135).

(7) Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24.

(8) Assisted living programs certified in good standing by the department of inspections and appeals.

(9) Residential care facilities for persons with mental retardation licensed in good standing by the department of inspections and appeals.

(10) Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals enrolled as providers in the Iowa Medicaid program.

b. Staff training. The agency shall meet the following training requirements as a condition of providing respite care under the children's mental health waiver:

(1) Within one month of employment, staff members must receive the following training:

1. Orientation regarding the agency's mission, policies, and procedures; and
2. Orientation regarding HCBS philosophy and outcomes for rights and dignity for the children's mental health waiver in 77.46(1)"c."

(2) Within four months of employment, staff members must receive training regarding the following:

1. Serious emotional disturbance in children and provision of services to children with serious emotional disturbance;
2. Confidentiality;
3. Provision of medication according to agency policy and procedure;
4. Identification and reporting of child abuse;
5. Incident reporting;
6. Documentation of service provision;
7. Appropriate behavioral interventions; and
8. Professional ethics.

(3) Until a staff member receives the training identified in subparagraphs (1) and (2), the staff member shall not provide any direct service without the oversight of supervisory staff and shall obtain feedback from the family within 24 hours of service provision.

(4) Within the first year of employment, staff members must complete 24 hours of training in children's mental health issues.

(5) During each consecutive year of employment, staff members must complete 12 hours of training in children's mental health issues.

c. Consumer-specific information. The following information must be written, current, and accessible to the respite provider during service provision:

(1) The consumer's legal and preferred name, birth date, and age, and the address and telephone number of the consumer's usual residence.

(2) The consumer's typical schedule.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The consumer's preferences in activities and foods or any other special concerns.

(4) The consumer's crisis intervention plan.

d. Written notification of injury. The respite provider shall inform the parents, guardian or usual caregiver that written notification must be given to the respite provider of any recent injuries or illnesses that have occurred before respite provision.

e. Medication dispensing. Respite providers shall develop policies and procedures for the dispensing, storage, and recording of all prescription and nonprescription medications administered during respite provision. Home health agencies must follow Medicare regulations regarding medication dispensing.

f. Support of crisis intervention plan. As a condition of providing services under the children's mental health waiver, a respite provider shall develop and implement policies and procedures for maintaining the integrity of the individualized crisis intervention plan as defined in 441—24.1(225C) that is developed by each consumer's interdisciplinary team. The policies and procedures shall address:

(1) Sharing with the case manager and the interdisciplinary team information pertinent to the development of the consumer's crisis intervention plan.

(2) Training staff before service provision, in cooperation with the consumer's parents or legal guardian, regarding the consumer's individual mental health needs and individualized supports as identified in the crisis intervention plan.

(3) Ensuring that all staff have access to a written copy of the most current crisis intervention plan during service provision.

(4) Ensuring that the plan contains current and accurate information by updating the case manager within 24 hours regarding any circumstance or issue that would have an impact on the consumer's mental health or change the consumer's crisis intervention plan.

g. Service documentation. Documentation of respite care shall be made available to the consumer, parents, guardian, or usual caregiver upon request.

h. Capacity. A facility providing respite care under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in a location and for a duration consistent with the facility's licensure.

i. Service provided outside home or facility. For respite care to be provided in a location other than the consumer's home or the provider's facility:

(1) The care must be approved by the parent, guardian or usual caregiver;

(2) The care must be approved by the interdisciplinary team in the consumer's service plan;

(3) The care must be consistent with the way the location is used by the general public; and

(4) Respite care in these locations shall not exceed 72 continuous hours.

This rule is intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

ITEM 3. Amend rule 441—78.33(249A) as follows:

Amend the introductory paragraph as follows:

**441—78.33(249A) Case management services.** Payment on a monthly payment per enrollee basis will be approved for the case management functions required in 441—Chapter 90 or 441—Chapter 186.

Amend subrule **78.33(1)**, paragraph "c," as follows:

c. Recipients under 18 years of age receiving HCBS MR waiver or *HCBS children's mental health waiver* services.

Rescind and reserve subrule **78.33(3)**.

ITEM 4. Adopt **new** rule 441—78.52(249A) as follows:

**441—78.52(249A) HCBS children's mental health waiver services.** Payment will be approved for the following services to consumers eligible for the HCBS children's mental health waiver as established in 441—Chapter 83. All services shall be provided in accordance with the general standards in subrule 78.52(1), as well as standards provided specific to each waiver service in subrules 78.52(2) through 78.52(5).

**78.52(1) General service standards.** All children's mental health waiver services shall be provided in accordance with the following standards:

a. Services must be based on the consumer's needs as identified in the consumer's service plan developed pursuant to 441—83.127(249A).

(1) Services must be delivered in the least restrictive environment consistent with the consumer's needs.

(2) Services must include the applicable and necessary instruction, supervision, assistance and support as required by the consumer to achieve the consumer's goals.

b. Payment for services shall be made only upon departmental approval of the services. Waiver services provided before approval of the consumer's eligibility for the waiver shall not be paid.

c. Services or service components must not be duplicative.

(1) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through the Iowa Medicaid program outside of the waiver.

(2) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through natural supports or community resources.

(3) Services may not be simultaneously reimbursed for the same period as nonwaiver Medicaid services or other Medicaid waiver services.

(4) Costs for waiver services are not reimbursable while the consumer is in a medical institution.

**78.52(2) Environmental modifications and adaptive devices.**

a. Environmental modifications and adaptive devices include items installed or used within the consumer's home that address specific, documented health, mental health, or safety concerns.

b. A unit of service is one modification or device.

c. For each unit of service provided, the case manager shall maintain in the consumer's case file a signed statement from a mental health professional on the consumer's interdisciplinary team that the service has a direct relationship to the consumer's diagnosis of serious emotional disturbance.

**78.52(3) Family and community support services.** Family and community support services shall support the consumer and the consumer's family by the development and implementation of strategies and interventions that will result in the reduction of stress and depression and will increase the consumer's and the family's social and emotional strength.

a. Dependent on the needs of the consumer and the consumer's family members individually or collectively, family and community support services may be provided to the consumer, to the consumer's family members, or to the consumer and the family members as a family unit.

b. Family and community support services shall be provided under the recommendation and direction of a mental

## HUMAN SERVICES DEPARTMENT[441](cont'd)

health professional who is a member of the consumer's interdisciplinary team pursuant to 441—83.127(249A).

c. Family and community support services shall incorporate recommended support interventions and activities, which may include the following:

(1) Developing and maintaining a crisis support network for the consumer and for the consumer's family.

(2) Modeling and coaching effective coping strategies for the consumer's family members.

(3) Building resilience to the stigma of serious emotional disturbance for the consumer and the family.

(4) Reducing the stigma of serious emotional disturbance by the development of relationships with peers and community members.

(5) Modeling and coaching the strategies and interventions identified in the consumer's crisis intervention plan as defined in 441—24.1(225C) for life situations with the consumer's family and in the community.

(6) Developing medication management skills.

(7) Developing personal hygiene and grooming skills that contribute to the consumer's positive self-image.

(8) Developing positive socialization and citizenship skills.

d. Family and community support services may include an amount not to exceed \$1500 per consumer per year for transportation within the community and purchase of therapeutic resources. Therapeutic resources may include books, training materials, and visual or audio media.

(1) The interdisciplinary team must identify the transportation or therapeutic resource as a support need.

(2) The annual amount available for transportation and therapeutic resource must be listed in the consumer's service plan.

(3) The consumer's parent or legal guardian shall submit a signed statement that the transportation or therapeutic resource cannot be provided by the consumer or the consumer's family or legal guardian.

(4) The consumer's Medicaid targeted case manager shall maintain a signed statement that potential community resources are unavailable and shall list the community resources contacted to fund the transportation or therapeutic resource.

(5) The transportation or therapeutic resource must not be otherwise eligible for Medicaid reimbursement.

(6) Family and community support services providers shall maintain records to:

1. Ensure that the transportation and therapeutic resources provided do not exceed the maximum amount authorized; and

2. Support the annual reporting requirements in 441—subparagraph 79.1(15)"a"(1).

e. The following components are specifically excluded from family and community support services:

(1) Vocational services.

(2) Prevocational services.

(3) Supported employment services.

(4) Room and board.

(5) Academic services.

(6) General supervision and consumer care.

f. A unit of family and community support services is one hour.

**78.52(4)** In-home family therapy. In-home family therapy provides skilled therapeutic services to the consumer and family that will increase their ability to cope with the effects of serious emotional disturbance on the family unit and the familial relationships. The service must support the family

by the development of coping strategies that will enable the consumer to continue living within the family environment.

a. The goal of in-home family therapy is to maintain a cohesive family unit.

b. In-home family therapy is exclusive of and cannot serve as a substitute for individual therapy, family therapy, or other mental health therapy that may be obtained through the Iowa Plan or other funding sources.

c. A unit of in-home family therapy service is one hour. Any period less than one hour shall be prorated.

**78.52(5)** Respite care services. Respite care services are services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The "usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

a. Respite care shall not be provided to consumers during the hours in which the usual caregiver is employed, except when the consumer is attending a camp.

b. The usual caregiver cannot be absent from the home for more than 14 consecutive days during respite provision.

c. Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions:

(1) Basic individual respite is provided on a ratio of one staff to one consumer. The consumer does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(2) Specialized respite is provided on a ratio of one or more nursing staff to one consumer. The consumer has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(3) Group respite is provided on a ratio of one staff to two or more consumers receiving respite. These consumers do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

d. Respite services provided for a period exceeding 24 consecutive hours to three or more consumers who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

e. Respite services provided outside the consumer's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

f. A unit of service is one hour.

This rule is intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

ITEM 5. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," by adopting **new** numbered paragraphs "27," "28," and "29" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
27. Environmental modifications and adaptive devices	Fee schedule	\$6,000 per year
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	\$33.62 per hour
29. In-home family therapy	Fee schedule	\$90 per hour

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 79.1(15) as follows:

Amend the introductory paragraph as follows:

**79.1(15)** HCBS retrospectively limited prospective rates. This methodology applies to reimbursement for HCBS supported community living; *HCBS family and community support services*; *HCBS supported employment*; HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency; and; HCBS respite when provided by nonfacility providers, camps, home care agencies, or providers of residential-based supported community living; and HCBS group respite provided by home health agencies.

Amend paragraph “a,” subparagraph (1), as follows:

(1) Providers shall submit cost reports for each waiver service provided using Form 470-0664, Financial and Statistical Report for Purchase of Service, and Form 470-3449, Supplemental Schedule. The cost reporting period is from July 1 to June 30. The completed cost reports shall be submitted to ~~Ryun, Givens, Wenthe, and Company, 1601 48th Street, Suite 150, West Des Moines, Iowa 50266-6722~~ *the IME Provider Cost Audits and Rate-Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315*, by September 30 of each year.

Amend paragraph “b” as follows:

Amend subparagraph (1) as follows:

(1) To receive reimbursement for services, a certified provider shall enter into an agreement with the department on Form 470-2918, HCBS Waiver Agreement, and have an approved ~~individual comprehensive service~~ plan for the consumer.

Amend subparagraph (5) as follows:

(5) Consumer ~~travel and transportation~~, consumer consulting, consumer instruction, consumer environmental modification and repairs and consumer environmental furnishings shall not exceed \$1,570 per consumer per year *for supported community living services*.

Adopt new subparagraph (8) as follows:

(8) Transportation and therapeutic resources reimbursement shall not exceed \$1,500 per child per year for family and community support services.

ITEM 6. Amend subrule **83.102(5)**, paragraph “a,” subparagraph (2), as follows:

(2) For current Medicaid recipients, the county department office shall contact the bureau by the end of the second working day after receipt of Form ~~470-3501~~ *470-3502*, Physical Disability Waiver Assessment Tool, with the choice of HCBS waiver indicated by the signature of the consumer or a written request signed and dated by the consumer.

ITEM 7. Reserve rules **441—83.112** to **83.120**.

ITEM 8. Amend **441—Chapter 83** by adopting new Division VII as follows:

DIVISION VII—HCBS CHILDREN’S MENTAL HEALTH  
WAIVER SERVICES

**441—83.121(249A) Definitions.**

“Assessment” means the review of the consumer’s current functioning in regard to the consumer’s situation, needs, abilities, desires, and goals.

“Case manager” means the person designated to provide Medicaid targeted case management services for the consumer.

“CMS” means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

“Consumer” means an individual up to the age of 18 who is included in a Medicaid coverage group listed in 441—75.1(249A) and is a recipient of children’s mental health waiver services.

“Deeming” means considering parental or spousal income or resources as income or resources of a consumer in determining eligibility for a consumer according to Supplemental Security Income program guidelines.

“Department” means the Iowa department of human services.

“Guardian” means a parent of a consumer or a legal guardian appointed by the court.

“HCBS” means home- and community-based services provided under a Medicaid waiver.

“IME” means the Iowa Medicaid enterprise.

“IME medical services unit” means the contracted entity in the Iowa Medicaid enterprise that determines level of care for consumers initially applying for or continuing to receive children’s mental health waiver services.

“Interdisciplinary team” means the consumer, the consumer’s family, and persons of varied professional and non-professional backgrounds with knowledge of the consumer’s needs, as designated by the consumer and the consumer’s family, who meet to develop a service plan based on the individualized needs of the consumer.

“ISIS” means the department’s individualized services information system.

“Local office” means a department of human services office as described in 441—subrule 1.4(2).

“Medical institution” means a nursing facility, an intermediate care facility for the mentally retarded, a psychiatric hospital or psychiatric medical institution for children, or a state mental health institute that has been approved as a Medicaid vendor.

“Mental health professional” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and
2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

“Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer’s role or functioning in family, school, or community activities. “Serious emotional disturbance” shall not include developmental disorders, substance-related disorders, or conditions or problems classified in DSM-IV-TR as “other conditions that may be a focus of clinical attention” (V codes), unless those conditions co-occur with another diagnosable serious emotional disturbance.

“Service plan” means a written, consumer-centered, outcome-based plan of services developed by the consumer’s interdisciplinary team that addresses all relevant services and

## HUMAN SERVICES DEPARTMENT[441](cont'd)

supports being provided. The service plan may involve more than one provider.

“Skill development” means that the service provided is habilitative and is intended to impart an ability or capacity to the consumer. Supervision without habilitation is not skill development.

“Targeted case management” means Medicaid case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90 for consumers eligible for the children’s mental health waiver.

“Waiver year” for the children’s mental health waiver means a 12-month period commencing on July 1 of each year.

**441—83.122(249A) Eligibility.** To be eligible for children’s mental health waiver services, a consumer must meet all of the following requirements:

**83.122(1) Age.** The consumer must be under 18 years of age.

**83.122(2) Diagnosis.** The consumer must be diagnosed with a serious emotional disturbance.

a. Initial certification. For initial application to the HCBS children’s mental health waiver program, psychological documentation that substantiates a mental health diagnosis of serious emotional disturbance as determined by a mental health professional must be current within the 12-month period before the application date.

b. Ongoing certification. A mental health professional must complete an annual evaluation that substantiates a mental health diagnosis of serious emotional disturbance.

**83.122(3) Level of care.** The consumer must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit shall certify the consumer’s level of care annually based on Form 470-4211, Children’s Mental Health Waiver Assessment.

**83.122(4) Financial eligibility.** The consumer must be eligible for Medicaid as follows:

a. Be eligible for Medicaid under an SSI, SSI-related, FMAP, or FMAP-related coverage group; or

b. Be eligible under the special income level (300 percent) coverage group; or

c. Become eligible through application of the institutional deeming rules; or

d. Would be eligible for Medicaid if in a medical institution. For this purpose, deeming of parental or spousal income or resources ceases in the month after the month of application.

**83.122(5) Choice of program.** The consumer must choose HCBS children’s mental health waiver services over institutional care, as indicated by the signature of the consumer’s parent or legal guardian on Form 470-4211, Children’s Mental Health Waiver Assessment.

**83.122(6) Need for service.** The consumer must have service needs that can be met under the children’s mental health waiver program, as documented in the service plan developed in accordance with rule 441—83.12(249A).

a. The consumer must be a recipient of targeted case management services or be identified to receive targeted case management services immediately following program enrollment.

b. The total cost of children’s mental health waiver services needed to meet the consumer’s needs may not exceed \$1765 per month.

c. At a minimum, each consumer must receive one billable unit of a children’s mental health waiver service per calendar quarter.

d. A consumer may not receive children’s mental health waiver services and any of the following services at the same time:

(1) Rehabilitative treatment services under 441—Chapter 185; or

(2) Family foster care under 441—Chapter 202.

e. A consumer may be enrolled in only one HCBS waiver program at a time.

**441—83.123(249A) Application.** The Medicaid application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed for an application for HCBS children’s mental health waiver services.

**83.123(1) Program limit.** The number of persons who may be approved for the HCBS children’s mental health waiver shall be subject to the number of consumers to be served as set forth in the federally approved HCBS children’s mental health waiver. When the number of applicants exceeds the number of consumers specified in the approved waiver, the consumer’s application shall be rejected and the consumer’s name shall be placed on a waiting list.

a. The local office shall determine if a payment slot is available by the end of the fifth working day after receipt of:

(1) A completed Form 470-2297, Health Services Application, from a consumer who is not currently a Medicaid member;

(2) Form 470-4211, Children’s Mental Health Waiver Assessment, with HCBS waiver choice indicated by signature of a Medicaid member’s parent or legal guardian; or

(3) A written request signed and dated by a Medicaid member’s parent or legal guardian.

b. When a payment slot is available, the local office shall enter the application into ISIS to begin the waiver approval process.

(1) The department shall hold the payment slot for the consumer as long as reasonable efforts are being made to arrange services and the consumer has not been determined to be ineligible for the program.

(2) If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer must reapply for a new slot.

c. If no payment slot is available, the department shall enter the names of persons on a waiting list according to the following:

(1) The names of consumers not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is submitted and date-stamped in the local office.

(2) The names of Medicaid members shall be added to the waiting list on the date Form 470-4211, Children’s Mental Health Waiver Assessment, or a written request as specified in 83.123(2)“a”(3) is date-stamped in the local office.

(3) In the event that more than one application is received at one time, the names of consumers shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

d. Consumers whose names are on the waiting list shall be contacted to reapply as slots become available, based on the order of the waiting list, so that the number of approved consumers on the program is maintained.

(1) Once a payment slot is assigned, the department shall give written notice to the consumer within five working days.

(2) The department shall hold the payment slot for 30 days for the consumer to file a new application.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) If an application has not been filed within 30 days, the slot shall revert for use by the next consumer on the waiting list, if applicable. The consumer originally assigned the slot must reapply for a new slot.

**83.123(2) Approval of waiver eligibility.**

a. Time limit. Applications for the HCBS children's mental health waiver program shall be processed within 30 days unless one or more of the following conditions exist:

(1) An application has been filed and is pending for federal Supplemental Security Income benefits.

(2) The application is pending because the department has not received information for a reason that is beyond the control of the consumer or the department.

(3) The application is pending because the assessment or the service plan has not been completed. When a determination is not completed 90 days after the date of application due to the lack of a service plan, the application shall be denied.

b. Notice of decisions. The department shall mail or give decisions to the applicant on the dates when eligibility and level-of-care determinations and the consumer's service plan are completed.

**83.123(3) Effective date of eligibility.** The effective date of a consumer's eligibility for children's mental health waiver services shall be the first date that all of the following conditions exist:

a. All eligibility requirements are met;

b. Eligibility and level-of-care determinations have been made; and

c. The service plan has been completed.

**441—83.124(249A) Financial participation.** A consumer must contribute to the cost of children's mental health waiver services to the extent of the consumer's total income less 300 percent of the maximum monthly payment for one person under the federal Supplemental Security Income (SSI) program.

**441—83.125(249A) Redetermination.** The department shall redetermine a consumer's eligibility for the children's mental health waiver at least once every 12 months or when there is significant change in the consumer's situation or condition.

**83.125(1) Eligibility review.** Every 12 months, the local office shall review a consumer's eligibility in accordance with procedures in rule 441—76.7(249A). The review shall verify:

a. Continuing eligibility factors as specified in rule 441—83.122(249A).

b. The existence of a current service plan meeting the requirements listed in rule 441—83.125(249A).

**83.125(2) Continuation of eligibility.** A consumer's waiver eligibility shall continue until one of the following conditions occurs.

a. The consumer fails to meet eligibility criteria listed in rule 441—83.122(249A).

b. The consumer is an inpatient of a medical institution for 30 or more consecutive days.

(1) After the consumer has spent 30 consecutive days in a medical institution, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

(2) If the consumer returns home after 30 consecutive days but no more than 60 days, the consumer must reapply for children's mental health waiver services, and the IME medical services unit must redetermine the consumer's level of care.

c. The consumer does not reside at the consumer's natural home for a period of 60 consecutive days. After the consumer has resided outside the home for 60 consecutive days, the local office shall terminate the consumer's waiver eligibility and review the consumer for eligibility under other Medicaid coverage groups. The local office shall notify the consumer and the consumer's parents or legal guardian through Form 470-0602, Notice of Decision.

**83.125(3) Payment slot.** When a consumer loses waiver eligibility, the consumer's assigned payment slot shall revert for use to the next consumer on the waiting list.

**441—83.126(249A) Allowable services.** Services allowable under the children's mental health waiver shall be provided as set forth in rule 441—78.52(249A) and shall include:

1. Environmental modifications, adaptive devices, and therapeutic resources;
2. Family and community support services;
3. In-home family therapy; and
4. Respite care.

**441—83.127(249A) Service plan.** The consumer's case manager shall prepare an individualized service plan for each consumer that meets the requirements set for case plans in rule 441—130.7(234).

**83.127(1)** The service plan shall be developed through an interdisciplinary team process.

**83.127(2)** The service plan shall be developed annually or when there is significant change in the consumer's situation or condition.

**83.127(3)** The service plan shall be based on information in Form 470-4211, Children's Mental Health Waiver Assessment.

**83.127(4)** The service plan shall specify the type and frequency of the waiver services and the providers that will deliver the services.

**83.127(5)** The service plan shall identify and justify any restriction of the consumer's rights.

**441—83.128(249A) Adverse service actions.**

**83.128(1) Denial.** An application for children's mental health waiver services shall be denied when the department determines that:

a. The consumer is not eligible for or in need of waiver services.

b. Needed services are not available or received from qualified providers.

c. Service needs exceed the limit on aggregate monthly costs established in 83.122(6)"c" or are not met by the services provided.

**83.128(2) Termination.** A consumer's participation in the children's mental health waiver program may be terminated when the department determines that:

a. The provisions of 441—paragraph 130.5(2)"a," "b," "c," "g," or "h" apply.

b. The costs of the children's mental health waiver services for the consumer exceed the aggregate monthly costs established in 83.122(6)"c."

c. The consumer receives care in a hospital, nursing facility, psychiatric hospital serving children under the age of 21, or psychiatric medical institution for children for 30 days in any one stay.

d. The physical or mental condition of the consumer requires more care than can be provided in the consumer's own home, as determined by the consumer's case manager.

e. Service providers are not available.

**83.128(3) Reduction.** Reduction of services shall apply as specified in 441—paragraphs 130.5(3)"a" and "b."

HUMAN SERVICES DEPARTMENT[441](cont'd)

**441—83.129(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). An applicant or consumer may obtain a review of the IME medical services unit's level-of-care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME medical services unit's review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

ITEM 9. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance case management services provided in accordance with Iowa Code section 225C.20 for consumers with mental retardation (MR), chronic mental illness (CMI), or a developmental disability (DD) *and consumers eligible for the HCBS children's mental health waiver*. Provider accreditation standards are set forth in 441—Chapter 24.

~~MR/CMI/DD case~~ *Case management* is a method to manage multiple resources effectively for the benefit of Medicaid consumers. The service is designed to help consumers with ~~MR, CMI or DD~~ gain access to appropriate and necessary medical services and interrelated social and educational services. ~~MR/CMI/DD case~~ *Case management* ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.

ITEM 10. Amend rule **441—90.1(249A)** as follows:

Amend the definitions of "MR/CMI/DD case management" and "targeted population":

"MR/CMI/DD case management" means a service provided under the medical assistance program designed to assist eligible individuals with mental retardation, chronic mental illness or developmental disabilities *and children eligible for the HCBS children's mental health waiver* in gaining access to appropriate and necessary medical services and interrelated social and educational services. MR/CMI/DD case management is intended to manage multiple resources and to ensure that necessary evaluations are conducted; that individual service and treatment plans are developed, implemented, and monitored; and that reassessment of consumer needs and services occurs on an ongoing and regularly scheduled basis. MR/CMI/DD case management does not include direct services.

"Targeted population" means people who meet one of the following criteria:

1. An adult *who is* identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or

2. A child who is eligible to receive HCBS mental retardation waiver *or HCBS children's mental health waiver services according to 441—Chapter 83*; or

3. A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.

[Filed 3/10/06, effective 5/3/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

## ARC 5008B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 153, "Social Services Block Grant and Funding for Local Services," Iowa Administrative Code.

These rules create a new division in Chapter 153 to address policies and procedures for the decategorization of child welfare and juvenile justice funding. The decategorization initiative began in 1989 as a three-year pilot project in Scott County and Polk County, as authorized by 1988 Iowa Acts, chapter 1276, section 12. In the following year, the legislature directed the Department to add projects in Dubuque County and Pottawattamie County. At the end of the pilot, 1992 Iowa Acts, chapter 1229, enacted Iowa Code section 232.188, which allows any county or group of counties to form a decategorization project.

The purpose of the initiative is to allow the "decategorization" of specific state and state-federal funding categories into a funding pool that the county or counties in the project can use to provide services that are more preventive, more family-centered, and more community-based than may be allowed by the "categorical" funding streams available for child welfare services. Projects must have a governance board, conduct communitywide service planning, and produce an annual service plan and an annual progress report. The initiative has expanded to the point where 98 of Iowa's 99 counties are part of a decategorization project.

These rules are adopted in response to 2005 Iowa Acts, chapter 95, which amended Iowa Code section 232.188. The rules clarify the implementation procedures and requirements for a decategorization project, more clearly define the allowable funding streams for services, and provide clarity on the roles and responsibilities of decategorization governance boards, Department service area managers, and chief juvenile court officers.

These rules do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). The rules frequently parallel the statutory language, so the Department's flexibility for approving waivers is limited.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4800B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on March 8, 2006.

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These amendments are intended to implement Iowa Code Supplement section 232.188.

These amendments shall become effective on June 1, 2006.

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 [Ch 153 title; 153.11 to 153.19] is being omitted. These amendments are identical to those published under Notice as **ARC 4800B**, IAB 1/4/06.

[Filed 3/10/06, effective 6/1/06]  
[Published 3/29/06]

[For replacement pages for IAC, see IAC Supplement 3/29/06.]

## ARC 5003B

### LABOR SERVICES DIVISION[875]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

These amendments adopt by reference changes to federal occupational safety and health regulations. The changes are Phase II of the U.S. Department of Labor, Occupational Safety and Health Administration's Standards Improvement Project. The changes are intended to streamline standards, increase consistency, and remove standards that are outdated, duplicative and unnecessary.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and to make Iowa's occupational safety and health regulations more current and consistent with federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 4828B** on January 18, 2006. The adopted amendments are identical to those published under Notice.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code section 88.5.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

70 Fed. Reg. 1140 (January 5, 2005)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

70 Fed. Reg. 1143 (January 5, 2005)

[Filed 3/9/06, effective 5/3/06]  
[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

## ARC 5014B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

The Department was petitioned by the Dubuque County Conservation Board and the U.S. Fish and Wildlife Service to draft a rule which will establish a "no-wake" zone in a portion of a backwater area known as Mud Lake on the Mississippi River in Dubuque County. The Dubuque County Conservation Board will be responsible for placement of buoy markers to designate the zoned area. This request is being made in an effort to reduce the negative impacts of large vessels operated at higher speeds and the resulting shoreline erosion and excessive noise levels and to protect the integrity of the Mud Lake area.

The Department has also been petitioned by the East Okoboji Lakes Improvement Corporation for rule making which would establish a nighttime speed limit for all vessels on all Dickinson County lakes between the hours of one-half hour after sunset and sunrise. This is a boating safety issue which concerns limited sight visibility during nighttime hours as having a direct effect on a boat operator's ability to recognize and avoid potential hazards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4794B**. No comments were received during the comment period for the rule affecting Mud Lake. Comments were received electronically, by mail, and orally at the public hearings held in the Wallace State Office Building and locally at Arnolds Park during the comment period for the rule imposing a nighttime speed limit on all lakes in Dickinson County. The majority of the comments were in agreement that a nighttime speed limit should be established. No changes have been made from the Notice of Intended Action.

These rules are intended to implement Iowa Code section 456A.24.

These rules will become effective May 3, 2006.

The following amendment is adopted.

Amend 571—Chapter 40 by adopting the following **new** rules:

**571—40.53(462A) Zoning of the Mississippi River, Mud Lake, Dubuque County.** All vessels shall be operated at a no-wake speed within the area of river mile markers 587.6 to 589.3, in a backwater known as Mud Lake and designated by marker buoys approved by the natural resource commission.

**571—40.54(462A) Nighttime speed limit, Dickinson County.** No vessels, except authorized emergency vessels, shall be operated at speeds greater than 25 miles per hour at any time between one-half hour after sunset and sunrise on all lakes located in Dickinson County.

[Filed 3/10/06, effective 5/3/06]  
[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 4987B**  
**PROFESSIONAL LICENSURE**  
**DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners amends Chapter 83, "Discipline for Dietitians," Iowa Administrative Code.

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4777B**. A public hearing was held on January 24, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 83.5(3) needed to be clarified and that the Iowa Code reference in subrule 83.5(4) needed to be corrected. The Board approved these changes.

This amendment was adopted by the Board of Dietetic Examiners on March 3, 2006.

This amendment will become effective May 3, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendment is adopted.

Adopt **new** rule 645—83.5(152A) as follows:

**645—83.5(152A) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

**83.5(1)** Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

**83.5(2)** Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or to request the board to approve an alternative examiner or treatment facility. The

board in its sole discretion shall determine whether to grant such a request.

**83.5(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**83.5(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**83.5(5)** Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**83.5(6)** Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**83.5(7)** Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 3/3/06, effective 5/3/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 4996B**

**PROFESSIONAL LICENSURE**  
**DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners amends Chapter 100, "Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments," and Chapter 103, "Disciplinary Proceedings," Iowa Administrative Code.

The amendments clarify responsibilities of the funeral director, clarify contract requirements of crematory establishments, correct rules relating to burial transits, clarify disposition of cremation remains, and provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4789B**. A public hearing was held on January 24, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Assistant Attorney General commented that the wording of the last sentence of subrule

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

103.7(3) needed to be clarified and that the Iowa Code reference in subrule 103.7(4) needed to be corrected. The Board approved these changes. The subrules now read as follows:

“**103.7(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee’s confidentiality.

“**103.7(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).”

The amendments were adopted by the Board of Mortuary Science Examiners on March 9, 2006.

These amendments will become effective May 3, 2006.

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 [100.7(2), 100.10, 103.7] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4789B**, IAB 1/4/06.

[Filed 3/9/06, effective 5/3/06]  
[Published 3/29/06]

[For replacement pages for IAC, see IAC Supplement 3/29/06.]

**ARC 4991B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy amends Chapter 131, “Licensure of Massage Therapists,” Iowa Administrative Code.

The amendment provides for the Board to accept the applicant’s copy of examination passage as initial proof prior to official examination service notification to expedite the application process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4796B**. A public hearing was held on January 24, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No changes from the Notice have been made.

This amendment was adopted by the Board of Examiners for Massage Therapy on March 7, 2006.

This amendment will become effective May 3, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendment is adopted.

Amend subrule 131.2(7) as follows:

**131.2(7)** The applicant shall provide proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. Proof of passing shall be sent directly from the testing service to the board of examiners for massage therapy. *The applicant may submit a copy of the official notification from the testing service of the applicant’s passing the NCBTMB written examination. The copy of the applicant’s official notification may be used by the board as proof of passage of the NCBTMB examination until the official proof of passage is received directly from the NCBTMB. Submission of the applicant’s copy of the official notification from the testing service shall not be allowed in lieu of the applicant’s arranging for and the board’s receiving the official record of proof of passage sent directly from the NCBTMB. The examination score must be received from the NCBTMB within 60 days of issuance of the license.* The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

[Filed 3/8/06, effective 5/3/06]  
[Published 3/29/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 4992B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy Examiners amends Chapter 131, “Licensure of Massage Therapists,” and Chapter 134, “Discipline for Massage Therapists,” Iowa Administrative Code.

The amendments define the national examination required for endorsement and provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4785B**. A public hearing was held on January 24, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. There were no public comments. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 134.6(3) needed to be clarified and that the Iowa Code reference in subrule 134.6(4) needed to be corrected. The Board approved these changes.

These amendments were adopted by the Board of Examiners for Massage Therapy on March 7, 2006.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—131.6(152C)**, numbered paragraph “5,” as follows:

5. ~~Submits a certified copy of the scores from the appropriate professional examination to be sent to the board, if applicable~~ *Provides proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. Proof of passing shall be sent directly from the testing service to the board of examiners for massage therapy. The passing score on the written examina-*

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tion shall be the passing point criterion established by the national testing authority at the time the test was administered; and

ITEM 2. Adopt **new** rule 645—134.6(152C) as follows:

**645—134.6(152C) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

**134.6(1)** Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

**134.6(2)** Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**134.6(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**134.6(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**134.6(5)** Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**134.6(6)** Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or ex-

amination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**134.6(7)** Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 3/8/06, effective 5/3/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

**ARC 4998B**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11 and 730.5, the Department of Public Health hereby amends Chapter 12, "Approval of Confirmatory Laboratories for Private Sector Drug-Free Workplace Testing," Iowa Administrative Code.

The rules in Chapter 12 describe the procedures that a laboratory must follow to receive approval by the Department to conduct confirmatory testing of samples for the detection of alcohol or other drugs, or their metabolites, in employees or prospective employees. These amendments expand the definition of "sample" from the human body to include saliva, which is consistent with the definition of "sample" in the Iowa Code. This amendment provides private-sector employers additional options for samples from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. These amendments also reflect the change in the name of the Health Care Financing Administration (HCFA) to Centers for Medicare and Medicaid Services (CMS).

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4845B**. The Department received no comments on the Notice of Intended Action. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on March 8, 2006.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code section 730.5.

The following amendments are adopted.

ITEM 1. Amend rule **641—12.2(730)**, definitions of "HCFA" and "sample," as follows:

"HCFA" "~~CMS~~" means ~~Health Care Financing Administration~~ *Centers for Medicare and Medicaid Services*. ~~HCFA~~ *CMS* is the federal agency responsible for implementing and administering the CLIA regulations.

"Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, "sample" does not mean blood except as authorized pursuant to Iowa Code subsection 730.5(7), paragraph "1." For the purpose of these rules, the substances determined by the department to be samples from the human body capable of accurately and reliably revealing

PUBLIC HEALTH DEPARTMENT[641](cont'd)

the presence of alcohol or other drugs, or their metabolites, are urine, breath, and blood, and saliva.

ITEM 2. Amend subrule 12.4(3) as follows:

**12.4(3)** Proof of enrollment in a recognized proficiency testing program. Recognized programs include those approved by HCEA CMS.

[Filed 3/9/06, effective 5/3/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

## ARC 5000B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(29), the Iowa Department of Public Health hereby adopts Chapter 24, "Private Well Testing, Reconstruction, and Plugging—Grants to Counties," Iowa Administrative Code.

The authority for this program was transferred to the Iowa Department of Public Health from the Iowa Department of Natural Resources during the 2003 legislative session. These rules will replace, with some modifications, the rules that the Environmental Protection Commission has in place for this program at 567 IAC 47.

Notice of Intended Action was published in the February 1, 2006, Iowa Administrative Bulletin as **ARC 4843B**.

No one from the public attended the public hearing held on February 21, 2006. Written comments were received through E-mail. Comments included requests to increase the fee reimbursed to the county for well plugging. Several counties provided information on the average cost to plug wells in Iowa as justification for this increase. Another significant request was to require that the county staff or contractor perform well testing services. Other comments were related to the administration of the program.

The following changes to these rules have been made from the Notice of Intended Action. In the title, the word "sampling" has been changed to "testing" to remain consistent with the language used throughout the chapter. In 24.5(5), the fee for plugging private water wells has been raised from \$375 to \$475, including \$75 for administrative expenses. This increase was justified through documentation provided by counties that showed the average cost to plug a well ranged from \$450 to \$650. In 641—24.7(135), the first sentence, which read "Each county participating must have authority..." was deleted because the same information is stated in 24.7(6). In 24.7(1), a sentence was added to require that a county employ or contract with qualified staff to collect water samples for well testing. In 24.7(2), a phrase was added in the first sentence to also require that a county employ or contract with qualified staff to verify that appropriate information is collected and entered into the private well tracking system. The changes to 24.7(1) and 24.7(2) are intended to improve the quality of data collected by having only qualified staff perform these duties to ensure consistency in water sample collection and data collection. The introduction to 641—24.7(135) and subrules 24.7(1) and 24.7(2) now read as follows:

**"641—24.7(135) Performance requirements.** The following minimum standards must be met by all grantees:

**"24.7(1) Sample collection.** Private water supply well samples are to be collected using proper sample collection and handling techniques as specified by the department. Samples shall be collected by a qualified staff person pursuant to 24.7(3) who is employed by or under contract with the local board of health.

**"24.7(2) Background information.** For each well tested, reconstructed, or plugged, all appropriate information must be verified by a qualified staff person pursuant to 24.7(3) who is employed by or under contract with the local board of health and must be entered into the private well tracking system (PWTS) managed by the Iowa department of natural resources. Information shall include at a minimum:

"a. The name and address of the private water well or abandoned private water well owner.

"b. Private water well or abandoned private water well location to the quarter, quarter, quarter section or latitude and longitude coordinates.

"c. Records of dates for reconstructing private water wells or plugging abandoned private water wells (including cisterns).

"d. The name and the license number of the water well contractor conducting the private water well reconstruction or the abandoned private water well plugging."

In addition, the following nonsubstantive changes were made for clarification. In 24.7(3), the word "maintain" was changed to "complete." In 24.7(8)"c," the word "plugging" was inserted after the words "abandoned well." The words "or counties" were deleted from 24.8(2).

These rules were adopted by the State Board of Health on March 8, 2006.

These rules will become effective on July 1, 2006.

These rules are intended to implement Iowa Code sections 135.11(29) and 455E.11.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 24] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 4843B**, IAB 2/1/06.

[Filed 3/9/06, effective 7/1/06]

[Published 3/29/06]

[For replacement pages for IAC, see IAC Supplement 3/29/06.]

## ARC 5002B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Medicine Technologists, and Radiation Therapists,” Chapter 45, “Radiation Safety Requirements for Industrial Radiographic Operations,” and Chapter 46, “Minimum Requirements for Tanning Facilities,” Iowa Administrative Code.

The following itemize the adopted changes.

Items 1, 11, 18, 21, 23, and 57 amend the rules to reflect current federal regulations.

Items 2 and 24 amend definitions to meet Nuclear Regulatory Commission (NRC) compatibility requirements.

Item 3 adds requirements for electronic records as new technology.

Items 4 and 10 correct the agency address.

Item 5 increases fees to cover the cost of the inspections.

Items 6 and 7 increase fees to cover the cost of administering the service.

Item 8 removes an incorrect reference.

Item 9 adds new language for highway route controlled quantities to correspond to the definition added in Item 2. It also increases a fee to cover the cost of monitoring the shipments.

Item 12 changes language to meet NRC compatibility requirements for decommissioning.

Items 13 and 15 increase fees required for financial assurance for decommissioning to meet NRC compatibility requirements.

Items 14 and 16 adopt new language for decommissioning to meet NRC compatibility requirements.

Item 17 adds new language for transportation of radioactive material to clarify language and to meet NRC compatibility requirements.

Items 19 and 20 add new language for security and control of certain licensed material to meet NRC compatibility requirements.

Item 22 clarifies the requirements for operators of different types of X-ray equipment.

Item 25 corrects a reference that is rescinded in another item.

Items 26, 27, 28, 29, and 30 correct language for medical use of radioactive material to meet NRC compatibility requirements.

Item 31 clarifies the term “physically present.”

Item 32 rescinds subrule 41.2(65) and replaces it with updated language to meet NRC compatibility requirements for a radiation safety officer.

Item 33 rescinds subrule 41.2(66). The content of the rescinded subrule is incorporated into subrule 41.2(75) in Item 42.

Item 34 rescinds subrule 41.2(67) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users for uptake, dilution, and excretion studies.

Item 35 amends language to meet NRC compatibility requirements for training of authorized users for imaging and localization studies.

Item 36 rescinds subrule 41.2(69) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of certain unsealed by-product material.

Item 37 rescinds subrule 41.2(70) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of manual brachytherapy sources.

Item 38 rescinds subrule 41.2(71) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users for ophthalmic use of strontium-90.

Item 39 rescinds subrule 41.2(72) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of sealed sources for diagnosis.

Item 40 rescinds subrule 41.2(73) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

Item 41 rescinds subrule 41.2(74) and replaces it with updated language to meet NRC compatibility requirements for training of authorized medical physicists.

Item 42 amends language to meet NRC compatibility requirements for experienced radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, authorized users and teletherapy or medical physicists.

Item 43 corrects language by adding a reference.

Item 44 amends language to meet NRC compatibility requirements for authorized nuclear pharmacists.

Item 45 adopts new language to meet NRC compatibility requirements for training for authorized users for oral administration of sodium iodide I-131 in certain quantities.

Items 46, 47, and 48 remove certain mammography continuing education requirements for interpreting physicians because the FDA no longer requires the training.

Items 49 and 50 add requirements for physicians in mammography to be licensed physicians in Iowa. This change is to meet FDA and Iowa Board of Medical Examiners requirements.

Item 51 amends definitions by correcting a reference, removing a subject that does not apply and removing definitions that are defined in previous chapters.

Item 52 adds a word to correct a phrase.

Item 53 adds language to require additional training for limited radiographers opting to perform pediatric radiography. This training is not included in the basic training of limited radiographers. The additional training provides competency in pediatric radiography to improve imaging.

Item 54 clarifies dual imaging devices and adopts new language to require training for individuals operating certain dual imaging devices. This change is made in order to address new technology in imaging.

Item 55 corrects a misspelled word.

Item 56 adopts a new requirement for a radiologist assistant to have a delegation agreement, similar to licensed physicians, on file at a facility.

Item 58 adds language to meet NRC compatibility requirements.

Item 59 removes language that does not apply to the subrule.

Item 60 removes all references to ethnic groups and leaves only references to skin and eye color. It removes any language offensive to certain groups.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4842B**. A public hearing was held on February 28, 2006. No one attended the hearing. Five sets of written comments were received and reviewed, and changes were incorporated as appropriate. The changes made from the Notice of Intended Action are as follows:

In Item 2, the definition of “radiopharmaceutical” was not adopted because this definition was in conflict with the term “radioactive drug.”

In Items 28, 30, 34, 35, 36, 37, 40, 42, 44, and 45, the term “by-product material” was replaced with “radioactive material.” This change allows the use of accelerator-produced material and NARM by licensees and allows the agency to regulate the additional material.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

In Item 54, the amendments to 42.2(7) were revised based upon written comments. Terminology was changed, and proposed subparagraph 42.2(7)“b”(4), which required that an individual restrict performance of CT procedures to the SPECT/CT or PET/CT, was not adopted. Subrule 42.2(7) now reads as follows:

“**42.2(7)** Requirements for operators of dual imaging devices.

“a. When a unit is operated as a stand-alone nuclear medicine imaging device, the operator must have a permit to practice as a nuclear medicine technologist and meet the requirements of 641—42.4(136C). When the unit is operated as a stand-alone CT imaging device, the operator must have a permit to practice as a general diagnostic radiographer and meet the requirements of 641—42.3(136C). When a unit is operated in dual mode as a SPECT/CT or PET/CT device, the operator must have a permit to practice as a nuclear medicine technologist.

“b. In order to operate a SPECT/CT or PET/CT unit as a stand-alone CT unit, the individual must:

“(1) Be certified as a nuclear medicine technologist;

“(2) Complete a training program approved by the agency; and

“(3) Successfully complete the ARRT specialty examination for CT.”

The State Board of Health adopted these amendments on March 8, 2006.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code chapters 136C and 136D.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 38 to 42, 45, 46] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4842B**, IAB 2/1/06.

[Filed 3/9/06, effective 5/3/06]

[Published 3/29/06]

[For replacement pages for IAC, see IAC Supplement 3/29/06.]

## ARC 4997B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 691.6(6), the Iowa Department of Public Health hereby amends Chapter 127, “County Medical Examiners,” Iowa Administrative Code.

These amendments clarify the existing rules and adopt additional rules governing the types of deaths for which autopsies are required. In addition, an amendment to clarify the appropriate professional board overseeing medicolegal death investigation is included.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4847B**. One written comment was received from the Department of Corrections recommending that in Item 3, new subparagraph (6) “within the department of corrections” be clarified by stating “occurring in any institutions under the department of

corrections as outlined in Iowa Code section 904.102”. This change was made.

The State Board of Health adopted these amendments on March 8, 2006.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code section 691.6.

The following amendments are adopted.

ITEM 1. Amend subrule **127.3(1)** by adding **new** paragraph “**k**” as follows.

k. Deaths in a prison, jail or correctional institution or under police custody, where there is not a natural disease process that accounts for the death.

ITEM 2. Amend subrule **127.3(2)** by rescinding and reserving paragraph “**c**.”

ITEM 3. Amend subrule **127.3(4)**, paragraph “**b**,” as follows:

Rescind subparagraphs (1) and (2) and adopt the following **new** subparagraphs in lieu thereof:

(1) Deaths of adolescents through 18 years of age when there is not a known or preexisting natural cause of death.

(2) All cases of homicide or suspected homicide, irrespective of the period of survival following injury.

Adopt the following **new** subparagraphs (3) to (6):

(3) Deaths of children under the age of 2 years if death results from an unknown cause or if the circumstances surrounding the death indicate that Sudden Infant Death Syndrome may be the cause of death.

(4) All suspicious suicides.

(5) All high-profile deaths including, but not limited to, deaths of elected officials in municipal, state or federal government.

(6) All deaths of inmates occurring in any institutions under the department of corrections as outlined in Iowa Code section 904.102, excluding those deaths that result from a preexisting medical condition.

ITEM 4. Amend subrule **127.7(2)**, paragraph “**b**,” subparagraph (2), as follows:

(2) Obtain and maintain certification as a death investigator by the ~~National Association of Medical Examiners American Board of Medicolegal Death Investigators.~~

[Filed 3/9/06, effective 5/3/06]

[Published 3/29/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/29/06.

## ARC 4999B

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11 and 2005 Iowa Acts, chapter 175, the Department of Public Health hereby rescinds 643—Chapters 1, 2, 4, 5, 7, and 10 and transfers and amends 643—Chapters 3, 6, 8, and 9 to 641—Chapters 155 to 158, Iowa Administrative Code.

The 81st Iowa General Assembly passed 2005 Iowa Acts, chapter 175, eliminating the Commission on Substance Abuse and transferring the duties of the Commission to the

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

State Board of Health. The information contained in the six chapters that are rescinded duplicates information found in existing chapters under [641] Public Health Department. The remaining four chapters under [643] Substance Abuse Commission are transferred and amended to reflect the changes in 2005 Iowa Acts, chapter 175. Additional amendments include the change in the name of one of the Department's divisions, change in the names of two of the transferred chapters to better reflect the information contained therein, and a change in smoking policy in Item 9.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 2006, as **ARC 4846B**. One written comment was received in regard to Item 9, transferred subrule 155.21(23), paragraph "e." Concern was expressed that the subrule prohibits smoking in all facilities and provides no provision for a designated area to smoke in residential facilities. A change from the Notice is made to ensure that the subrule is consistent with the Department's General Contract Conditions on Tobacco Free Environment, which do not prohibit smoking in residential or inpatient substance abuse treatment facilities. Amendments to paragraph "f" were not adopted. Paragraph 155.21(23)"e" now reads as follows:

"e. Smoking shall be prohibited within any facilities or any portion of a facility used for outpatient drug and alcohol

treatment services and programs. Smoking shall be prohibited except in designated areas within facilities or portions of facilities used for inpatient and residential drug and alcohol treatment services."

These amendments were adopted by the State Board of Health on March 8, 2006.

These amendments will become effective May 3, 2006.

These amendments are intended to implement Iowa Code chapter 17A and chapters 125 and 136 as amended by 2005 Iowa Acts, chapter 175.

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 [rescind 643—Chs 1, 2, 4, 5, 7 and 10; transfer and amend 643—Chs 3, 6, 8 and 9 to 641—Chs 155 to 158] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4846B**, IAB 2/1/06.

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[For replacement pages for IAC, see IAC Supplement 3/29/06.]

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