



# IOWA ADMINISTRATIVE BULLETIN

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Pages 553 to 604

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## PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2011

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Wednesday, October 26, 2011	November 16, 2011
11	Wednesday, November 9, 2011	November 30, 2011
12	Wednesday, November 23, 2011	December 14, 2011

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 1, 2011, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

### ATTORNEY GENERAL[61]

Disclosure statement of repairs or adjustments to, or replacements of parts with new parts on, new motor vehicles, ch 36 Filed **ARC 9806B** ..... 10/19/11

### CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Maintenance of allowance for loan losses account, amendments to ch 18 Filed **ARC 9777B** ..... 10/5/11

### EDUCATION DEPARTMENT[281]

Senior year plus program—student proficiency, regional academies, 22.2(2)"b"(3), 22.26, 22.27 Notice **ARC 9791B** ..... 10/5/11

Child development programs for at-risk children—grantee use of moneys received, 64.15 Notice **ARC 9792B** ..... 10/5/11

Uses of categorical funding—home school assistance program, physical plant and equipment levy, 98.12, 98.64(2) Notice **ARC 9793B** ..... 10/5/11

Child abuse reports—duties of school authorities, 102.5 Notice **ARC 9794B** ..... 10/5/11

### ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Reexaminations for state-specific land surveying examination candidates, 5.1(8)"e" Filed **ARC 9805B** ..... 10/19/11

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Ground heat exchanger (GHEX) loop borehole systems, amend chs 38, 39, 49, 82; adopt ch 48 Notice of Termination **ARC 9809B** ..... 10/19/11

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

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Emergency management performance grant—allocation and distribution process, 7.7 Notice of Termination **ARC 9760B** ..... 10/5/11

### HUMAN SERVICES DEPARTMENT[441]

Medicaid eligibility—elderly or disabled inmates of public institutions, 75.12 Notice **ARC 9804B** ..... 10/19/11

Increase in maintenance payment and initial allowance for supervised apartment living placements, 156.6, 156.8, 156.9(2)"b," 156.12 Filed **ARC 9778B** ..... 10/5/11

Foster home insurance fund, 158.1(2), 158.2, 158.4 Filed **ARC 9779B** ..... 10/5/11

Conditions for denial of parental right to know location of foster child's placement, 202.12(2) Notice **ARC 9776B** ..... 10/5/11

### INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Synthetic guaranteed investment contracts, ch 96 Notice **ARC 9815B** ..... 10/19/11

### IOWA FINANCE AUTHORITY[265]

Military service member home ownership assistance program, 27.2, 27.3(2) Filed **ARC 9803B** ..... 10/5/11

HOME partnership program, 39.2, 39.4, 39.6, 39.8, 39.9 Filed **ARC 9764B** ..... 10/5/11

HOME partnership program—base home purchase price eligibility limits, 39.4(1) Filed **Emergency** **ARC 9802B** ..... 10/5/11

### LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Child labor—exemption to allow golf cart driving, 32.8(2)"a" Notice **ARC 9758B** ..... 10/5/11

International boiler and pressure vessel codes, 90.2, 91.1(1)"c" Filed **ARC 9790B** ..... 10/5/11

### MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Contested case hearing procedures, 25.18 Notice **ARC 9807B** ..... 10/19/11

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmacist licenses—continuing education activities, 2.12	Filed	ARC 9782B	10/5/11
Tech-check-tech programs, 3.21(1), 3.23, ch 40	Filed	ARC 9783B	10/5/11
Pharmacist-interns, 4.1, 4.6	Filed	ARC 9784B	10/5/11
Pharmacy support persons—tasks, 5.17, 5.18	Filed	ARC 9785B	10/5/11
Patient counseling and instruction, 6.14	Notice	ARC 9787B	10/5/11
Hospital pharmacies—verbal medication orders, 7.1, 7.8(3)	Notice	ARC 9788B	10/5/11
Drugs in emergency medical service programs, ch 11	Filed	ARC 9786B	10/5/11
Pharmacy Internet sites, ch 24	Notice	ARC 9789B	10/5/11

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board meetings, 4.3(5)	Filed	ARC 9768B	10/5/11
Dietitians—discipline, 83.2(12)	Notice	ARC 9799B	10/5/11
Hearing aid dispensers—discipline, 124.2	Notice	ARC 9800B	10/5/11
Nursing home administrators—licensure, discipline, 141.9(1), 144.2(13)	Notice	ARC 9801B	10/5/11
Psychologists—discipline, 242.2(12)	Notice	ARC 9798B	10/5/11
Respiratory care practitioners—continuing education sponsors, 262.3(2)	Notice	ARC 9780B	10/5/11
Speech pathologists and audiologists—licensure, board meetings, discipline, 300.11(1), 300.12, 304.2(11)	Notice	ARC 9767B	10/5/11

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Decertification election procedure—tie vote, 5.4(1)	Notice	ARC 9795B	10/5/11
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**PUBLIC HEALTH DEPARTMENT[641]**

Advisory council on brain injuries, ch 55	Filed	ARC 9772B	10/5/11
Local boards of health; district health departments, adopt ch 77; rescind ch 78	Filed	ARC 9773B	10/5/11
Office of minority and multicultural health, 82.1, 82.3, 82.4	Filed	ARC 9775B	10/5/11
State medical examiner—consideration of fees as repayment receipts, 126.3(1)	Notice	ARC 9771B	10/5/11
Abuse and gambling treatment programs—personnel, 155.21(8)	Filed	ARC 9774B	10/5/11

**PUBLIC SAFETY DEPARTMENT[661]**

Flammable and combustible liquids; liquefied natural gas, rescind ch 51; adopt ch 228	Notice	ARC 9765B	10/5/11
Fire safety requirements—bleachers, grandstands, and folding and telescopic seating, 201.2(1)	Filed	ARC 9769B	10/5/11
Fire fighter training and certification, 251.101 to 251.103, 251.201, 251.204(1)	Notice	ARC 9766B	10/5/11
State building code—bleachers, grandstands, and folding and telescopic seating, 301.3	Filed	ARC 9770B	10/5/11
Electrician licensure, 500.2, 502.1, 502.2	Filed	ARC 9811B	10/19/11

**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Fines; advance deposit wagering; horse racing; gambling games, amendments to chs 4, 8 to 11	Notice	ARC 9808B	10/19/11
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**REGENTS BOARD[681]**

Regent merit system, 3.2, 3.104(4), 3.143, 3.148	Filed	ARC 9812B	10/19/11
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**REVENUE DEPARTMENT[701]**

Department reorganization; substitute tax forms, 6.1, 6.2, 7.50(7), 8.2 to 8.4	Notice	ARC 9797B	10/5/11
Telecommunication services, 18.20, 26.43, ch 224	Filed	ARC 9814B	10/19/11
Tax credits, amendments to chs 42, 43, 52, 58	Notice	ARC 9796B	10/5/11
Property assessment appeal board, 71.21	Notice	ARC 9761B	10/5/11

**SECRETARY OF STATE[721]**

Voting system standards, 22.2	Notice	ARC 9763B, also Filed Emergency	ARC 9762B	10/5/11
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**TRANSPORTATION DEPARTMENT[761]**

Primary highway system—access management, utility accommodation, 112.1, 115.1	Notice	ARC 9781B	10/5/11
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**TREASURER OF STATE[781]**Unclaimed property, ch 9 Notice **ARC 9813B** ..... 10/19/11**VOTER REGISTRATION COMMISSION[821]**Voter notifications, ch 12 Notice **ARC 9810B** ..... 10/19/11**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.

Senator Merlin Bartz  
2081 410th Street  
Grafton, Iowa 50440

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

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

Representative Jo Oldson  
4004 Grand Avenue, #302  
Des Moines, Iowa 50312

Senator Wally Horn  
101 Stoney Point Road, SW  
Cedar Rapids, Iowa 52404

Representative Rick Olson  
3012 East 31st Court  
Des Moines, Iowa 50317

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

Representative Dawn Pettengill  
P.O. Box A  
Mt. Auburn, Iowa 52313

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

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**EDUCATION DEPARTMENT[281]**

Senior year plus program—student proficiency, regional academies, 22.2(2)“b”(3), 22.26, 22.27 IAB 10/5/11 <b>ARC 9791B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 25, 2011 1 to 2 p.m.
Child development programs for at-risk children—grantee use of moneys received, 64.15 IAB 10/5/11 <b>ARC 9792B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 25, 2011 3 to 4 p.m.
Uses of categorical funding—home school assistance program, physical plant and equipment levy, 98.12, 98.64(2) IAB 10/5/11 <b>ARC 9793B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 25, 2011 1 to 2 p.m.
Child abuse reports—duties of school authorities, 102.5 IAB 10/5/11 <b>ARC 9794B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 25, 2011 3 to 4 p.m.

**INSURANCE DIVISION[191]**

Synthetic guaranteed investment contracts, ch 96 IAB 10/19/11 <b>ARC 9815B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	November 8, 2011 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Child labor—exemption for golf cart driving, 32.8(2)“a” IAB 10/5/11 <b>ARC 9758B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	October 26, 2011 9 a.m. (If requested)
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**MEDICINE BOARD[653]**

Contested case hearing procedures, 25.18 IAB 10/19/11 <b>ARC 9807B</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	November 8, 2011 4 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Dietitians—discipline, 83.2(12) IAB 10/5/11 <b>ARC 9799B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 2, 2011 10 to 10:30 a.m.
Hearing aid dispensers—discipline, 124.2 IAB 10/5/11 <b>ARC 9800B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 1, 2011 10:30 to 11 a.m.
Nursing home administrators—licensure, discipline, 141.9(1), 144.2(13) IAB 10/5/11 <b>ARC 9801B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 1, 2011 10 to 10:30 a.m.
Psychologists—discipline, 242.2(12) IAB 10/5/11 <b>ARC 9798B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 2, 2011 10:30 to 11 a.m.
Respiratory care practitioners—continuing education sponsors, 262.3(2) IAB 10/5/11 <b>ARC 9780B</b>	Fifth Floor Conference Room 518 Lucas State Office Bldg. Des Moines, Iowa	October 25, 2011 9 to 9:30 a.m.



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

Speech pathologists and audiologists—licensure, board meetings, discipline, 300.11(1), 300.12, 304.2(11) IAB 10/5/11 <b>ARC 9767B</b>	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	October 25, 2011 8 to 8:30 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Liquefied natural gas, rescind ch 51; adopt ch 228 IAB 10/5/11 <b>ARC 9765B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	November 1, 2011 9:45 a.m.
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Fire fighter training and certification, 251.101 to 251.103, 251.201, 251.204(1) IAB 10/5/11 <b>ARC 9766B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	November 1, 2011 9:30 a.m.
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**RACING AND GAMING COMMISSION[491]**

Fines; advance deposit wagering; horse racing; gambling games, amendments to chs 4, 8 to 11 IAB 10/19/11 <b>ARC 9808B</b>	Suite B 717 E. Court Ave. Des Moines, Iowa	November 8, 2011 9 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Primary highway system—access management, utility accommodation, 112.1, 115.1 IAB 10/5/11 <b>ARC 9781B</b>	First Floor South Conference Room DOT Administration Building 800 Lincoln Way Ames, Iowa	October 27, 2011 10 a.m. (If requested)
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**TREASURER OF STATE[781]**

Unclaimed property, ch 9 IAB 10/19/11 <b>ARC 9813B</b>	Lucas Conference Room Treasurer of State's Office Lucas State Office Bldg. Des Moines, Iowa	November 9, 2011 2 p.m.
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The following list will be updated as changes occur.

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

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

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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**ARC 9809B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Termination**

Pursuant to the authority of Iowa Code sections 455B.105(3) and 455B.187, the Environmental Protection Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 9, 2011, as **ARC 9425B**. The Notice proposed to amend Chapter 38, "Private Water Well Construction Permits," and Chapter 39, "Requirements for Properly Plugging Abandoned Wells"; to adopt new Chapter 48, "Ground Heat Exchanger (GHEX) Loop Borehole Systems"; and to amend Chapter 49, "Nonpublic Water Supply Wells," and Chapter 82, "Well Contractor Certification," Iowa Administrative Code.

The purpose of the rule making was to rescind current GHEX language from Chapter 49 and to adopt GHEX loop borehole rules as new Chapter 48. Chapter 48 would standardize the minimum construction requirements for this type of well structure and create additional protections to Iowa's groundwater and drinking water. The proposed Chapter 48 rules were written to closely correspond to nationwide standards that are currently proposed by contractor trade groups and would be more relevant to the actual geological conditions that exist in Iowa. Amendments to additional private well-related rules were proposed to fully implement the proposed Chapter 48.

The public hearing process brought forth a number of concerns about specific rules within proposed Chapter 48. These concerns warrant holding additional stakeholder meetings with multiple groups and working toward consent on amended language.

Because of the time needed to adequately work with stakeholder groups and modify the proposed rules, the Department was not be able to comply with the 180-day time limit for completion of rule making, which expired on October 9, 2011.

The Commission will commence rule making when work with the stakeholder groups has resolved key issues. Therefore, rule making for **ARC 9425B** is hereby terminated.

**ARC 9804B**

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, Senate File 482, section 13(4), the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

One of the factors that precludes Medicaid eligibility is residence in a public institution, such as a jail or prison. 2011 Iowa Acts, Senate File 482, mandates suspension rather than cancellation of Medicaid eligibility when a person who is either elderly or disabled enters a public institution. This amendment sets the procedural requirements for that policy change. The expectation is that suspension of eligibility will allow for a streamlined process of reopening a person's Medicaid case when the person leaves the institution.

Any interested person may make written comments on the proposed amendment on or before November 8, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment does not provide for waivers in specified situations because it confers a benefit and is mandated by the General Assembly. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

This amendment is intended to implement Iowa Code section 249A.3 and 2011 Iowa Acts, Senate File 482, division IX.

The following amendment is proposed.

Amend rule 441—75.12(249A) as follows:

**441—75.12(249A) Inmates of public institutions.** A person is not eligible for medical assistance for any care or services received while the person is an inmate of a public institution. For the purpose of this rule, ~~the phrase~~ “inmate of a public institution” and “public institution” ~~is~~ are defined by 42 CFR Section ~~435.1009, 435.1010~~ as amended ~~on November 10, 1994~~ to August 25, 2011.

**75.12(1) Suspension.** Medical assistance shall be suspended, rather than canceled, for the first 12 continuous calendar months that a person is an inmate of a public institution if all of the following conditions are met:

a. The department is notified of the person's entry into the public institution through either:

(1) A monthly report which is provided to the department by the public institution and includes the person's name, date of birth, and social security number and the date the person entered the institution;

or

(2) Other verified notice received by the department.

b. The person has entered a public institution on or after January 1, 2012, and has been in the public institution for 30 days or more.

c. On the date of entry into the public institution, the person was a Medicaid member based on:

(1) Disability as determined pursuant to rule 441—75.20(249A), or

(2) Being 65 years of age or older.

d. The person remains eligible for medical assistance except for institutional status.

**75.12(2) Coverage during suspension.** While medical assistance is suspended, payment will be made only for services received while the person is not an inmate of a public institution.

**75.12(3) Reinstatement.** Inmates who are released from a public institution while Medicaid is suspended may submit Form 470-5045, Request to Reopen Medicaid, to request reinstatement of Medicaid. The department must receive the form within 30 calendar days after the person's release from the public institution.

This rule is intended to implement Iowa Code section 249A.3 and 2011 Iowa Acts, Senate File 482, division IX.

**ARC 9815B**

## **INSURANCE DIVISION[191]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8 and chapter 508, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 96, “Synthetic Guaranteed Investment Contracts,” Iowa Administrative Code.

The rules in Chapter 96 prescribe the terms and conditions under which life insurance companies may issue group annuity contracts and other agreements that in whole or in part establish the insurer's obligation by reference to a segregated portfolio of assets that is not owned by the insurer; the essential

INSURANCE DIVISION[191](cont'd)

operational features of the segregated portfolio of assets; and the reserve requirements for these group annuity contracts and agreements.

A waiver provision is provided in subrule 96.6(2).

Any interested person may make written comments on the proposed rules on or before November 8, 2011. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to [matthew.hargrafen@iid.iowa.gov](mailto:matthew.hargrafen@iid.iowa.gov) or via facsimile to (515)281-3059.

A public hearing will be held on November 8, 2011, at 10 a.m. in the Lobby Conference Room, Iowa Insurance Division, 330 Maple Street, 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 remarks to the subject of the proposed rules.

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

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

These rules are intended to implement Iowa Code section 505.8 and chapter 508.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 96:

#### CHAPTER 96 SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

**191—96.1(505,508) Authority.** This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

**191—96.2(505,508) Purpose.**

**96.2(1)** The purpose of this chapter is to prescribe:

*a.* The terms and conditions under which life insurance companies may issue group annuity contracts and other contracts issued in connection with group annuity contracts that in whole or in part establish the insurer's obligation by reference to a segregated portfolio of assets that is not owned by the insurer;

*b.* The essential operational features of the segregated portfolio of assets; and

*c.* The reserve requirements for these contracts.

**96.2(2)** This chapter is intended to aid in the timely approval of such products by the commissioner and to recognize that timely approval is essential, given the competitive nature of the market for these products.

**191—96.3(505,508) Scope and application.** This chapter applies to that portion of a group annuity contract or other contract issued in connection with group annuity contracts described in rule 191—96.4(505,508), definition of “synthetic guaranteed investment contract,” and issued by a life insurer that functions as an accounting record for an accumulation fund and has benefit guarantees relating to a principal amount and levels of interest at a fixed rate of return specified in advance. The fixed rate of return will be constant over the applicable rate periods, and may reflect prior and current market conditions with respect to the segregated portfolio but may not reference future changes in market conditions. This chapter applies to all contract forms filed on or after [insert the effective date of these rules]. Contract forms that have been filed before [insert the effective date of these rules] need not be refiled with the commissioner.

**191—96.4(505,508) Definitions.** For purposes of this chapter, the following definitions shall apply:

“*Account assets*” means the assets in the segregated portfolio plus any assets held in the general account or a separate account to meet the asset maintenance requirements.

## INSURANCE DIVISION[191](cont'd)

*“Actuarial opinion and memorandum”* means the opinion and memorandum of the valuation actuary required to be submitted to the commissioner pursuant to subrule 96.10(8).

*“Affirmatively approved”* means approval of an insurer’s plan of operation for a class of contracts containing the form of contract under review after the plan of operation associated with the class of contracts has been reviewed by the insurer’s domiciliary insurance department and the plan of operation has been found to be in compliance with this chapter by the domiciliary insurance department. Affirmatively approved does not mean approval as a result of the deemer provision.

*“Appointed actuary”* means the qualified actuary appointed or retained either directly by or by the authority of the board of directors through an executive officer of the company to prepare the annual statement of actuarial opinion for the company as a whole pursuant to Iowa Code section 508.36.

*“Asset maintenance requirement”* means the requirement to maintain assets to fund contract benefits in accordance with rule 191—96.10(505,508).

*“Class of contracts”* means the set of all contracts to which a given plan of operation pertains.

*“Commissioner”* means the Iowa commissioner of insurance.

*“Contract value record”* means an accounting record, provided by the contract in relation to a segregated portfolio of assets, that is credited with a fixed rate of return over regular periods and that is used to measure the extent of the insurer’s obligation to the contract holder. The fixed rate of return credited to the contract value record is determined by means of a crediting rate formula or declared at the inception of the contract and is valid for the entire term of the contract.

*“Crediting rate formula”* means a mathematical formula used to calculate the fixed rate of return credited to the contract value record during any rate period and based in part upon the difference between the contract value record and the market value record amortized over an appropriate period. The fixed rate of return calculated by means of this formula may reflect prior and current market conditions with respect to the segregated portfolio, but may not reference future changes in market conditions.

*“Duration”* means, with respect to the segregated portfolio assets or guaranteed contract liabilities, a measure of price sensitivity to changes in interest rates, such as the Macaulay duration or option-adjusted duration.

*“Fair market value”* means a reasonable estimate of the amount that a knowledgeable buyer of an asset would be willing to pay, and a knowledgeable seller of an asset would be willing to accept, for the asset without duress in an arm’s length transaction. In the case of a publicly traded security, the fair market value is the price at which the security is traded or, if no price is available, a price that appropriately reflects the latest bid and asked prices for the security. For all non-publicly traded assets, fair market value will be determined in accordance with valuation practices customarily used within the financial industry.

*“Investment guidelines”* means a set of written guidelines, established in advance by the person with investment authority over the segregated portfolio, to be followed by the investment manager. The guidelines shall include a description of:

1. The segregated portfolio’s investment objectives and limitations;
2. The investment manager’s degree of discretion;
3. The duration, asset class, quality, diversification, and other requirements of the segregated portfolio; and
4. The manner in which derivative instruments may be used, if at all, in the segregated portfolio.

*“Investment manager”* means the person (including the contract holder) responsible for managing the assets in the segregated portfolio in accordance with the investment guidelines in a fiduciary capacity to the owner of the assets.

*“Market value record”* means an accounting record provided by the contract to reflect the fair market value of the segregated portfolio.

*“NAIC”* means the National Association of Insurance Commissioners.

*“Permitted custodial institution”* means a bank, trust company or other licensed fiduciary services provider.

*“Plan of operation”* means a written plan meeting the requirements of paragraph 96.5(2)“a.”

## INSURANCE DIVISION[191](cont'd)

“*Qualified actuary*” means an individual who meets the qualification standards set forth in 191—paragraph 5.34(5)“*b.*”

“*Rate period*” means the period of time during which the fixed rate of return credited to the contract value record is applicable between crediting rate formula adjustments.

“*Segregated portfolio*” means:

1. A portfolio or subportfolio of assets to which the contract pertains that is held in a custody or trust account by the permitted custodial institution and identified on the records of the permitted custodial institution as special custody assets held for the exclusive benefit of the retirement plans or other entities on whose behalf the contract holder holds the contract; and

2. Any related cash or currency received by the permitted custodial institution for the account of the contract holder and held in a deposit account for the exclusive benefit of the retirement plans or other entities on whose behalf the contract holder holds the contract.

“*Spot rate,*” corresponding to a given time of benefit payment, means the yield on a zero-coupon noncallable and nonprepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, noncallable and nonprepayable United States government obligations in accordance with a formula set forth in the plan of operation. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner and are supported by investments denominated in the currency of the foreign country, the spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the spot rate shall be determined on a basis mutually agreed upon by the insurer and the commissioner.

“*Synthetic guaranteed investment contract*” or “*contract*” means a group annuity contract or other contract issued in connection with a group annuity contract that in whole or in part establishes the insurer’s obligations by reference to a segregated portfolio of assets that is not owned by the insurer.

“*Unilateral contract termination event*” means an event allowing the insurer to unilaterally and immediately terminate the contract, without future liability or obligation to the contract holder.

“*United States government obligation*” means a direct obligation issued, assumed, guaranteed or insured by the United States or by an agency or instrumentality of the United States government.

“*Valuation actuary*” means the appointed actuary or, alternatively, a qualified actuary designated by the appointed actuary to render the actuarial opinion pursuant to rule 191—96.10(505,508). Written documentation of any such designation shall be on file at the company and available for review by the commissioner upon request.

“*Value of guaranteed contract liabilities*” means the same as set forth in subrule 96.10(6).

**191—96.5(505,508) Financial requirements and plan of operation.** A contract may not be delivered or issued for delivery in this state unless the issuing insurer is licensed as a life insurance company in this state and is financially qualified under the provisions of subrule 96.5(1). In addition, a domestic insurer may not deliver or issue for delivery, either in this state or outside this state, a contract unless the insurer has satisfied the requirements of subrule 96.5(2) with respect to the class of contracts to which the contract belongs.

**96.5(1)** An insurer will be financially qualified under this rule if its most recent statutory financial statements reflect at least \$1 billion in admitted assets or \$100 million in capital and surplus, and its risk-based capital results do not place it at a regulatory level of action. In lieu of the requirements in the preceding sentence, the insurer may be required to satisfy such other financial qualification requirements set forth by the commissioner as having been deemed necessary or appropriate in a particular case to protect the insurer’s policyholders and the public.

**96.5(2)** A domestic insurer will satisfy the requirements of this subrule with respect to a class of contracts if the insurer has filed with the commissioner a plan of operation pertaining to the class of contracts, together with copies of the forms of contract in the class, and the filing of the plan of operation



## INSURANCE DIVISION[191](cont'd)

has been approved or has not been disapproved within the 60-day period following the date of filing, in which event the plan of operation shall be deemed approved.

*a.* The plan of operation for a class of contracts shall describe the financial implications for the insurer of the issuance of contracts in the class and shall include at least the following:

(1) A statement that the plan of operation will be administered in accordance with the requirements prescribed by the commissioner pursuant to this chapter, along with a statement that the insurer will comply with the plan of operation in its administration of the contract;

(2) A statement describing the methods and procedures used to value statutory liabilities for purposes of rule 191—96.10(505,508);

(3) A description of the criteria used by the insurer in approving the investment manager for the segregated portfolio of assets associated with a contract in the class, if the investment manager is an entity other than the insurer or is controlling, controlled by or under common control with the insurer;

(4) A description of the insurer's requirement for reports concerning the assets in each segregated portfolio and transactions involving the assets and a description of how the insurer can use the information in a report to determine that the segregated portfolio is being managed in accordance with its investment guidelines. The insurer shall require that the report be prepared no less frequently than quarterly and include a complete statement of segregated portfolio holdings and their fair market value;

(5) A demonstration of financial results for one or more sample contracts from the class of contracts showing, at a minimum, the projected contract value records, the applicable fixed rate or rates of return, and the projected market value records and describing how the investments in the segregated portfolio reflect provision for benefits insured by the contract and how the contract value and market values and the rates of return may be affected by changes in the investment returns of the segregated portfolio and by reasonably anticipated deposits to and withdrawals from the segregated portfolio by the contract holder, and any advances made by the insurer to the contract holder. The sample contracts shall be chosen to reasonably represent the range of results that could be expected from possible combinations of contract provisions of all contracts within the class. The demonstration shall include at least three hypothetical return scenarios: level, increasing, and decreasing. For each of these scenarios, at least three withdrawal scenarios shall be modeled: zero, moderate, and high. The commissioner may require additional scenarios if deemed necessary to fully understand the risks under the class of contracts. The demonstration period shall be the greater of five years or the minimum period the insurer must underwrite the risk;

(6) A statement that all contracts in the class of contracts satisfy the requirement of rule 191—96.9(505,508) regarding unilateral contract terminations, together with a description of all termination events, discontinuation triggers and options, notice requirements, corrective action procedures, all other contract safeguards, and the procedures to be followed when a unilateral contract termination event occurs;

(7) A description of the allowable investment parameters (such as objectives, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio) to be reflected in the investment guidelines applicable to each contract issued in the class to which the submitted plan of operation applies; and a description of the procedures that will be followed by the insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contract holder. If the insurer chooses to operate a contract in accordance with investment guidelines that do not conform to the criteria established pursuant to this subparagraph, the nonconforming set of investment guidelines shall be filed with the commissioner in accordance with the filing requirements of this subrule;

(8) An unqualified opinion by a qualified actuary with expertise to evaluate the adequacy of the consideration charged by the insurer for the risks it has assumed with respect to the contracts in the class to which the plan of operation applies;

(9) A statement that the actuarial opinion and memorandum required by rule 191—96.10(505,508) shall include, with respect to the class of contracts to which the plan of operation applies:

1. If a payment has been made by the insurer in the prior reporting period under a contract in the class, the amount of aggregate risk charges (net of administrative expenses) for contracts in the class and the aggregate amount of any losses incurred; and

## INSURANCE DIVISION[191](cont'd)

2. An inventory of all material unilateral contract termination events in the class that have not been cured within the time period specified and that have occurred during the prior reporting period for which the company decided not to terminate the contract.

*b.* Review of the plan of operation by the commissioner may necessitate requests for information to supplement that furnished pursuant to paragraph 96.5(2) "a." Replies made in compliance with such requests for information should be made in sufficient detail that any follow-up correspondence can be held to a minimum.

**191—96.6(505,508) Required contract provisions and filing requirements.** A contract may not be delivered or issued for delivery in this state unless the contract satisfies the requirements of subrule 96.6(1) and the issuing insurer has satisfied the requirements of subrule 96.6(2) with respect to the contract.

**96.6(1)** The contract shall:

*a.* Provide that the assets to which the contract pertains and for which a contract value record is established will be maintained in a segregated portfolio of a permitted custodial institution;

*b.* Grant the insurer the right to perform audits and inspections of assets held in the segregated portfolio from time to time upon reasonable notice to the permitted custodial institution;

*c.* Provide that the insurer will receive prior notice of and the right to approve any appointment or change of investment manager;

*d.* Give a description of how the contract value record will be determined and, where applicable, adjusted by a crediting rate formula;

*e.* State the maximum rate period between crediting rate formula recalculations that will be permitted, if any;

*f.* Provide the insurer with the right to refuse to recognize any new deposits to the segregated portfolio unless there is a written agreement between the insurer and the contract holder as to the permissible levels and timing of new deposits;

*g.* Clearly identify all circumstances under which insurer payments or advances to the contract holder are to be made;

*h.* Clearly identify the types of withdrawals made on a market value basis;

*i.* Provide either a fixed maturity schedule or a settlement option permitting the contract holder to receive the contract value record over time, provided that no unilateral contract termination event has occurred; and

*j.* Include a provision stating, or substantially similar to, the following:

No waiver of remedies by the insurer that is a party to this contract, following the breach of any contractual provision of the contract, or of the investment guidelines applicable to it, or the failure to enforce the provisions or guidelines, which constitutes grounds for termination of the contract for cause by the insurer, and which breach or failure is not cured within 30 days following the insurer's discovery of it, shall be effective against an insurance commissioner in any future rehabilitation or insolvency proceedings against the insurer unless approved in advance, in writing, by the commissioner.

**96.6(2)** An insurer will satisfy the filing and approval requirements of this rule with respect to a contract if the insurer has filed the form of the contract with the commissioner, the form is accompanied by the items specified in paragraphs 96.6(2) "a," "b" and "c," and the form has been approved or has not been disapproved within the 30-day period following the date of filing, in which event the form of contract shall be deemed approved. Notwithstanding the foregoing, the requirement for filing and approval of the form of contract may be waived at the discretion of the commissioner.

*a.* The form of contract filed for approval shall be accompanied by a statement that the contract meets the conditions of subrule 96.6(1).

*b.* The form of contract filed for approval shall be accompanied by a statement:

(1) Specifying the range of variation of variable contract provisions, if any, that could have a material effect on the risk assumed by the insurer under the contract, including withdrawal methodology, crediting rate formula and termination events;

## INSURANCE DIVISION[191](cont'd)

- (2) Describing how the fair market value will be determined;
  - (3) Describing the crediting rate formula, if any, and how it will operate to take into account the difference between the market value record and the contract value record over time; and
  - (4) Listing events that give the insurer the right to terminate the contract immediately.
- c. If the plan of operation pertaining to the class of contracts to which the contract belongs:
- (1) Has been affirmatively approved by the insurance commissioner of the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement verifying the receipt of approval and indicating that the approval was an affirmative approval.
  - (2) Has been deemed approved in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement indicating that the issuing insurer has met the requirements for deemed approval.
  - (3) Has not been approved, either affirmatively or by deemer, in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement of this fact, together with a plan of operation pertaining to the contract.

**191—96.7(505,508) Investment management of the segregated portfolio.**

**96.7(1)** The investment manager must have full responsibility for the management of all segregated portfolio assets within the constraints specified in the investment guidelines.

**96.7(2)** The investment guidelines shall be submitted to the insurer for underwriting review before the contract becomes effective.

**96.7(3)** If the insurer accepts a proposed change to the investment guidelines or allows the contract to operate in accordance with investment guidelines that do not conform to the criteria established in subparagraph 96.5(2)“a”(7), approval of the nonconforming investment guidelines must be obtained pursuant to subrule 96.5(2).

**191—96.8(505,508) Purchase of annuities.** For contracts that are group annuity contracts and that make available to the contract holder the purchase of immediate or deferred annuities for the benefit of individual members of the group, an annuity may not be purchased without the delivery of the contractually agreed-upon consideration in cash to the insurer from the segregated portfolio for allocation to the insurer’s general account or a separate account. The insurer shall collect adequate consideration for the cost of annuities purchased under contract option by transfer from the segregated portfolio.

**191—96.9(505,508) Unilateral contract terminations.** A contract subject to this chapter shall allow the insurer to unilaterally and immediately terminate, without future liability of the insurer or obligation to provide further benefits, upon the occurrence of any one of the following events that is material and that is not cured within 30 days following the insurer’s discovery of it:

**96.9(1)** The investment guidelines are changed without the advance consent of the insurer and the investment manager is not controlling, controlled by or under common control with the insurer;

**96.9(2)** The segregated portfolio, if managed by an entity that is not controlling, controlled by or under common control with the insurer, is invested in a manner that does not comply with the investment guidelines; or

**96.9(3)** Investment discretion over the segregated portfolio is exercised by or granted to anyone other than the investment manager.

**191—96.10(505,508) Reserves.** This rule describes asset maintenance requirements for segregated portfolios governed by this chapter.

**96.10(1)** At all times, an insurer shall hold minimum reserves in the general account or one or more separate accounts, as appropriate, equal to the excess, if any, of the value of the guaranteed contract liabilities, determined in accordance with subrules 96.10(6) and 96.10(7), over the market value of the assets in the segregated portfolio less the deductions provided for in subrule 96.10(2). The reserve requirements of this subrule shall be applied on a contract-by-contract basis.

## INSURANCE DIVISION[191](cont'd)

**96.10(2)** In determining compliance with the asset maintenance requirement and the reserve for the value of guaranteed contract liabilities specified in subrule 96.10(1), the insurer shall deduct a percentage of the market value of an asset as follows:

*a.* For debt instruments, the percentage shall be the NAIC asset valuation “reserve objective factor,” but the factor shall be increased by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year.

*b.* For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor.”

**96.10(3)** To the extent that expected guaranteed contract benefits are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the foreign country, the percentage deduction for these assets under subrule 96.10(2) shall be that for a substantially similar investment denominated in the currency of the United States.

**96.10(4)** To the extent that expected guaranteed contract benefits are denominated in the currency of the United States and are supported by segregated portfolio assets denominated in the currency of a foreign country, and to the extent that expected guaranteed contract benefits are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the United States, the deduction for debt instruments under subrule 96.10(2) shall be increased by 15 percent of the market value of the assets unless the currency exchange risk on the assets has been adequately hedged, in which case the percentage deduction under subrule 96.10(2) shall be increased by 0.5 percent. No expected guaranteed contract benefits denominated in the currency of a foreign country shall be supported by segregated portfolio assets denominated in the currency of another foreign country without the approval of the commissioner. For purposes of this subrule, the currency exchange risk on an asset is deemed to be adequately hedged if:

*a.* It is an obligation of:

(1) A jurisdiction that is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner;

(2) Any political subdivision or other governmental unit of such a jurisdiction, or any agency or instrumentality of such a jurisdiction, political subdivision or other governmental unit; or

(3) An institution that is organized under the laws of any such jurisdiction; and

*b.* At all times the principal amount of the obligation and scheduled interest payments on the obligation are hedged against the United States dollar pursuant to contracts or agreements that are:

(1) Issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province of Canada;

(2) Entered into with a United States banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission that has net capital in excess of \$250 million; or

(3) Entered into with any other banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency and that is organized under the laws of a jurisdiction that is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency.

**96.10(5)** Synthetic guaranteed investment contracts may provide for the allocation to one or more separate accounts of all or any portion of the amount needed to meet the asset maintenance requirement. If the contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the insurer shall maintain in a distinct separate account that is so chargeable: that portion of the amount needed to meet the asset maintenance requirement that has been allocated to separate accounts, less the amounts contributed to separate accounts by the contract holder in accordance with the contract and the earnings on the contract.

**96.10(6)** For purposes of this chapter, the “value of guaranteed contract liabilities” is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to

## INSURANCE DIVISION[191](cont'd)

the expected time of payment of the expected guaranteed contract benefit that is not greater than the maximum multiple of the spot rate supportable by the expected return from the segregated portfolio assets, and in no event greater than 105 percent of the spot rate as described in the plan of operation, pursuant to rule 191—96.5(505,508), or the actuary's opinion and memorandum, pursuant to subrule 96.10(8), except that if the expected time of payment of an expected guaranteed contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than 80 percent of the 30-year spot rate and from year 30 to the date of valuation at a rate not greater than 105 percent of the 30-year spot rate.

**96.10(7)** In calculating the value of guaranteed contract benefits:

*a.* All expected guaranteed contract benefits potentially available to the contract holder on an ongoing basis shall be considered in the valuation process and analysis, and the reserve held must be sufficient to fund the greatest present value of each independent expected guaranteed contract benefit. For purposes of this subrule, the right granted to the contract holder to exit the contract by discharging the insurer of its obligations under the contract and taking control of the assets in the segregated portfolio shall not be considered an expected guaranteed contract benefit.

*b.* To the extent that future guaranteed cash flows are dependent upon the benefit responsiveness of an employer-sponsored plan, a best estimate based on company experience, or other reasonable criteria if company experience is not available, shall be used in the projections of future cash flows.

**96.10(8)** Actuarial opinion and memorandum for segregated portfolios are governed by this chapter.

*a.* An insurer that issues a synthetic guaranteed investment contract subject to this chapter shall submit to the commissioner annually by March 1 following the December 31 valuation date an actuarial opinion and, upon request, a memorandum showing the status of the accounts as of the prior December 31. The actuarial opinion and memorandum shall be in form and substance satisfactory to the commissioner.

*b.* The actuarial memorandum required by this chapter is deemed to be confidential to the same extent, and under the same conditions, as the actuarial memorandum required by Iowa Code section 508.36(2)“d”(8).

*c.* Except in cases of fraud or willful misconduct, the valuation actuary shall not be liable for damages to any person (other than the insurer and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

*d.* The statement of actuarial opinion submitted in accordance with paragraph 96.10(2)“a” shall consist of:

- (1) A paragraph identifying the valuation actuary and the valuation actuary's qualification;
- (2) A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the valuation actuary's work;
- (3) A reliance paragraph describing those areas, if any, where the valuation actuary has deferred to other experts in developing data, procedures or assumptions;
- (4) An opinion paragraph expressing the valuation actuary's opinion with respect to the matters described in subparagraphs 96.10(8)“e”(1) and (2); and
- (5) One or more additional paragraphs which may be needed for individual companies in the following cases:

1. If the valuation actuary considers it necessary to state a qualification of the valuation actuary's opinion;

2. If the valuation actuary must disclose an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion;

3. If the valuation actuary chooses to add a paragraph briefly describing the assumptions which form the basis of the actuarial opinion.

*e.* This paragraph describes the contents of the opinion paragraph of the actuarial opinion.

(1) The actuarial opinion shall state, after taking into account any risk charge payable, the segregated portfolio assets, and the amount of any reserve liability with respect to the asset maintenance requirement, that the account assets make adequate provision for expected guaranteed contract benefits.

(2) The opinion shall also state that:

## INSURANCE DIVISION[191](cont'd)

1. Reserves for expected guaranteed contract benefits are calculated pursuant to the requirements of subrule 96.10(1);
2. After taking into account any reserve liability with respect to the asset maintenance requirement, the amount of the account assets satisfies the asset maintenance requirement;
3. The fixed-income segregated portfolio conforms to and justifies the rates used to discount expected guaranteed contract benefits for valuation pursuant to subrule 96.10(6);
4. Whether any rates used pursuant to subrule 96.10(6) to discount expected guaranteed contract benefits and other items applicable to the segregated portfolio were modified from the rate or rates described in the plan of operation filed pursuant to rule 191—96.5(505,508); and
5. The level of risk charges, if any, retained in the general account is appropriate in view of such factors as the nature of the expected guaranteed contract benefits and losses experienced in connection with contracts and other pricing factors.
  - f. The opinion shall be accompanied by a certificate from an officer of the insurer responsible for monitoring compliance with the asset maintenance requirements for synthetic guaranteed investment contracts describing the extent to and manner in which, during the preceding year:
    - (1) Actual benefit payments conformed to the benefit payment estimated to be made as described in the plan of operation;
    - (2) The determination of the fair market value of the segregated portfolio conformed to the valuation procedures described in the plan of operation, including a statement of the procedures and sources used during the year; and
    - (3) Any assets were transferred to or from the insurer's general account or any amounts were paid to the insurer by any contract holder to support the insurer's guarantee.
  - g. The actuarial memorandum shall:
    - (1) Substantially conform with those portions of 191—subrule 5.34(7) that are applicable to asset adequacy testing and that either:
      1. Demonstrate the adequacy of account assets based upon cash flow analysis, or
      2. Explain why cash flow testing analysis is not appropriate, describe the alternative methodology of asset adequacy testing used, and demonstrate the adequacy of account assets under that methodology;
    - (2) Clearly describe the assumptions the valuation actuary used in support of the actuarial opinion, including any assumptions made in projecting cash flows under each class of assets, and any dynamic portfolio hedging techniques utilized and the tests performed on the utilization of the techniques;
    - (3) Clearly describe how the valuation actuary has reflected the cost of capital;
    - (4) Clearly describe how the valuation actuary has reflected the risk of default on obligations and mortgage loans, including obligations and mortgage loans that are not investment grade;
    - (5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts;
    - (6) If the plan of operation provides for investments in segregated portfolio assets other than United States government obligations, demonstrate that the rates used to discount contract liabilities pursuant to subrule 96.10(6) conservatively reflect expected investment returns, taking into account any foreign exchange risks;
    - (7) If the contracts provide that in certain circumstances the contracts would cease to be funded by a segregated portfolio and instead would become contracts funded by the general account, clearly describe how any increased reserves would be provided for if and to the extent these circumstances occur;
    - (8) State the amount of account assets maintained in a separate account that are not chargeable with liabilities arising out of any other business of the insurer;
    - (9) State the amount of reserves and supporting assets as of December 31 and where the reserves are shown in the annual statement;
    - (10) State the amount of any contingency reserve carried as part of surplus;
    - (11) State the market value of the segregated asset portfolio; and

## INSURANCE DIVISION[191](cont'd)

(12) Where separate account assets are not chargeable with liabilities arising out of any other business of the insurer, describe how the level of risk charges payable to the general account provides an appropriate compensation for the risk taken by the general account.

**96.10(9)** When the insurer issues a synthetic guaranteed investment contract and complies with the asset maintenance requirements of subrule 96.10(1), the insurer need not maintain an asset valuation reserve with respect to those account assets.

**96.10(10)** This subrule describes the reserve valuation requirements for contracts subject to this chapter.

*a.* Reserves for synthetic guaranteed investment contracts subject to this chapter shall be an amount equal to the sum of the following:

- (1) The amounts determined as the minimum reserve as required under subrule 96.10(1);
- (2) Any additional amount determined by the insurer's valuation actuary as necessary to make adequate provision for all expected guaranteed contract benefits; and
- (3) Any additional amount determined as necessary by the commissioner due to the nature of the expected guaranteed contract benefits.

*b.* The amount of any reserves required by paragraph 96.10(4) "a" may be established by either:

- (1) Allocating sufficient assets to one or more separate accounts; or
- (2) Setting up the additional reserves in the general account.

**191—96.11(505,508) Severability.** If any provision of this chapter or its application to any person or circumstances is judged invalid by a court of competent jurisdiction, the judgment shall not affect or impair the validity of the other provisions of this chapter.

**191—96.12(505,508) Effective date.** This chapter shall take effect [insert effective date of these rules]. These rules are intended to implement Iowa Code section 505.8 and chapter 508.

**ARC 9807B**

## **MEDICINE BOARD[653]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.5, the Board of Medicine hereby proposes to amend Chapter 25, "Contested Case Proceedings," Iowa Administrative Code.

The purpose of Chapter 25 is to provide rules for the administration of contested cases before the Board. The proposed amendments require that hearing panels have six members. The proposed amendments also allow parties in contested cases before the Board to present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on September 23, 2011.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on November 8, 2011. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on November 8, 2011, at 4 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

## MEDICINE BOARD[653](cont'd)

After analysis and review of this proposed rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code chapter 272C. The following amendments are proposed.

ITEM 1. Amend subrule 25.18(1) as follows:

**25.18(1)** ~~A hearing may be~~ Hearings are conducted before a quorum of the board or a panel of not less than three members of the board, at least two of whom are licensed by the board. When a sufficient number of board members is unavailable to hear a contested case, the executive director, or the executive director's designee, may request alternate members, as defined in rule 653—1.1(17A,147) and Iowa Code ~~section~~ sections 148.2A and 148.7(4), to serve on the hearing panel. A hearing panel containing alternate members must include at least six people, of whom ~~the majority shall be members licensed to practice under Iowa Code chapter 148~~ a majority must be board members, a majority must be members licensed to practice medicine under Iowa Code chapter 148, and no more than three may be public members.

ITEM 2. Amend subrule 25.18(6) as follows:

**25.18(6)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. Parties may present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.

**ARC 9808B****RACING AND GAMING COMMISSION[491]****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 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases and Other Procedures,” Chapter 8, “Wagering and Simulcasting,” Chapter 9, “Harness Racing,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” and Chapter 11, “Gambling Games,” Iowa Administrative Code.

Item 1 amends rule 491—4.7(99D,99F), Penalties (gaming board and board of stewards), to restore language that was removed in error.

Item 2 establishes a new rule for advance deposit wagering.

Items 3 and 6 remove an outdated provision related to eligibility for claiming a horse.

Item 4 rescinds the definition for “claiming race” and replaces it with a new definition.

Item 5 changes from 30 days to 60 days the time frame in which a published workout for quarter horses is required.

Item 7 establishes a waived claiming rule.

Item 8 amends the definition of “implement of gambling” to remove unnecessary language.

Item 9 removes outdated games listed in subrule 11.5(1).

Item 10 improves the integrity of tournaments for patrons by establishing controls for tournament chips.

Item 11 amends the subrule concerning wagers to clarify what information needs to be posted and to clarify requirements for “renting” a seat at a table game.

Item 12 clarifies wagering and shooting procedures for craps.

Item 13 rescinds a subrule that pertains to an outdated table game.

Item 14 clarifies which poker games should have the Rules of Game on hand, what constitutes a “Bad Beat,” and how the fund can be seeded. It prevents an administrative fee from being charged.



## RACING AND GAMING COMMISSION[491](cont'd)

Item 15 improves the integrity of the game for players.

Item 16 establishes fundamental wagering rules for baccarat.

Any person may make written suggestions or comments on the proposed amendments on or before November 8, 2011. Written material should be directed to the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on November 8, 2011, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrules 4.7(1) to 4.7(5):

**4.7(1)** Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours, at any commission office. Nonpayment or late payment of a fine may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

**4.7(2)** If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

**4.7(3)** If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

**4.7(4)** Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

**4.7(5)** When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

ITEM 2. Adopt the following **new** rule 491—8.6(99D):

**491—8.6(99D) Advance deposit wagering.**

**8.6(1) Definitions.**

*"Account"* means an account approved by the commission for advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

*"Advance deposit wagering"* means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering.

*"Advance deposit wagering center"* means an actual location, equipment, and staff of a licensee, ADWO, or both involved in the management, servicing and operation of advance deposit wagering for the licensee.

*"Advance deposit wagering operator"* or *"ADWO"* means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen's Benevolent and Protective Association to provide advance deposit wagering.

*"Credits"* means all positive inflows of money to an account.

*"Debits"* means all negative outflow of money from an account.

*"Deposit"* means a payment of money into an account.

*"Licensee"* means a horse racetrack located in Polk County operating under a license issued by the commission.

*"Licensee account holder"* means any individual at least 21 years of age who successfully completed an application and for whom the licensee or ADWO has opened an account. "Licensee account holder" does not include any corporation, partnership, limited liability company, trust, estate or other formal or nonformal entity.

## RACING AND GAMING COMMISSION[491](cont'd)

*“Proper identification”* means a form of identification accepted in the normal course of business to establish that the person making a transaction is a licensee account holder.

*“Secure personal identification code”* means an alpha-numeric character code provided by a licensee account holder as a means by which the licensee or ADWO may verify a wager or account transaction as authorized by the licensee account holder.

*“Source market fee”* or *“host fee”* means the part of a wager made on any race by a person who is a licensee account holder that is returned to the licensee and the Iowa Horsemen’s Benevolent and Protective Association pursuant to the terms of a negotiated agreement as required by these rules.

*“Withdrawal”* means a payment of money from an account by the licensee or ADWO to the licensee account holder when properly requested by the licensee account holder.

**8.6(2)** *Authorization to conduct advance deposit wagering.*

a. A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to 2011 Iowa Acts, Senate File 526, section 7, and these rules. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system’s operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

b. The commission may conduct investigations or inspections or request additional information from the licensee as the commission deems appropriate in determining whether to allow the licensee to conduct advance deposit wagering.

c. The licensee shall establish and manage an advance deposit wagering center.

d. The commission may issue an ADWO license to an entity that enters into an agreement with the commission, licensee, and the Iowa Horsemen’s Benevolent and Protective Association. The terms of any ADWO’s license shall include but not be limited to:

(1) Any source market fees and host fees to be paid on any races subject to advance deposit wagering.

(2) An annual ADWO license fee in an amount to be determined by the commission.

(3) Completion of all necessary background investigations.

(4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County from all of its licensee account holders.

(5) A bond or irrevocable letter of credit on behalf of the ADWO to be determined by the commission.

(6) A detailed description and certification of systems and procedures used by the ADWO to validate the identity and age of licensee account holders and to validate the legality of wagers accepted.

(7) Certification of prompt commission access to all records relating to licensee account holder identity and age in hard-copy or standard electronic format acceptable to the commission.

(8) Certification of secure retention of all records related to advance deposit wagering and accounts for a period of not less than three years or such longer period as specified by the commission.

(9) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

e. Commission access to and use of information concerning advance deposit wager transactions and licensee account holders shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

f. For each advance deposit wager made for an account by telephone, the licensee or ADWO shall make a voice recording of the entire transaction and shall not accept any such wager if the voice-recording system is inoperable. Voice recordings shall be retained for not less than six months and shall be made available to the commission for investigative purposes.

## RACING AND GAMING COMMISSION[491](cont'd)

**8.6(3) Establishing an account.**

a. A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include: the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission.

b. Each application submitted will be subject to electronic verification with respect to the applicant's name, principal residence address and date of birth by either a national, independent individual reference service company or by means of a technology which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. An applicant's social security number may be necessary for completion of the verification process and for tax reporting purposes. If there is a discrepancy between the application submitted and the information provided by the electronic verification or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted and given instructions as to how to resolve the matter.

c. The identity of a licensee account holder must be verified via electronic means or copies of other documents before the licensee account holder may place an advance deposit wager.

d. Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensee or ADWO provided that the licensee or ADWO informs the licensee account holder in writing prior to the change.

e. The applicant shall provide the licensee or ADWO with an alpha-numeric code to be used as a secure personal identification code when the licensee account holder is placing an advance deposit wager. The licensee account holder has the right to change this code at any time.

f. The licensee account holder shall receive at the time the account is approved a unique account identification number; a copy of the advance deposit wagering rules and such other information and material pertinent to the operation of the account; and such other information as the licensee, ADWO or commission may deem appropriate.

g. The account is nontransferable.

h. The licensee or ADWO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information used to open an account was false or that the account has been used in violation of these rules or the licensee's or ADWO's terms and conditions.

**8.6(4) Operation of an account.** The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval.

ITEM 3. Amend subparagraph **9.6(15)“a”(1)** as follows:

(1) No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting who has started a horse at the meeting. ~~A temporary horse owner's license is not valid for claiming purposes;~~ or
2. and 3. No change.

ITEM 4. Rescind the definition of "Claiming race" in rule **491—10.1(99D)** and adopt the following **new** definition in lieu thereof:

"*Claiming race*" means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules. (See also waived claiming rule in paragraph 10.6(18)“k.”)

ITEM 5. Amend paragraph **10.6(9)“a”** as follows:

a. *When required.* No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which the horse is entered. The workout must

## RACING AND GAMING COMMISSION[491](cont'd)

have occurred within the previous 30 days for a thoroughbred or within the previous 60 days for a quarter horse. First-time starters must have at least two published workouts and be approved from the gate by the starter.

ITEM 6. Amend subparagraph **10.6(18)“a”(1)** as follows:

- (1) Registered to race or open claim. No person may file a claim for any horse unless the person:
  1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting. ~~A temporary horse owner's license is not valid for claiming purposes;~~ or
  2. and 3. No change.

ITEM 7. Adopt the following **new** paragraph **10.6(18)“k”**:

*k. Waived claiming rule.*

- (1) At the time of entry into claiming races, the owner, trainer, or any authorized agent may opt to declare a horse ineligible to be claimed provided:
  1. The horse has not been an official starter at any racetrack for a minimum of 120 days since the horse's last race as an official starter (at time of race);
  2. The horse's last race as an official starter was a claiming race in which the horse was eligible to be claimed;
  3. The horse is entered for a claiming price equal to or greater than the claiming price at which the horse last started as an official starter;
  4. Failure of declaration of ineligibility at time of entry may not be remedied; and
  5. Ineligibility to be claimed shall apply only to the horse's first start as an official starter following each such 120-day or longer layoff.
- (2) Any win which occurs in a claiming race by a horse ineligible to be claimed under waived claiming rules of this, or any other, jurisdiction will be treated as an allowance win for the determination of the horse's eligibility and allowances for every race at the meet, unless the conditions of the race specify otherwise.

ITEM 8. Amend rule **491—11.1(99F)**, definition of “Implement of gambling,” as follows:

*“Implement of gambling”* means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a slot machine; or be integral to the conduct of a commission-authorized gambling game, ~~possession or use of which is otherwise prohibited by statute.~~

ITEM 9. Amend subrule 11.5(1) as follows:

**11.5(1)** ~~Dice, craps~~ Craps, roulette, twenty-one (blackjack), ~~big six—roulette, red dog,~~ baccarat, and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

ITEM 10. Adopt the following **new** subrule 11.6(3):

**11.6(3) Tournament chips.** Tournament chips used as wagers in table game tournament proposals approved pursuant to this rule shall be imprinted with a number representing the value of the chip or shall be assigned a value. The facility shall provide that:

- a. The assigned value of tournament chips be conspicuously displayed in the tournament area.
- b. Internal controls which account for all tournament chips and include reconciliation, handling and variance procedures are approved by a commission representative.

ITEM 11. Amend subrule 11.7(2) as follows:

**11.7(2) Wagers.** All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout. Information pertaining to the minimum and maximum allowed at the table shall be posted on the game. Any other fee collected to participate in a table game shall be subject to the wagering tax pursuant to Iowa Code section 99F.11.

ITEM 12. Rescind subrule 11.7(3) and adopt the following **new** subrule in lieu thereof:

**11.7(3) Craps.**

## RACING AND GAMING COMMISSION[491](cont'd)

*a.* Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed. A wager made on any bet may be removed or reduced at any time prior to a roll that decides the outcome of such wager unless the wager is a "Pass" or "Come" bet and a point has been established with respect to such bet or the wager is a proposition bet contingent on multiple rolls.

*b.* The shooter shall make a "Pass" or "Don't Pass" bet and shall handle the two selected dice with one hand before throwing the dice in a simultaneous manner.

*c.* Each die used shall be transparent.

ITEM 13. Rescind and reserve subrule **11.7(6)**.

ITEM 14. Adopt the following new paragraphs **11.7(7)"e"** and **"f"**:

*e.* The facility shall comply with and receive approval pursuant to subrule 11.4(3) for each type of poker game offered.

*f.* The facility may elect to offer a jackpot award generated from pot contributions at a table or group of tables for predesignated high-value poker hands, subject to the following requirements:

(1) Approval of the jackpot award rules must be obtained from a commission representative prior to play.

(2) Jackpot award rules and jackpot award amounts shall be posted in a conspicuous location within the poker room. Jackpot award amounts shall be updated no less than once per day.

(3) The facility shall divide pot contributions for any single qualifying award circumstance or event into no more than three jackpot award pools.

(4) The jackpot award pool containing the highest monetary value amount shall be the amount posted in the poker room and awarded to a qualifying player or players.

(5) If additional jackpot award pools are in use, the award pool containing the highest monetary value shall be used to seed the primary jackpot award pool.

(6) All moneys collected as pot contributions to a jackpot award payout shall be distributed in their entirety to the players; no facility shall charge an administration fee for distribution of a jackpot award.

ITEM 15. Amend paragraph **11.7(7)"a"** as follows:

*a.* When a facility conducts poker with an imprest dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer gaming chip banks must be submitted in writing and approved by a commission representative prior to use and must include, but not be limited to, controls to regularly monitor, investigate, and report table bank variances.

ITEM 16. Rescind subrule 11.7(8) and adopt the following new subrule in lieu thereof:

**11.7(8) Baccarat.** Before the first card is dealt for each round of play, each player is permitted to make a wager on the Banker's Hand, Player's Hand, Tie Bet, and any proposition bet if offered. All wagers shall be made by placing gaming chips on the appropriate areas of the layout. Once the first card has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager.

## TREASURER OF STATE

### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 4.25%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 11, 2011, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .05%
One year to 397 days .....	Minimum .15%
More than 397 days .....	Minimum .45%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**ARC 9813B**

**TREASURER OF STATE[781]**

**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 556.26, the Treasurer of State hereby gives Notice of Intended Action to rescind Chapter 9, “Unclaimed Property,” Iowa Administrative Code, and to adopt a new Chapter 9 with the same title.

The proposed rules in Chapter 9 are necessary to provide definitions, guidelines, and reporting requirements for holders of unclaimed property. New Chapter 9 will also provide clarification and documentation necessary for owners of unclaimed property to recover their lost assets.

Any interested person may make written suggestions or comments on the proposed rules on or before November 8, 2011. Such written comments or suggestions should be directed to Jake Friedrichsen,

## TREASURER OF STATE[781](cont'd)

Iowa Treasurer of State, 1007 E. Grand Avenue, Des Moines, Iowa 50319. E-mail may be sent to [Jake.Friedrichsen@iowa.gov](mailto:Jake.Friedrichsen@iowa.gov).

A public hearing will be held on November 9, 2011, at 2 p.m. in the Treasurer of State's Office, Lucas Conference Room, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and confine their remarks to the subject of the proposed rules.

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

These rules are intended to implement Iowa Code chapter 556.

The following amendment is proposed.

Rescind 781—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9  
UNCLAIMED PROPERTY

**781—9.1(556) Purpose.** Iowa Code chapter 556 authorizes the treasurer of state to establish administrative rules that are necessary for the purpose of carrying out the provisions of Iowa Code chapter 556, the uniform disposition of unclaimed property Act.

This rule is intended to implement Iowa Code chapter 556.

**781—9.2(556) Forms.** The following approved forms will be used by the unclaimed property division:

**9.2(1)** Claim Form, together with, as applicable, the Affidavit of Lost Certificate, Affidavit of Administration, and Affidavit of Distributory Responsibility as well as other applicable affidavits, is the form required by the division for a claimant to file and support a claim relative to unclaimed property held in custody by the division.

**9.2(2)** Safe Deposit Box Inventory Form is the form that may be used by holders in the inventory and reporting of contents of safe deposit boxes reportable under the Act.

**9.2(3)** Holder Report Forms UP1 (also referred to as Holder Verification Form or Holder Report Cover Sheet) and UP2 are the forms holders are required to use to report unclaimed property.

**9.2(4)** Holder Reimbursement Form (or a form by another name that this office distributes to reimburse an owner or holder) is the form holders are required to use to request that the state pay an owner directly or to seek reimbursement from the state in cases when the holder has paid the claim of a reappearing owner, pursuant to Iowa Code section 556.14(5).

This rule is intended to implement Iowa Code chapter 556.

**781—9.3(556) Definitions.** In addition to the terms defined in Iowa Code section 556.1, the following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

*“Act”* means the uniform disposition of unclaimed property Act, Iowa Code chapter 556.

*“Aggregate property”* means individual items of intangible property with a value of less than \$50 each, which have been “aggregated” by a holder and reported and delivered to the division in a lump sum.

*“Book shares”* means debt or equity securities which are maintained in book entry form only and for which no physical certificate was or is issued.

*“Claimant”* means a person or legal entity entitled to reclaim abandoned property in the possession of the division. A claimant may be an original owner, legal representative, or successor in interest.

*“Contract auditor”* means any person or entity engaged or hired by the treasurer or the division to provide unclaimed property examination services. “Contract auditor” includes agents, employees and any subcontractor engaged by a contract auditor or engaged by its subcontractors.

*“Credits, advance payments, overpayments, refunds, or credit memoranda,”* for purposes of Iowa Code section 556.1(12), means current accounts receivable of a business association that have not been reduced to a check or other form of payment. “Credits, advance payments, overpayments, refunds, or credit memoranda,” for purposes of Iowa Code section 556.1(12), shall not include uncashed checks or

## TREASURER OF STATE[781](cont'd)

other unclaimed payments due and owing to a business association for its provision of goods or services, with respect to any other type of obligation.

*“Custodial property”* means property transferred to a custodian for a minor under the provisions of (1) the Iowa UTMA, (2) the Uniform Transfer to Minors Act, (3) the Uniform Gifts to Minors Act, or (4) a substantially similar Act of another state if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

*“Division”* means the Iowa unclaimed property division within the Iowa treasurer of state’s office that has the responsibility of administering the Act.

*“Dormancy fee”* means a service charge, dormancy charge, inactive account fee, escheat fee, minimum balance fee, maintenance fee, unclaimed property fee, or any other charge that results in the reduction of an account balance or property value, which is not directly related to a transaction initiated by an owner.

*“Dormancy period”* means the statutorily specified span of time after which an owner’s failure to indicate an interest in property will result in the property’s being presumed abandoned and subject to reporting and delivery to the division.

*“Due diligence”* means the efforts required to be undertaken by a holder of unclaimed property to find the rightful owner of such property before the property is delivered to the division.

*“Finder”* means a person hired or engaged to assist owners, heirs or other persons in the recovery of unclaimed property reported under the Act.

*“Finder agreement”* means an agreement to pay a fee, commission, or other compensation to a finder to identify, locate, deliver, recover, or assist in the recovery of unclaimed property reported under the Act.

*“Funds for liquidation”* means unclaimed funds which are held by a holder on behalf of an owner of debt or equity securities and which are owing as a result of the liquidation of the securities issuer.

*“Indication of interest”* means an action by an owner with respect to the owner’s property which indicates that the owner is aware of the existence of the property and intends for the property not to be presumed abandoned. Examples of an owner’s indication of interest include, but are not limited to, the following: an owner-initiated deposit or withdrawal from an account; notification to a holder of a change of address specific to the account; and any communication, such as written or electronic correspondence, telephone call or person-to-person conversation between an owner and a holder (or the agent of a holder), which can be documented and which reflects an owner’s awareness of the existence of the property.

*“Intangible property”* means such property as described in Iowa Code section 556.1(12).

*“Iowa uniform transfer to minors Act”* or *“Iowa UTMA”* means Iowa Code chapter 565B.

*“Last activity date”* means the last verifiable date of owner-initiated activity or contact with respect to unclaimed property.

*“Matured bond principal”* means unclaimed funds which are held by a holder for a bond holder pending the bond holder’s redemption of debt securities.

*“Retained asset account”* means a funds account or similar account maintained by a life insurer on behalf of a beneficiary, which is established through the life insurer’s retention of policy proceeds due a beneficiary, rather than the life insurer’s making a lump sum payment of the policy proceeds to the beneficiary.

*“Tangible property”* means the physical contents of a safe deposit box or other safekeeping repository, or physical items held as collateral by a banking organization, financial organization, or business association, that are reportable and deliverable to the division.

*“Treasurer”* means the treasurer of the state of Iowa.

*“Undelivered shares”* means unclaimed physically issued debt or equity securities, which were returned to the issuer by the post office as undeliverable, or which were otherwise never delivered into the possession of the owner.

*“Underlying shares”* means unclaimed physically issued debt or equity securities which are presumably in the possession of an owner.



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“*Unexchanged shares*” means unclaimed debt or equity securities which are held by a holder on behalf of an owner, pending the owner’s surrender of obsolete debt or equity securities in conjunction with an acquisition, merger, recapitalization, or similar mandatory corporate action.

This rule is intended to implement Iowa Code section 556.1.

**781—9.4(556) Dormancy fees and related charges.**

**9.4(1)** Iowa Code chapter 556 authorizes the following dormancy fees:

*a.* Lawful charges withheld from abandoned demand, savings, or matured time deposits held by a financial organization.

*b.* Charges on un-presented travelers checks and money orders, when a valid and enforceable contract to assess the charges exists, and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel such charges for the benefit of the owner.

*c.* Charges on un-presented checks, drafts, or similar instruments on which a financial organization is directly liable, where a valid and enforceable written contract to assess the charges exists and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel such charges for the benefit of the owner.

*d.* Deductions from the face value of a gift certificate or gift card resulting from untimely presentment or usage, where a valid and enforceable written contract was provided in conjunction with the issuance of the gift certificate or gift card, and the issuer of the gift certificate or gift card regularly imposes and does not regularly reverse or otherwise cancel the deduction for the benefit of the owner.

**9.4(2)** Dormancy fees not authorized by Iowa Code chapter 556 are prohibited.

**9.4(3)** All dormancy fees assessed against an unclaimed account must be disclosed in the report of unclaimed property filed with the division.

This rule is intended to implement Iowa Code section 556.2.

**781—9.5(556) Reporting and delivery of safe deposit box contents.**

**9.5(1)** Safe deposit boxes or other safekeeping depositories that have been abandoned shall be opened and inventoried in the presence of at least two employees of the holder.

**9.5(2)** The holder shall list the contents of each box inventoried and provide that list to the division. The Safe Deposit Box Inventory Form or any financial institution’s internal inventory form may be used and provided to the division.

**9.5(3)** The property and a copy of the inventory shall then be sealed for safekeeping until delivered to the owner or to the division when required by the Act. The holder may not convert the property to cash or reduce cash property to check; all property is to be delivered in its original form and “as is” to the owner or, if required, to the division.

**9.5(4)** Property transferred to the division shall be packaged in a reasonably protective manner to prepare for transportation to the division. Property should be delivered to the division via certified mail or insured courier. The holder assumes all risk of loss pending receipt of the property by the division.

This rule is intended to implement Iowa Code section 556.2.

**781—9.6(556) Reporting of individual retirement accounts (IRAs) and other retirement accounts.**

**9.6(1)** The reporting and delivery of property in an individual retirement account, defined contribution plan, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States shall be extended until three years after the earliest of the following has occurred:

*a.* The date of distribution or the attempted distribution of the property;

*b.* The date of the required distribution, as stated in agreements governing the account; or

*c.* The date specified in the income tax laws of the United States by which a distribution must occur in order for the owner to avoid a tax penalty.

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**9.6(2)** In reporting individual retirement accounts and other retirement accounts, holders shall include the name, address, and social security number of the account beneficiary, to the extent such information is known.

This rule is intended to implement Iowa Code section 556.7.

**781—9.7(556) Reporting of certificates of deposit and other time deposits.** If an automatically renewable time deposit or nonrenewable time deposit is deemed abandoned prior to its initial maturity, the time for the reporting and delivery of the time deposit to the division will be extended to the date of maturity or three years from the date at which the abandonment period commenced, whichever is later.

This rule is intended to implement Iowa Code section 556.7.

**781—9.8(556) Indication of interest by an owner in a certificate of deposit or other time deposit.**

**9.8(1)** The following acts by the owner of a time deposit shall constitute nonabandonment of the time deposit:

*a.* Consent in writing to a renewal of the time deposit at or about the time of renewal and signed by the owner, given by delivery of the original or a signed facsimile or an E-mail transmission of the facsimile initiated by the owner, or demonstrated by the existence of a memorandum or other record on file with the holder made at the time of renewal; or

*b.* The owner, within three years after the earlier of the maturity date or the date of the owner's last indication of interest in the deposit, has:

(1) Increased or decreased the amount or presented the passbook or other similar evidence of the deposit for the crediting of interest due;

(2) Communicated in writing with the financial organization concerning the time deposit, including requesting that the time deposit be redeemed;

(3) Otherwise demonstrated an indication of interest in the deposit as evidenced by a memorandum or other record on file prepared by an employee of the financial organization;

(4) Owned other property to which subparagraphs 9.8(1) "b"(1), (2), and (3) above apply and the financial organization communicates with the owner about the deposit that would otherwise be presumed abandoned under this subrule in writing at the address to which communications regarding the other property regularly are sent; or

(5) Had another relationship other than time or demand deposits, such as, but not limited to, a safe deposit box, mortgage, stocks, bonds or other investments, with the financial organization concerning which the owner has:

1. Communicated in writing with the banking or financial organization; or

2. Demonstrated an indication of interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization.

**9.8(2)** Consent to renewal of a time deposit shall be presumed and the owner will be deemed to have demonstrated an indication of interest in a time deposit when the financial organization sends the owner notice of the renewal via first class mail, address correction requested, and the notice is not returned to the financial organization by the post office for reason of nondelivery; provided, however, the financial organization must maintain a system for tracking and documenting return mail.

**9.8(3)** The date on which the owner has last demonstrated an indication of interest in and awareness of the owner's time deposit, as defined in paragraph 9.8(1) "a" above, or the date of maturity if no conduct evidencing such interest is made, whichever is earlier, shall begin the three-year abandonment period. However, when a written communication mailed to an owner is returned marked "undeliverable" or "unclaimed," the date of receipt by the financial organization of the returned mailing shall be deemed to begin the abandonment period. When periodic interest checks are issued on a time deposit, the abandonment period will commence on the date of an uncashed interest check, and the time deposit will be considered abandoned if all subsequent interest checks continue to remain uncashed through the entire statutory abandonment period, unless there is other conduct by the owner demonstrating an

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indication of interest in the time deposit as specified elsewhere in this subrule and applicable statutory law.

This rule is intended to implement Iowa Code section 556.7.

**781—9.9(556) Reporting of retained asset accounts.** Funds held in a retained asset account maintained by a life insurance company on behalf of a beneficiary shall be reported and delivered to the division if the beneficiary has failed to take such actions demonstrating an indication of interest in the account for a period of three years.

This rule is intended to implement Iowa Code section 556.9.

**781—9.10(556) Information required to be included in report.**

**9.10(1)** All Holder Report Forms submitted to the division must include, to the extent such information is available to the holder, the following information:

- a. The owner's (and as applicable/available, the beneficiary's) name;
- b. The owner's (and as applicable/available, the beneficiary's) last-known address;
- c. The owner's (and as applicable/available, the beneficiary's) social security or federal tax identification number;
- d. Account number, policy number, or other similar account relationship identifier;
- e. Check number, certificate number, or other similar property identifier;
- f. Date of owner's last indication of interest; and
- g. Date the property became payable or distributable.

**9.10(2)** The division may find the Holder Report Form as nonconforming and may seek a revision of the form under any of the following circumstances:

- a. Form does not include complete information;
- b. Form does not reconcile to the property remittance;
- c. Form is not verified;
- d. Form is not verified by the appropriate individual as required by statute;
- e. Form reflects unauthorized service or other owner charges assessed by the holder;
- f. Form includes property which is not subject to Iowa Code chapter 556;
- g. Form has been filed electronically and cannot be read or converted by the division.

This rule is intended to implement Iowa Code section 556.11.

**781—9.11(556) Early reporting of unclaimed property.**

**9.11(1)** A holder may request permission to report and deliver property to the division before it is presumed abandoned by sending a written request to the division.

**9.11(2)** The request must identify the property to be reported and delivered and the reasons for requesting permission to report and deliver the property prior to the date it is presumed abandoned.

**9.11(3)** The division may, at its sole discretion, consent to early reporting and delivery according to terms and conditions prescribed by the division.

This rule is intended to implement Iowa Code section 556.11.

**781—9.12(556) Due diligence.** Holders shall exercise reasonable and necessary due diligence consistent with good business practice in attempting to reactivate dormant accounts and to locate owners of unclaimed property.

This rule is intended to implement Iowa Code section 556.11.

**781—9.13(556) Reporting aggregate amounts to the division.** Holders may report in aggregate to the division items of property with a value of under \$50. Holders are encouraged not to aggregate unclaimed dividend checks, oil royalties, and other payments of a recurring nature, regardless of the item value.

This rule is intended to implement Iowa Code section 556.11.

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**781—9.14(556) Regulation of finders.**

**9.14(1)** Pursuant to Iowa Code section 556.11(10), agreements or contracts between finders and owners to pay compensation to recover or assist in the recovery of abandoned property are unenforceable if made within 24 months of the date the property was received by the division. In no case shall the finder fees or compensation exceed 15 percent of the amount of the property subject to claim.

**9.14(2)** A claim form signed by a finder shall not be reviewed by the division. The apparent owner or owner's legal representative shall make direct contact with the division and sign the claim form. All communication regarding the claim will be sent to the claimant. A signed, dated and notarized copy of any original agreement or contract between a finder and an owner shall be included with the filing of any claim. Handwritten agreements or contracts will not be accepted.

**9.14(3)** Owner information shall be reproduced in a format to be determined by the treasurer at least annually and shall be provided to anyone requesting the information for a fee of \$20 per copy. The fee shall be paid in the form of an official check or money order and made payable to the State of Iowa. All fees for owner information shall be received by the division before the owner information is made available.

This rule is intended to implement Iowa Code section 556.11.

**781—9.15(556) Disposition of safe deposit box contents.**

**9.15(1)** Except as stated in subrules 9.15(2) and 9.15(3), the contents of safe deposit boxes and other tangible property received by the division shall be held by the division for not less than one year, after which time the property will be offered through public sale.

**9.15(2)** Medals awarded for military service in the armed forces of the United States shall not be auctioned.

**9.15(3)** If the treasurer determines, after investigation and after an attempt to dispose of the unclaimed property in accordance with the Act, that the probable cost of sale exceeds the value of the property, the treasurer may destroy or otherwise dispose of the property at any time.

This rule is intended to implement Iowa Code section 556.17.

**781—9.16(556) Filing of owner claims.**

**9.16(1)** All claims for abandoned property shall be filed with the division on the division's claim form or such other documents as the division finds acceptable.

**9.16(2)** The claim form shall be completed in its entirety and must include the following information:

*a.* Social security number or tax identification number, or both, of all claimants;

*b.* Signature of claimant(s). If the claim is over \$200 or includes stock(s) or safe deposit box contents, the signature must be notarized.

**9.16(3)** The treasurer shall consider any claim filed under the Act.

This rule is intended to implement Iowa Code section 556.19.

**781—9.17(556) Documentation of claims by individuals.** A claimant should provide the following supporting documentation with claims, as applicable, if the claim is being made by the person that is set forth as the apparent owner of the unclaimed property in the report filed with the division:

**9.17(1)** A copy of the claimant's driver's license or other government-issued identification.

**9.17(2)** A copy of a document verifying the claimant's social security number.

**9.17(3)** A document showing the claimant's address as it was reported to the division may be required if the holder did not report the social security number to the division. Examples of relevant documentation include a federal Form W-2, pay stub, bank statement, expired driver's license, stock certificate, college transcript, report card, marriage certificate, divorce decree, birth certificate, or an original (not a copy) of a postmarked envelope addressed to the claimant.

**9.17(4)** If the claimant's name has changed, copies of supporting documentation showing the name change.

**9.17(5)** If the property subject to claim is a joint account, each surviving claimant must provide:

## TREASURER OF STATE[781](cont'd)

*a.* The claimant's signature, a copy of the claimant's driver's license, and a document verifying the social security number for each joint owner; or

*b.* Where one or more joint owners are deceased, a copy of the deceased joint owner's death certificate.

**9.17(6)** If the property subject to claim is being claimed in the capacity of a guardian or conservator or under a power of attorney, the claimant must provide:

*a.* A copy of the letter of appointment;

*b.* Documentation identifying the claimant and the owner; and

*c.* If the owner is a minor, a copy of the owner's birth certificate and a document verifying the owner's social security number. No power of attorney filed by a finder will be recognized by the division for the purpose of making a claim.

**9.17(7)** If the property subject to claim is a security, in addition to the documentation required by this rule, the claimant must provide the original stock certificate(s).

**9.17(8)** If the property subject to claim is being claimed in the capacity of an executor or administrator, the claimant shall submit evidence as outlined in the Affidavit of Administration as provided by the treasurer of state.

This rule is intended to implement Iowa Code section 556.19.

**781—9.18(556) Documentation of claims by business entities.**

**9.18(1)** Businesses must provide the following supporting documentation with their claims, as applicable:

*a.* Proof of authority to conduct business on behalf of the entity, such as corporate resolution or other documentation deemed suitable by the treasurer.

*b.* Documentation setting forth the claimant's FEIN number.

*c.* A copy of the claimant's biennial report as filed with the office of the secretary of state or a copy of a current corporate tax return.

**9.18(2)** Claimants filing on behalf of businesses that are no longer in existence must additionally provide documentation that the claimant is the successor in interest to the rights of the discontinued business entity.

This rule is intended to implement Iowa Code section 556.19.

**781—9.19(556) Certification of entitlement by claimant.**

**9.19(1)** The claimant shall affirmatively certify that the claimant is the true owner of the unclaimed property and agree to hold harmless and indemnify the division, its employees, and the state in the event of a superior claim to such property by another claimant or person.

**9.19(2)** If the subject property is more than \$200, is security-related, or is a safe deposit box, the signature of the claimant must be notarized by a notary public or be guaranteed by an officer of a financial institution.

This rule is intended to implement Iowa Code section 556.19.

**781—9.20(556) Claims by holders for owner reimbursements.** A holder may make payment to the apparent owner and file a proof of payment with the division. Upon receiving reimbursement from the division, the holder shall assume liability for the claimed assets and indemnify and hold harmless the division from all future claims related to the claimed assets.

This rule is intended to implement Iowa Code section 556.19.

**781—9.21(556) Claims to custodial property under the Iowa UTMA or similar Acts.**

**9.21(1)** A claim to custodial property may be made by the custodian of the property, or the legal representative thereof, provided that the minor has not yet reached the age of 21 years.

**9.21(2)** Upon reaching the age of 21 years, a minor may file a claim to custodial property.

This rule is intended to implement Iowa Code section 556.19.

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**781—9.22(556) Claimant interest in unclaimed property.**

**9.22(1)** The division shall have the authority to determine a claimant's interest in unclaimed property.

**9.22(2)** An apparent owner's interest in unclaimed property held by the division may not be transferred to a third party except in the following circumstances:

*a.* As a remnant asset in bankruptcy;

*b.* Under an agreement that assigns the apparent owner's interest in the unclaimed property where the agreement is otherwise valid and meets the following criteria:

(1) The agreement is made at least 24 months after the date payment or delivery is made under Iowa Code section 556.13;

(2) The agreement is in writing and signed by the apparent owner; and

(3) The agreement discloses the nature and value of the property and the name and address of the person in possession of the property.

**9.22(3)** Notwithstanding subrule 9.22(2), the interest of a deceased apparent owner may pass pursuant to the Iowa probate code and related statutory provisions.

**9.22(4)** For the purposes of the Act, a money judgment against an apparent owner does not create an interest in the specific property held by the division on behalf of the apparent owner.

This rule is intended to implement Iowa Code section 556.19.

**781—9.23(556) Approval of claims.** Each claim submitted to the division must receive two levels of approval. Claims over a cash value of \$5000 must receive three levels of approval.

**9.23(1)** Level One approval shall be obtained from the division staff person(s) who receives the claim form. This approval shall be given if it is determined that the claimant has submitted all documentation required. If any documentation is missing when a claim form is sent to the division for approval, division staff will mail a letter to the claimant explaining what documentation is missing from the claimant's submission. Level One approval shall then be applied only if all required documentation is subsequently submitted by the claimant.

**9.23(2)** Level Two approval shall be obtained from the division staff person(s) designated to approve claims at this level.

**9.23(3)** Level Three approval shall be required for claims over a cash value of \$5000 and shall be obtained from the division staff person(s) designated to approve claims at this level.

This rule is intended to implement Iowa Code section 556.19.

**781—9.24(556) Payment of claims.**

**9.24(1)** Claims shall be paid as follows:

*a.* In the case of cash claims, approval shall cause the claim to become part of the settlement process. The settlement file will be submitted to the department of administrative services for payment. State warrants will be mailed or may be obtained from the treasurer's office.

*b.* In the case of a claim requiring the transfer of stock and mutual fund shares, Level Two or Three approval shall result in the division's sending a letter to a third-party agent responsible for the transfer of ownership of the stocks/mutual funds, instructing the agent to have ownership of the appropriate number of shares of the property reregistered in the name of the claimant.

**9.24(2)** In the case of safe deposit box contents that have not been liquidated, the claimant may assume physical custody of the contents from the division. The claimant may also request that the contents be mailed to the claimant. Any contents mailed to claimants will be sent via United States Postal Service (USPS). The division is not responsible for items lost, damaged, or not delivered by the USPS.

**9.24(3)** Payment for all claims made to an owner who has been assisted by a finder shall be made only to the owner and in no instance to the finder.

This rule is intended to implement Iowa Code section 556.19.

**781—9.25(556) Surety bonds.** If the property subject to claim is a security and the original stock certificate is not available, in addition to the documentation required by rules 781—9.16(556) and

## TREASURER OF STATE[781](cont'd)

781—9.17(556), the claimant must complete the Affidavit of Lost Certificate. The treasurer of state may require the claimant to furnish the treasurer with a surety bond containing terms and provisions acceptable to the treasurer and issued by a corporate surety. The claimant shall be responsible for all premiums, costs, fees or other expenses associated with any such surety bond.

This rule is intended to implement Iowa Code section 556.20.

**781—9.26(556) Examination of holders.** The division may conduct an examination of a holder if the division has reason to believe a holder has failed to report or has underreported unclaimed property pursuant to the Act.

**9.26(1) Examination and review.** The treasurer may authorize employees of the treasurer and contract auditors to conduct examinations and review records in the course of an examination.

**9.26(2) Examination entrance letter.** The division shall send an examination entrance letter to holders selected for examination.

**9.26(3) Examination records request.** Holders subject to examination are required to comply with any and all requests for records that are made by the division or any contract auditor conducting an examination.

**9.26(4) Examination entrance conference.** The division, at its option, shall conduct an examination entrance conference with a holder prior to the commencement of an examination, at which the division shall identify the examination period and describe the general examination methods that will be used including, but not limited to, any estimation techniques that may be utilized.

This rule is intended to implement Iowa Code section 556.23.

**781—9.27(556) Estimation.** The division may use estimation techniques where no holder records exist or the records are insufficient to determine the holder's obligation due pursuant to the Act.

**9.27(1) Report of the examination findings.** Upon completion of an examination, the division shall provide a written report reflecting the total unclaimed property reporting liability and, pursuant to the Act, any interest due on amounts due and owing for failure to report and deliver property due and payable for prior years. The division has the discretion to hold a conference with the holder to provide the written report.

**9.27(2) Delivery of examination findings by the holder.** The holder shall deliver to the division within 30 calendar days any unclaimed property and interest due to the division based upon the examination findings.

**9.27(3) Examination closure letter.** Upon receipt of the examination report and delivery of unclaimed property resulting from the examination, the division shall issue an examination closure letter informing the holder that the examination is closed.

This rule is intended to implement Iowa Code section 556.23.

**781—9.28(556) Appeal of examination findings.** A holder may appeal the examination findings of the division.

**9.28(1)** The holder may utilize the appeals process after receipt of the examination report from the division.

**9.28(2)** Failure to submit the appeal request within 30 calendar days shall constitute an acceptance of the total unclaimed property reporting liability findings.

**9.28(3)** The holder shall submit to the division a written request for an appeal along with all supporting documentation.

**9.28(4)** The division shall contact the holder and schedule an appeal meeting within 20 calendar days of receipt of the holder's appeal request.

**9.28(5)** An appeal review shall be conducted at which time the holder shall present evidence supporting the holder's basis of the appeal.

**9.28(6)** Based on the evidence and additional information presented during the appeal, the division will render a decision. Such decision will be written and sent to the holder within 30 calendar days of the appeal meeting.

TREASURER OF STATE[781](cont'd)

**9.28(7)** The holder shall file a report with the division and deliver unclaimed property to the division reflecting the unclaimed property reporting liability and interest due on amounts due and owing as determined by the division within 30 calendar days.

This rule is intended to implement Iowa Code section 556.23.

**781—9.29(556) Entering into contracts with contract auditors.** The treasurer may enter into contracts with persons, pursuant to procedures prescribed by the treasurer, for the sole purpose of examining the records of holders to determine compliance with the Act. The treasurer may consider any relevant factors when entering into a contract for services requested in the performance of an unclaimed property examination.

This rule is intended to implement Iowa Code chapter 556.

**781—9.30(556) Guidelines.** Contract auditors shall adhere to the following guidelines.

**9.30(1)** Contract auditors shall not participate in examinations in which such participation could be construed or perceived as a conflict of interest. Should the contract auditor believe that it could not conduct an assigned examination due to a conflict of interest or for any other reason, the contract auditor shall notify the division. The division shall then determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a holder, another contract auditor may be assigned.

**9.30(2)** Contract auditors shall maintain strict confidentiality of any nonpublic records or documents gathered during the course of an examination in accordance with the auditors' contract.

**9.30(3)** Contract auditors shall properly document their review and make their working papers gathered during examinations available on demand for review by the treasurer and the attorney general's office.

**9.30(4)** Upon request, contract auditors shall provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the treasurer.

**9.30(5)** Contract auditors shall maintain working papers for a minimum of seven years following the completion of the examination assignment, the delivery of unclaimed property, the resolution of any appeal, or the finality of judgment in any litigation, whichever is later.

**9.30(6)** Contract auditors shall conduct examinations consistent with the Act and other applicable law, policies of the treasurer, generally accepted accounting principles, generally accepted auditing standards, and any relevant examination rules promulgated pursuant to the Act as they relate to the reporting and delivery of unclaimed property from holders or persons.

This rule is intended to implement Iowa Code chapter 556.

**ARC 9810B**

## **VOTER REGISTRATION COMMISSION[821]**

### **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 47.1 and 17A.3, the Voter Registration Commission hereby gives Notice of Intended Action to adopt a new Chapter 12, “Voter Notifications,” Iowa Administrative Code.

New Chapter 12 proposes to require county commissioners to send a notice to a voter when the voter's primary or general election polling place is permanently changed. Currently, voters across the state are treated inconsistently when polling place locations are permanently changed. Some voters



## VOTER REGISTRATION COMMISSION[821](cont'd)

receive notices mailed to their residences and other voters must rely on the election publications or contact the county commissioner's office to determine the location of the voter's polling place. Proposed rule 821—12.1(48A) requires county commissioners to notify all active registered voters affected by a permanent primary or general election polling place change of their new polling place location. The rule provides commissioners with the discretion to send notices to each household with an active registered voter affected by the polling place change or to each active registered voter.

Any interested person may make written suggestions or comments on the proposed rule on or before November 8, 2011. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, 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 by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by November 8, 2011.

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

This rule is intended to implement Iowa Code section 48A.26.

The following amendment is proposed.

Adopt the following new 821—Chapter 12:

CHAPTER 12  
VOTER NOTIFICATIONS

**821—12.1(48A) Primary and general election polling place change—voter notification required.** When a precinct polling place used for the primary or general election is permanently changed by the county commissioner pursuant to Iowa Code section 49.10, the county commissioner shall mail every registered voter with a status of "active" who is affected by the change a notification informing the voter of the change. The county commissioner may either send a notice of the change to each household at which a voter with a status of "active" is registered or send notice of the change to each registered voter with a status of "active." The notification shall be sent at the time the polling place change is made.

This rule is intended to implement Iowa Code section 48A.26.

## ARC 9806B

## ATTORNEY GENERAL[61]

## Adopted and Filed

Pursuant to the authority of 2011 Iowa Acts, Senate File 418, the Attorney General adopts new Chapter 36, "Disclosure Statement of Repairs or Adjustments to, or Replacements of Parts with New Parts on, New Motor Vehicles," Iowa Administrative Code.

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

Notice of Intended Action for these rules was published in the August 10, 2011, Iowa Administrative Bulletin as **ARC 9669B**. No written comments were received on the Notice of Intended Action. These rules are identical to those published under Notice of Intended Action.

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

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

These rules will become effective November 23, 2011.

The following amendment is adopted.

Adopt the following new 61—Chapter 36:

## CHAPTER 36

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

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

**61—36.2(321) Definitions.**

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

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

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

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

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

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

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

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

ATTORNEY GENERAL[61](cont'd)

Repair(s) to the following part(s): \_\_\_\_\_

Adjustment(s), as follows: \_\_\_\_\_

Replacement(s) of the following part(s): \_\_\_\_\_

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

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

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

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

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

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

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

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

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

[Filed 9/21/11, effective 11/23/11]

[Published 10/19/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/19/11.

**ARC 9805B**

**ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD[193C]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 5, "Land Surveying Licensure," Iowa Administrative Code.

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

For Iowa State Specific Land Surveying examination candidates, this amendment allows examinees ample time, after two successive failing scores, to acquire the necessary skill and knowledge to pass the state-specific examination.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9567B**. A public hearing was held on Wednesday, July 20, 2011, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. A total of five comments were received via E-mail and in person; one was in favor of and four were against the amendment. The Board considered all comments and decided it was best to proceed with the amendment as noticed. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board on September 1, 2011.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

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

This amendment is intended to implement Iowa Code sections 542B.13 and 542B.14.

This amendment will become effective on November 23, 2011.

The following amendment is adopted.

Amend paragraph **5.1(8)“e”** as follows:

*e. Reexamination.* An applicant who fails an examination may request reexamination at the next examination period without reapplication.

(1) to (3) No change.

(4) An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination shall not be allowed to retake the state-specific portion for the next two years in order for the applicant to acquire the necessary skill and knowledge to successfully pass the examination.

[Filed 9/21/11, effective 11/23/11]

[Published 10/19/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/19/11.

**ARC 9811B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby amends Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration,” and Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9652B** on August 10, 2011. A public hearing on the proposed amendments was held on September 15, 2011. No comments were received on the proposed amendments at the hearing or otherwise.

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

Two corrective amendments were added (new Items 4 and 6) substituting “registered” for language referencing the United States Department of Labor in the apprenticeship requirement for residential electricians. These two changes were inadvertently omitted in the Notice of Intended Action when language was changed elsewhere in the rules to clarify that completion of apprenticeship in a program registered with a state which is recognized by the U.S. Department of Labor meets the Iowa apprenticeship requirement. In addition, paragraph 502.2(6)“c” was corrected to add the supervised written examination requirement for journeyman electricians included in the other lettered paragraphs of the subrule.

No fiscal impact on the state is anticipated from these amendments.

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

These amendments are intended to implement Iowa Code chapter 103.

These amendments will become effective on December 1, 2011.

The following amendments are adopted.

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

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

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

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

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

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

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

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

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

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

*c.* ~~EXCEPTION: An electrician currently licensed~~ Holds a current electrician license in another state may satisfy, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has satisfied the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

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

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

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

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

*d.* Holds a current license issued by the board, excluding a special electrician license other than special residential electrician license; has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher; has completed 54 hours of continuing education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician other than a special residential electrician, as verified by a master electrician licensed by the board. The 16,000 hours must include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours must have been completed by the applicant within the five years immediately preceding the submission date of the application.

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

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

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

ITEM 4. Amend paragraph **502.2(8)“e”** as follows:

*e.* Has successfully completed a registered residential electrician apprenticeship program approved by the United States Department of Labor and passed a supervised written residential electrician examination approved by the board with a score of 75 or higher.

ITEM 5. Amend paragraph **502.2(9)“b”** by adding the following **new** paragraphs at the end thereof:

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

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

ITEM 6. Amend subrule 502.2(10) as follows:

**502.2(10)** An apprentice electrician license may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is participating in ~~an~~ a registered apprenticeship training program that is registered with the Bureau of Apprenticeship and Training of the United States Department of Labor. A person may hold an apprentice electrician license for no more than six years from the original date on which an apprentice electrician license is granted, except that a person may apply to the board for an exception to this limitation based upon a documented hardship. “Documented hardship” includes, but is not limited to, an interruption in service as an apprentice electrician for active military duty or for an extended illness.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 7. Adopt the following **new** subrule 502.2(14):

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

[Filed 9/29/11, effective 12/1/11]

[Published 10/19/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/19/11.

**ARC 9812B**

## **REGENTS BOARD[681]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby adopts amendments to Chapter 3, "Personnel Administration," Iowa Administrative Code.

The amendments make changes to rules governing the Regent Merit System. The amendment in Item 1 corrects an Iowa Code citation. The amendment in Item 2 brings the subrule governing reduction in force into compliance with Iowa Code section 8A.402(2)"g"(1)(j) as well as with the rules of the Department of Administrative Services. Iowa Code section 8A.402(2)"g" was amended with the passage of 2010 Iowa Acts, Senate File 2088, the state government reorganization bill. The amendment in Item 3 clarifies the procedures for permanent employees who have exhausted all accumulated sick leave and vacation time and request to return to work upon receiving a medical release. The amendment in Item 4 brings the rule governing the use of sick leave by an employee to care for an ill or injured family member into compliance with the rules of the Department of Administrative Services as well as making the rule similar to the American Federation of State, County and Municipal Employees (AFSCME) collective bargaining agreement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 13, 2011, as **ARC 9597B**. A comment period was established. No comments were received. The adopted amendments are identical to the proposed amendments.

The Board of Regents adopted these amendments on September 20, 2011.

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

These amendments are intended to implement Iowa Code sections 8A.402(2)"g" and 262.9(3).

These amendments shall become effective on November 23, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 681—3.2(8A) as follows:

**681—3.2(8A) Covered employees.** All employees of the board of regents, except those exempted by Iowa Code Supplement section ~~8A.412(3)~~ 8A.412(5), will be covered under the rules of this system.

ITEM 2. Amend subrule 3.104(4) as follows:

**3.104(4) Reduction in force.**

*a.* Nothing herein shall be construed as a guarantee of hours of work per day or per work period. An institution may lay off an employee when it deems necessary because of shortage of funds or work, a material change in duties or organization or abolishment of one or more positions.

*b.* Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff provisions established in this subrule shall not apply to:

(1) Temporary layoffs of less than 20 workdays or 160 hours of work per calendar year;

## REGENTS BOARD[681](cont'd)

(2) Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the resident director;

(3) The promotion or reclassification of an employee to a class in the same or a higher pay grade;

(4) The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized;

(5) A change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion; and

(6) The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

c. The individual whose position is eliminated or reduced in hours will be reassigned to a vacant position in the same classification provided the individual can perform the essential functions of the position and possesses any required special qualifications. If there is no vacant position to which the individual can be reassigned, the individual(s) may request and accept layoff with reemployment rights as provided in 3.104(4)~~“j.”“o.”~~ If an individual(s) directly affected does not request layoff with reemployment rights, the reduction in force procedures ~~which follow in this subrule~~ shall be implemented. ~~Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff rules established in this subrule shall not apply to temporary layoffs of less than 20 workdays or 160 hours of work per calendar year:~~

~~a. d.~~ Reduction in force will be made by class.

~~b. e.~~ Reduction in force may be made by organizational unit within an institution or institutionwide, as designated by the institution, provided such designation is reported to the merit system director before the effective date of the reduction.

~~c. f.~~ The order of reduction in force will be by type of appointment as follows: temporary, trainee, initial probationary, permanent.

~~d. g.~~ Each permanent employee affected by a reduction in force will be notified in writing of the layoff and the reasons for it at least 20 working days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.

~~e. h.~~ There will be competition among all employees in the class affected by the layoff based on a retention points system that will consist of points for length of service and performance evaluation of all employees in the class within the organizational unit or units affected. Retention points will be calculated as follows:

(1) Length of service credit will be allowed at the rate of one point for each month of service. Any period of 15 calendar days of service in a month will be considered a full month. For the purpose of computing length of service credits, the institution will include all ~~continuous~~ periods of regular merit employment during periods of continuous regular appointments with the institution between the date of the original appointment and the date of the layoff or as provided otherwise by law. Periods of leave without pay exceeding 30 days will not be counted.

(2) Performance evaluation credit will be allowed at the rate of one point for each month of satisfactory service. No credit will be allowed for service rated less than satisfactory. If there is no record of performance evaluation for a specific time period, it shall be presumed that the employee's performance is satisfactory.

(3) Reduction in force retention points will be the total of length of service and performance evaluation.

~~f. i.~~ Employees will be placed on the layoff list beginning with the employee with the greatest number of retention points at top. Layoffs will be made from the list in reverse order unless the employee with the least retention points has special skills and abilities required to perform in the position currently occupied. Employees with greater retention points who must vacate their positions must possess the special skills and abilities required for that position and meet any job-related selective certification required for that position. Copies of the computation of retention points will be made



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available to affected employees. One copy will be retained by the resident director and one copy will be forwarded to the merit system director at least ten days prior to the effective date of the layoff.

~~g. j.~~ When two or more employees have the same total of retention points, the order of termination will be determined by giving preference for retention to the employee with the longest time in the class.

~~h. k.~~ The reduction in force plan approved by the merit system director will be made available by the resident director so that all employees will have access to it.

~~i. l.~~ An affected employee may appeal a reduction in force by filing, within five days after notification as provided in ~~paragraph "d" of this subrule, 3.104(4) "g,"~~ a written grievance with the resident director (at Step 3 of the grievance procedure provided in 681—3.129(8A) or at a comparable step of a procedure approved under 3.129(1)). If not satisfied with the decision rendered at that step, the ~~employees~~ employee may pursue ~~their~~ an appeal in accordance with the grievance procedure.

~~m.~~ A supervisory employee, defined as a public employee who is not a member of a collective bargaining unit and who has authority, in the interest of a public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, to direct such public employees, or to adjust the grievances of such public employees, or to effectively recommend such action, may not replace or bump a junior employee not being laid off. For purposes of this subrule, "junior employee" means an employee with less seniority or fewer retention points than a supervisory employee.

~~j. n.~~ A permanent employee in a nonsupervisory class in which layoffs are to be effected may, in lieu of layoff, elect voluntary demotion to a position in the next lower nonsupervisory class in the same series utilized at the institution or, in the absence of a lower nonsupervisory class in the same series, to a nonsupervisory class which the employee has formerly occupied while in the continuous employment of the institution. The employee must possess any special qualifications required and have the ability to perform the essential functions of the position. Such demotion or the occupying of a formerly held nonsupervisory class will not be permitted if the result thereof would be to cause the layoff of a permanent employee with a greater total of retention points. To exercise the right of voluntary demotion or to occupy a formerly held nonsupervisory classification in lieu of layoff, the employee must notify the resident director in writing of such election not later than five calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions will have the right of election as provided herein.

~~Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have their names placed on the reemployment eligibility list for the class from which they were laid off for a period of up to two years from the date of layoff.~~

~~o.~~ Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have their names placed on the reemployment eligibility list for the class from which they were laid off, and a lower class(es) in the same series from which they were laid off, and a class(es) formerly occupied in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date of layoff. If reemployment occurs within two years of separation due to reduction in force, prior service credit shall be restored. Acceptance of reemployment in a lower class in the same series from which the employee was laid off or in a previously held class will not affect the employee's standing on the reemployment list for the class that from which the employee formerly occupied was laid off. After two years on the reemployment eligibility list, the employee's name shall be removed.

ITEM 3. Amend rule 681—3.143(8A) as follows:

**681—3.143(8A) Sick leave.** Permanent and probationary employees will accrue sick leave as provided by law and will be entitled to such leave on presentation of satisfactory evidence. Permanent part-time employees will accrue sick leave in an amount equivalent to their fractional employment, and no employees will be granted sick leave in excess of their accumulation.

An employee who is transferred, promoted or demoted from one position to another position under this system will not lose any accumulated sick leave as a result thereof.

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~~Permanent employees~~ A permanent employee who have has recovered after exhausting all accumulated sick leave and vacation time and have has a medical release to return to work will, at their the employee's request, be placed on the reemployment lists list for the class they the employee previously occupied and on reemployment lists for lower level classes for which the employee is qualified in accordance with 681—3.67(8A) to 681—3.70(8A) for a period of up to two years from the date the employee was released to return to work. Such employee acceptance of reemployment in a lower class will not affect the employee's standing on the reemployment list for the class that the employee formerly occupied. If reemployment occurs within two years of an employee's release to return to work following a medically related disability, prior service credit shall be restored. After two years on the reemployment eligibility list, the employee's name shall be removed.

ITEM 4. Amend rule 681—3.148(8A) as follows:

**681—3.148(8A) Emergency Family care and funeral leave.** An employing department will, when satisfied by evidence presented, grant an employee time off with pay:

1. Not to exceed three days for each occurrence in the case of death in the employee's immediate family;
2. Not to exceed one day for each occurrence for service as a pallbearer at the funeral of a person not a member of the employee's immediate family; and
3. Not to exceed ~~five days~~ 40 hours a year for the ~~temporary-emergency~~ care of or necessary attention of ill or injured members of the employee's immediate family ~~for the time necessary to permit the employee to make other arrangements.~~ Employees may carry over up to 40 hours of unused ~~emergency family care~~ leave to the next year, for a maximum utilization of 80 hours in the next year.

All such time off will be charged to the employee's sick leave and will not be granted in excess of the employee's accrued leave. For the purpose of this rule, "immediate family" is defined as the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse, and other persons who are members of the employee's household.

[Filed 9/29/11, effective 11/23/11]

[Published 10/19/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/19/11.

**ARC 9814B**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 423.25, the Department of Revenue hereby amends Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 26, "Sales and Use Tax on Services," and adopts new Chapter 224, "Telecommunication Services," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIV, No. 3, p. 162, on August 10, 2011, as **ARC 9675B**.

These rules are amended to cross reference new 701—Chapter 224, to strike language referencing "one-way paging service" in rule 701—26.43(422), and to adopt new 701—Chapter 224. The new chapter is based upon current rule 701—18.20(422,423) and serves to explain a specific subset of taxable services, communications and telecommunications, identified in Iowa Code section 423.2.

There are two differences between rule 701—18.20(422,423) and the new chapter. First, the Department has added clarifying language required for compliance with the Streamlined Sales Tax

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

Governing Board Agreement. This change reflects clarification made in 2011 Iowa Acts, Senate File 515, section 5.

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

These amendments are identical to those published under Notice of Intended Action.

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

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

These amendments will become effective November 23, 2011, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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 [18.20, 26.43, Ch 224] is being omitted. These amendments are identical to those published under Notice as **ARC 9675B**, IAB 8/10/11.

[Filed 9/30/11, effective 11/23/11]

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[For replacement pages for IAC, see IAC Supplement 10/19/11.]

**Iowa Finance Authority**

At its September 2011 meeting, the Administrative Rules Review Committee voted to object to rule 265 IAC 32.7, relating to jobs created by an “I” jobs project. This filing was initially reviewed by the committee in May, 2011. In calculating the number of jobs created by an I-jobs project, this filing excludes temporary positions. The Committee takes this action pursuant to the authority of Iowa Code § 17A.4(6).

The Committee objects to rule 32.7 on the grounds that it is unreasonable. Committee members believe that in determining the effectiveness of the I Jobs program, all jobs created, both permanent and temporary should be calculated. Especially in construction-type projects, most of the jobs created are for a limited period. Those jobs do provide needed employment and are an economic benefit to the community. These benefits outweigh the small recordkeeping burden it places on project employers.

Objection filed October 11, 2011