



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIII  
June 29, 2011

NUMBER 26  
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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

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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2011

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<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>
2	Friday, July 8, 2011	July 27, 2011
3	Friday, July 22, 2011	August 10, 2011
4	Friday, August 5, 2011	August 24, 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, July 12, 2011, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

### **AGING, DEPARTMENT ON[17]**

State allotments—funding formula, 5.6 Notice **ARC 9576B**, also Filed Emergency **ARC 9577B**..... 6/29/11

### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Renewable fuel infrastructure board—transfer of rules, 1.2(4)“a,” chs 13 to 16

Notice **ARC 9583B**, also Filed Emergency **ARC 9584B** ..... 6/29/11

### **BANKING DIVISION[187]**

COMMERCE DEPARTMENT[181]“umbrella”

Licensure of real estate closing agents, amendments to ch 18

Notice **ARC 9592B**, also Filed Emergency **ARC 9593B** ..... 6/29/11

### **CORRECTIONS DEPARTMENT[201]**

Jail facilities; temporary holding facilities, amendments to chs 50, 51 Filed **ARC 9578B** ..... 6/29/11

### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

Fees—professional service license, 12.1, 12.2 Notice **ARC 9570B**..... 6/29/11

Class B license, 13.11(1) Filed **ARC 9573B** ..... 6/29/11

School business official authorization, 22.3, 22.4 Filed **ARC 9572B** ..... 6/29/11

### **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”

Notice **ARC 9567B** ..... 6/29/11

### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

NPDES General Permit No. 5 for mining and processing facilities, 64.14, 64.15(5),

64.16(3)“a”(5) Filed **ARC 9553B**..... 6/15/11

### **HUMAN SERVICES DEPARTMENT[441]**

Child abuse registry, 7.5(4)“d,” 175.21, 175.25(7), 175.32, 175.39, 175.40 Notice **ARC 9589B** ..... 6/29/11

Facility assessments, amendments to ch 36 Notice **ARC 9591B** ..... 6/29/11

Annual update of premium levels for employed people with disabilities; payment address,

75.1(39)“b” Filed **ARC 9581B** ..... 6/29/11

Nursing facility services and institutional care, 75.23(3), 75.24(3)“b” Filed Emergency **ARC 9582B** ..... 6/29/11

Medicaid case management services—coverage and payment provisions, 78.33, 79.1, 90.5,

90.8(2) Filed **ARC 9588B** ..... 6/29/11

Supervised apartment living placement services, 108.10 Notice **ARC 9563B**..... 6/15/11

### **IOWA FINANCE AUTHORITY[265]**

Military service member home ownership assistance program, 27.2, 27.3(2) Notice **ARC 9590B**..... 6/29/11

### **LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Continuing education—self-study activities, 3.2(2) Notice **ARC 9569B** ..... 6/29/11

### **NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Fishing tournaments, rescind ch 88 Filed **ARC 9585B**..... 6/29/11

Deer hunting by nonresidents, 106.7(8), 106.9 Notice **ARC 9587B** ..... 6/29/11

### **PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Pharmacist licenses—continuing education activities, 2.12 Notice **ARC 9554B** ..... 6/15/11

Tech-check-tech programs, 3.21(1), 3.23, ch 40 Notice **ARC 9557B** ..... 6/15/11

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**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Delegated prescribing by physician assistants, 327.6(1)"d" Notice of Termination **ARC 9579B** ..... 6/29/11  
 Delegated prescribing by physician assistants, 327.6(1)"d" Notice **ARC 9580B** ..... 6/29/11  
 Sign language interpreters and transliterators—discipline, 363.2(11) Filed **ARC 9568B** ..... 6/29/11

**PUBLIC SAFETY DEPARTMENT[661]**

- Fire safety requirements—bleachers, grandstands, and folding and telescopic seating,  
 201.2(1) Notice **ARC 9561B** ..... 6/15/11  
 State building code—bleachers, grandstands, and folding and telescopic seating, 301.3  
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**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Fees, 12.1, 12.3 Notice **ARC 9558B** ..... 6/15/11

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 District and ward apportionment—maximum allowable deviation from ideal population,  
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**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

- Coal mining—Code of Federal Regulations updates, amendments to ch 40 Filed **ARC 9575B** ..... 6/29/11

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

- Iowa youth mentoring program certification, 8.1 to 8.6 Filed **ARC 9574B** ..... 6/29/11

**WORKERS' COMPENSATION DIVISION[876]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Payroll tax tables, 8.8 Filed Emergency **ARC 9586B** ..... 6/29/11

**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

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

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

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

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

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

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

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

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

Representative Linda Upmeyer  
2175 Pine Avenue  
Garner, Iowa 50438

Brenna Findley  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone (515)281-5211

**EDUCATIONAL EXAMINERS BOARD[282]**

Fees—professional service license, 12.1, 12.2 IAB 6/29/11 <b>ARC 9570B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 20, 2011 1 p.m.
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**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Reexaminations for state-specific land surveying examination candidates, 5.1(8)“e” IAB 6/29/11 <b>ARC 9567B</b>	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	July 20, 2011 9 to 11 a.m.
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**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

Continuing education—self-study activities, 3.2(2) IAB 6/29/11 <b>ARC 9569B</b>	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	July 20, 2011 9 to 11 a.m.
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**NATURAL RESOURCE COMMISSION[571]**

Deer hunting by nonresidents, 106.7(8), 106.9 IAB 6/29/11 <b>ARC 9587B</b>	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 19, 2011 1 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Delegated prescribing by physician assistants, 327.6(1)“d” IAB 6/29/11 <b>ARC 9580B</b>	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	July 19, 2011 9:30 to 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Fire safety requirements— bleachers, grandstands, and folding and telescopic seating, 201.2(1) IAB 6/15/11 <b>ARC 9561B</b>	First Floor Public Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 2, 2011 10 a.m.
State building code—bleachers, grandstands, and folding and telescopic seating, 301.3 IAB 6/15/11 <b>ARC 9562B</b>	First Floor Public Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 2, 2011 10 a.m.
Electrician and electrical contractor licensing program; electrical inspection program, 500.2, 502.2, ch 505, 551.2 IAB 5/18/11 <b>ARC 9515B</b>	First Floor Public Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	June 30, 2011 10 a.m.
Statewide interoperable communications system board, ch 600 IAB 5/18/11 <b>ARC 9516B</b>	City Council Chambers West Des Moines City Hall 4200 George Mills Civic Parkway West Des Moines, Iowa	June 29, 2011 10:30 a.m.

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Registration fees; federal registry fee, 12.1, 12.3 IAB 6/15/11 <b>ARC 9558B</b>	Professional Licensing Conference Room Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	July 5, 2011 9 a.m.
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**UTILITIES DIVISION[199]**

Capital infrastructure investment automatic adjustment mechanism for rate-regulated natural gas utilities, 19.18 IAB 6/1/11 <b>ARC 9529B</b>	Utilities Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 8, 2011 9 a.m.
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The following list will be updated as changes occur.

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

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

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

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**ARC 9576B****AGING, DEPARTMENT ON[17]****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 231.23 and 17A.3, the Iowa Department on Aging hereby gives Notice of Intended Action to amend Chapter 5, “Department Fiscal Policy,” Iowa Administrative Code.

The amendment to rule 17—5.6(231) is necessary to implement the provisions of pending appropriations legislation and to create an equitable funding formula that continues to give priority to older Iowans who are aged 75 and older, reside in rural areas, are racial minorities, or have an income level at or below the official poverty guidelines.

Consideration will be given to all written suggestions or comments on the proposed amendment on or before July 19, 2011. Such written comments or suggestions should be directed to the Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov); or faxed to (515)725-3300.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9577B**. The content of that submission is incorporated herein by reference.

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

This amendment is intended to implement pending appropriations legislation.

**ARC 9583B****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” and to adopt new Chapter 13, “Renewable Fuel Infrastructure Board—Organization,” Chapter 14, “Renewable Fuel Infrastructure Program For Retail Motor Fuel Sites,” Chapter 15, “Renewable Fuel Infrastructure Program For Biodiesel Terminal Grants,” and Chapter 16, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

The proposed amendments carry out the transfer of the rules for the Renewable Fuel Infrastructure Board from the Iowa Department of Economic Development to the Department of Agriculture and Land Stewardship authorized by 2011 Iowa Acts, Senate File 531, division VII. The Department of Agriculture and Land Stewardship will provide for the administration of the related programs for retail motor fuel sites, biodiesel terminal grants, and the renewable fuel infrastructure fund.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 19, 2011. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street,

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

Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or E-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9584B**. The content of that submission is incorporated by reference.

The proposed amendments are subject to the Department's general waiver provision.

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

These amendments are intended to implement Iowa Code chapters 15G and 159 and 2011 Iowa Acts, Senate File 531.

**ARC 9592B****BANKING DIVISION[187]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“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 535B.14, the Division of Banking hereby gives Notice of Intended Action to amend Chapter 18, “Mortgage Bankers and Mortgage Brokers,” Iowa Administrative Code.

The proposed amendments are primarily designed to implement 2010 Iowa Acts, Senate File 2348, which will become effective July 1, 2011, and which requires independent real estate closing companies to be licensed as closing agents by the Banking Division beginning July 1, 2011. 2010 Iowa Acts, Senate File 2348, requires applicants for closing agent licensure to submit to background checks and to post a bond to be licensed.

The amendments address the processes and requirements for applying for and renewing a closing agent license. Because Chapter 18 already addresses mortgage banker and mortgage broker licensees, the amendments clarify when the rules apply only to a mortgage banker or mortgage broker licensee and not to a closing agent. The amendments make some minor changes to requirements applicable to mortgage bankers and mortgage brokers and require mortgage bankers and mortgage brokers to maintain certain records in an electronic format. The amendments also address accounting requirements for closing agent trust fund accounting and internal controls, closing standards, and the hiring of individuals responsible for handling money. Finally, the amendments outline a reporting obligation in the event of defalcation of trust funds and clarify when a real estate broker is engaged in the practice of real estate brokerage and, therefore, is exempt from the closing agent licensing requirement.

Interested persons may make written comments on the proposed amendments on or before July 19, 2011. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9593B**. The content of that submission is incorporated by reference.

These rules are not subject to waiver.

Jobs impact statement: The Banking Division does not believe the amendments will have a significant impact, either positive or negative, on private-sector jobs and employment opportunities in Iowa. It is possible a few very small companies that are currently providing real estate closing services will decide not to obtain a license and, as a result, will close, but if that happens, it will be the result of 2010 Iowa Acts, Senate File 2348, not the result of these amendments.

These amendments are intended to implement Iowa Code chapter 535B and 2010 Iowa Acts, Senate File 2348 [chapter 1111].

**ARC 9570B****EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 12, “Fees,” Iowa Administrative Code.

When the Professional Service license was created, the fee for the license was not included in Chapter 12. These amendments address that oversight.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 20, 2011, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, July 22, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraph “19” in rule **282—12.1(272)**:

19. Professional service license shall be \$85.

ITEM 2. Adopt the following **new** paragraph “20” in rule **282—12.2(272)**:

20. The renewal of the professional service license shall be \$85.

**ARC 9567B**

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

**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 542B.6, the Engineering and Land Surveying Examining Board proposes to amend Chapter 5, “Land Surveying Licensure,” Iowa Administrative Code.

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.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before July 20, 2011. Comments should be directed to Robert Lampe, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by E-mail to [robert.lampe@iowa.gov](mailto:robert.lampe@iowa.gov).

A public hearing will be 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. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

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

This amendment was approved by the Board on May 12, 2011.

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.

The following amendment is proposed.

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.

**ARC 9589B****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 234.6, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” and Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments will conform the Department’s rules to statutory changes made in 2011 Iowa Acts, House File 562. Those changes:

- Shorten the time limit for appeal of a child abuse finding from six months to 90 days.
- Clarify that failure on the part of the person responsible for the care of a child to provide adequate medical or mental health treatment or to provide adequate supervision meets the definition of child abuse.
- Clarify when a finding of child abuse shall be placed on the Central Abuse Registry.
- Remove obsolete provisions for review of abuse cases that were placed on the Registry before 1997.

The legislation provides that, with certain exceptions, information on founded abuse cases shall not be placed on the Registry when the Department:

- Finds an allegation of physical abuse but determines that the resulting injury was minor, isolated, and unlikely to reoccur; or
- Finds an allegation of abuse by failure to provide adequate supervision or adequate clothing but determines that the resulting risk to the child’s health and welfare was minor, isolated, and unlikely to reoccur.

Even in those circumstances, the founded abuse shall be placed on the Registry if:

- The case was referred for juvenile or criminal court action due to the acts or omissions of the alleged perpetrator of abuse;
- The Department has determined within the past 18 months that other acts or omissions of the alleged perpetrator met the definition of abuse; or
- The Department determines that the alleged perpetrator will continue to pose a danger to children.

The legislation also provides that the name of the alleged perpetrator of founded sexual abuse shall not be placed on the Registry when the alleged perpetrator is aged 13 or younger, and allows the court to find good cause for not listing the name when the alleged perpetrator is aged 14 through 17. All other child abuse information in these cases will be listed on the Registry.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before July 19, 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).

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

These amendments are intended to implement Iowa Code chapter 235A and sections 232.68 and 232.71D as amended by 2011 Iowa Acts, House File 562.

The following amendments are proposed.

ITEM 1. Amend paragraph **7.5(4)“d”** as follows:

*d. Abuse standard.*

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

(1) For appeals regarding ~~child and~~ dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section ~~235A.19~~ 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made within 90 days after official notification of the action as provided in Iowa Code section 235A.19 as amended by 2011 Iowa Acts, House File 562.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

ITEM 2. Amend rule ~~441—175.21(232,235A)~~, definitions of “Adequate food, shelter, clothing or other care” and “Denial of critical care,” as follows:

“Adequate food, shelter, clothing, medical or mental health treatment, supervision or other care” means that food, shelter, clothing, medical or mental health treatment, supervision or other care which, if not provided, would constitute a denial of critical care.

“Denial of critical care” ~~is~~ means the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision or other care necessary for the child’s health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. to 6. No change.

7. Failure to provide for the ~~proper adequate~~ supervision of the child ~~to the extent that there is danger of the child suffering injury or death, and which that~~ a reasonable and prudent person would ~~exercise provide~~ under similar facts and circumstances when the failure results in direct harm or creates a risk of harm to the child.

8. No change.

ITEM 3. Amend subrule 175.25(7) as follows:

**175.25(7) Determining placement on central abuse registry.** A determination of whether the report data and disposition data of a confirmed case of child abuse is subject to placement on the central abuse registry pursuant to Iowa Code ~~Supplement subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562, shall be made on each assessment.

ITEM 4. Amend rule 441—175.32(232,235A) as follows:

**441—175.32(232,235A) Case records.** The assessment case record shall contain the child protective assessment summary as described in 441—175.26(232) and any related correspondence or information which pertains to the assessment or to the child and family. The name of the person who made the report of child abuse shall not be disclosed to the subjects of the report. The child protective assessment summary has two parts.

1. Report and disposition data as described in 175.26(1). Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code ~~subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. Form 470-3240, Child Protective Services Assessment Summary, shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code ~~subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562.

2. No change.

**175.32(1) and 175.32(2)** No change.

ITEM 5. Amend rule 441—175.39(232) as follows:

**441—175.39(232) Founded child abuse.** Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by Iowa Code ~~Supplement subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. Reports of denial of critical care by failure to provide adequate clothing or failure

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

to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed in the central abuse registry as a case of founded child abuse as specified by Iowa Code ~~Supplement subsections 232.71D(2) and (3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. The confirmed abuse shall be placed on the registry unless all three conditions are met. ~~Minor abuse shall be placed on the registry if there is a prior confirmed abuse.~~

ITEM 6. Rescind and reserve rule **441—175.40(235A)**.

ITEM 7. Amend **441—Chapter 175**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 232.68 and 232.71D as amended by 2011 Iowa Acts, House File 562, sections 232.67, 232.69, 232.70, 232.71B, 232.71C and 232.72 to 232.77 and Iowa Code chapter 235A as amended by 2011 Iowa Acts, House File 562.

**ARC 9591B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 36, “Facility Assessments,” Iowa Administrative Code.

These amendments raise the amount of the assessment fee charged to an intermediate care facility for persons with mental retardation (an ICF/MR) from 5.5 percent to 6.0 percent of the facility’s revenue. Iowa Code section 249A.21 allows the Department to assess a fee of up to 6.0 percent of facility revenues. Since January 1, 2008, the assessment has been limited to 5.5 percent of revenues due to a provision of Public Law 109-432, the Tax Relief and Health Care Act of 2006. This federally imposed reduction on the maximum allowable assessment expires on September 30, 2011.

Increasing the ICF/MR provider tax is a revenue enhancement for the Medicaid program, since revenue from the assessment is credited to the state medical assistance appropriation. The assessment has no net financial effect on providers, because the assessment fee paid is considered an allowable cost and is included in each facility’s Medicaid per diem rate as an add-on. The state benefits because the federal financial participation is higher with the higher reimbursement rate.

These amendments also include technical changes to update legal references in the remainder of Chapter 36.

These amendments do not provide for waivers in specified situations because waivers would make the application of the assessment fee inequitable to facilities. Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to rule 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 19, 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).

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

These amendments are intended to implement Iowa Code section 249A.21.

The following amendments are proposed.

ITEM 1. Amend rule 441—36.1(249A) as follows:

**441—36.1(249A) Assessment of fee.** Intermediate care facilities for the mentally retarded (ICFs/MR) licensed in Iowa under 481—Chapter 64 shall pay a monthly fee to the department. Effective ~~January~~

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

~~1, 2008~~ October 1, 2011, the fee shall equal ~~5.5~~ 6.0 percent of the total revenue of the facility for the facility's preceding fiscal year divided by the number of months of facility operation during the preceding fiscal year.

ITEM 2. Amend **441—Chapter 36**, Division II, preamble, as follows:

These rules describe the nursing facility quality assurance assessment authorized by ~~2009 Iowa Code Supplement~~ chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 3. Amend **441—Chapter 36**, Division II, implementation sentence, as follows:

These rules are intended to implement ~~2009 Iowa Code Supplement~~ chapter 249L.

ITEM 4. Amend **441—Chapter 36**, Division III, preamble, as follows:

These rules describe the hospital health care access assessment authorized by ~~2010 Iowa Acts, Senate File 2388, enacted by the Eighty-third General Assembly~~ Code chapter 249M. The rules explain how the assessment is determined and paid.

ITEM 5. Strike the parenthetical implementation "(83GA,SF2388)" in rules **441—36.10(83GA,SF2388)** to **441—36.12(83GA,SF2388)** and insert "(249M)" in lieu thereof.

ITEM 6. Amend **441—Chapter 36**, Division III, implementation sentence, as follows:

These rules are intended to implement ~~2010 Iowa Acts, Senate File 2388~~ Code chapter 249M.

**ARC 9590B**

## IOWA FINANCE AUTHORITY[265]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(1)"r" and 16.54, the Iowa Finance Authority proposes to amend Chapter 27, "Military Service Member Home Ownership Assistance Program," Iowa Administrative Code.

The purpose of these amendments is to clarify the requirements of the Military Service Member Home Ownership Assistance Program and to implement Iowa Code section 16.54.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on July 19, 2011. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

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

These amendments are intended to implement Iowa Code sections 16.5(1)"r" and 16.54.

The following amendments are proposed.

ITEM 1. Amend rule **265—27.2(16)**, definition of "Qualified mortgage," as follows:

"*Qualified mortgage*" means a permanent mortgage loan made pursuant to one of the authority's home buyer mortgage programs unless the lender offers a lower annual percentage interest rate (APR), fixed-rate, fully amortizing first mortgage or, in cases where the home buyer is not eligible for standard 30-year, fixed-rate FHA, RD, VA, Fannie Mae, or Freddie Mac mortgage financing, any permanent, fully amortizing, ~~fixed-rate~~ mortgage loan made by a participating lender with a maturity date of not

## IOWA FINANCE AUTHORITY[265](cont'd)

less than five years. The authority's home buyer mortgage program information may be obtained on the authority's Web site at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov).

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

**27.3(2) *Financed home purchases.***

*a.* In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for assistance under the program through a participating lender or a lender approved to facilitate MHOA assistance. The mortgage financing provided shall be a mortgage loan made pursuant to one of the authority's home buyer mortgage programs if the service member qualifies for it, unless lower APR, fixed-rate, fully amortizing mortgage financing is available or unless another permanent, ~~fixed-rate~~, fully amortizing mortgage loan is available if the service member does not qualify for one of the authority's home buyer mortgage programs.

*b. to d.* No change.

*e.* ~~Service members~~ A service member who were was otherwise eligible for the program and closed on a home on or after July 1, 2008, and prior to July 1, 2010, but who were was ineligible for assistance under the program ~~at the during that time of closing~~ due to the fact that ~~they~~ the service member purchased a home using a mortgage loan other than one made through one of IFA's with financing from a lender that was not a participating lender in the authority's home buyer programs, may retroactively receive assistance under the program provided that:

(1) The mortgage loan used by the service member had a lower annual percentage rate than the mortgage loans being made through the authority's home buyer programs at the time the service member closed on the service member's mortgage loan; ~~and~~

(2) The service member and the service member's lender provide all documentation as required by paragraphs "b" through "d," above; and

(3) The financing lender becomes a facilitating lender pursuant to 27.3(7).

ITEM 3. Amend ~~265—~~**Chapter 27**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 16.5(1) "r" and ~~section~~ 16.54 as amended by 2010 Iowa Acts, House File 2148.

**ARC 9569B****LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]****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 544B.5, the Landscape Architectural Examining Board proposes to amend Chapter 3, "Continuing Education," Iowa Administrative Code.

This amendment deletes outdated text and clarifies the requirements for self-study activities.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before July 20, 2011. Comments should be directed to Robert Lampe, Executive Officer, Iowa Landscape Architectural Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by E-mail to [robert.lampe@iowa.gov](mailto:robert.lampe@iowa.gov).

A public hearing will be 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. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

## LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

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

This amendment was approved by the Board on May 25, 2011.

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

This amendment is intended to implement Iowa Code section 544B.13.

The following amendment is proposed.

Amend subrule 3.2(2) as follows:

**3.2(2)** Within any biennial renewal period, 24 contact hours must be acquired and shall be in health, safety, welfare subjects acquired in structural educational activities. The hours earned in self-study activities shall be limited to 6 hours, ~~effective for the renewals that are due on June 30, 2008~~ during any renewal period. Hours acquired in any 24-month renewal period may not be carried over to a subsequent 24-month renewal period. Continuing education hours may be acquired in any location.

**ARC 9587B**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

The proposed amendments:

1. Modify the blaze orange requirement for blinds during the shotgun season so that the visible orange is a minimum size, not shape.
2. Clarify that antlerless deer are tagged on a leg and antlered deer are tagged on the main beam of the antler. This change will keep the tag from pulling off accidentally during transport.
3. Clarify that a person may not tag a deer with a tag purchased after the deer was taken.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 19, 2011. Written comments may be directed to Wildlife Bureau Chief, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by E-mail at [wildlife@dnr.iowa.gov](mailto:wildlife@dnr.iowa.gov); or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on July 19, 2011, at 1 p.m. in the conference room on the fourth floor of the Wallace State Office Building. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8C, 483A.24, and 483A.24B.

The following amendments are proposed.

ITEM 1. Amend subrule 106.7(8) as follows:

**106.7(8) *Hunting from blinds.*** No person shall use a blind for hunting deer during the regular gun deer seasons as defined in ~~106.2(3)~~ 106.2(2), unless such blind exhibits a solid blaze orange marking

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

~~which is a minimum of 144 square inches in size and is visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches.~~ Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as a place of concealment constructed, either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 2. Amend rule 571—106.9(481A) as follows:

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to ~~the carcass~~ one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is killed located after being taken or before the carcass is moved ~~in any manner,~~ to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person’s name. During the first and second regular gun seasons and the November and January antlerless-deer-only seasons, anyone present in the hunting party may tag a deer with a tag issued in that person’s name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

**ARC 9579B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9550B** amending Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

The proposed amendment further defined ways to allow electronic billing to meet the requirement to provide the name of the supervising physician associated with the prescription. The reason for the termination of the rule making is that the final changes approved by the Board were inadvertently left out of the rule making.

The Board is terminating the rule making commenced in **ARC 9550B** and has renoticed the proposed amendment [**ARC 9580B** herein] to incorporate the changes as approved by the Board.

**ARC 9580B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants hereby gives Notice of Intended Action to amend Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

The proposed amendment further defines ways to allow electronic billing to meet the requirement that the name of the supervising physician associated with the prescribing physician assistant be provided on each prescription. Currently many billing systems do not have fields to allow multiple names to be submitted, and the law allows for other options to be utilized.

Any interested person may make written comments on the proposed amendment no later than July 19, 2011, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on July 19, 2011, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

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

The following amendment is proposed.

Amend paragraph **327.6(1)“d”** as follows:

*d.* A When delegated prescribing occurs, the supervising physician’s name, which shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Notification may include, but is not limited to, including the physician’s name on the prescription, providing a list of physician assistants to whom the physician has delegated prescribing authority, including the physician’s name in the memo section of an electronic prescription, or providing the physician’s name by telephone or other electronic means.

**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 June is 5.50%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

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

TREASURER OF STATE(cont'd)

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 June 9, 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 .20%
More than 397 days	.....	Minimum .65%

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 9577B

## AGING, DEPARTMENT ON[17]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Iowa Department on Aging hereby amends Chapter 5, "Department Fiscal Policy," Iowa Administrative Code.

The amendment to rule 17—5.6(231) is necessary to implement the provisions of pending appropriations legislation and to create an equitable funding formula that continues to give priority to older Iowans who are aged 75 and older, reside in rural areas, are racial minorities, or have an income level at or below the official poverty guidelines.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to public interest because of the immediate need to implement a funding formula that will continue to give priority to older Iowans most in need of aging services.

The Department further finds that the normal effective date of this amendment should be waived and this amendment should be made effective upon filing. The Department's finding is based upon the fact that the amendment will confer a benefit upon specific segments of the population. Specifically, the amendment will allow for the continuance of aging services, funded on a priority basis, to older Iowans who are aged 75 and older, reside in rural areas, are racial minorities, or have an income level at or below the official poverty guidelines. If this amendment were not provided on an emergency basis, services to these portions of the aging population would be affected and thereby could result in imminent peril to public health, safety, and welfare. Therefore, the amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2) and (3).

The Department adopted this amendment on June 7, 2011.

This amendment is also published herein under Notice of Intended Action as **ARC 9576B** to allow public comment.

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

This amendment is intended to implement pending appropriations legislation.

This amendment became effective on June 7, 2011.

The following amendment is adopted.

Amend rule 17—5.6(231) as follows:

**17—5.6(231) State appropriations and case management allotments.**

**5.6(1) *Elderly services Aging programs.*** All state ~~elderly services~~ aging program funds appropriated to the department, excluding those otherwise specifically identified in the appropriation, shall be allocated to AAA ~~on the basis of persons aged 60 and older and minority persons aged 60 and older and double-weighted for persons aged 60 and older at or below the poverty level of income in the AAA planning and service area.~~ Elderly services funds set aside for the case management program for the frail elderly shall be allocated on the basis of a \$45,000 block grant per AAA with the balance of funds allocated on the AAA's proportion of persons aged 60 and older. each AAA by utilizing a formula that:

a. Shall triple-weight all of the following:

(1) Individuals aged 75 and older.

(2) Individuals aged 60 and older who are members of a racial minority.

(3) Individuals aged 60 and older who reside in rural areas.

(4) Individuals aged 60 and older who have incomes at or below the official poverty guideline as defined each year by the federal Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

b. Shall single-weight for individuals aged 60 and older.

The department shall use the best available population data based on United States census reports to calculate allotments under this subrule.

~~**5.6(2) *Senior living program.***~~ The department shall allocate funds received from the senior living trust established in Iowa Code section 249H.4 to each AAA by utilizing, at a minimum, a formula that:

AGING, DEPARTMENT ON[17](cont'd)

- ~~a. Shall triple weight all of the following:~~
- ~~(1) Individuals aged 75 and older.~~
  - ~~(2) Individuals aged 60 and older who are members of a racial minority.~~
  - ~~(3) Individuals aged 60 and older who reside in rural areas.~~
  - ~~(4) Individuals aged 60 and older who have incomes at or below the official poverty guideline as defined each year by the federal Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.~~
- ~~b. Shall single weight for individuals aged 60 and older.~~
- ~~The department shall use the best available population data based on United States census reports to calculate allotments under this subrule.~~

[Filed Emergency 6/7/11, effective 6/7/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

## ARC 9584B

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship amends Chapter 1, "Administration," and adopts new Chapter 13, "Renewable Fuel Infrastructure Board—Organization," Chapter 14, "Renewable Fuel Infrastructure Program For Retail Motor Fuel Sites," Chapter 15, "Renewable Fuel Infrastructure Program For Biodiesel Terminal Grants," and Chapter 16, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

The amendments carry out the transfer of the rules for the Renewable Fuel Infrastructure Board from the Iowa Department of Economic Development to the Department of Agriculture and Land Stewardship authorized by 2011 Iowa Acts, Senate File 531, division VII. The Department of Agriculture and Land Stewardship will provide for the administration of the related programs for retail motor fuel sites, biodiesel terminal grants, and the renewable fuel infrastructure fund.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable. Timely adoption is necessary for the amendments to be in effect when the provisions of 2011 Iowa Acts, Senate File 531, become effective.

Pursuant to Iowa Code section 17A.5(2)"b"(1), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2011, in accordance with 2011 Iowa Acts, Senate File 531, section 49.

Notice of Intended Action for these amendments is also published herein as **ARC 9583B** to allow for public comment.

The amendments are subject to the Department's general waiver provision.

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

These amendments are intended to implement Iowa Code chapters 15G and 159 and 2011 Iowa Acts, Senate File 531.

These amendments will become effective July 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.2(4)"a"** as follows:

a. *Agricultural marketing.* This unit works with the various boards of Iowa agricultural organizations to assist and support their respective marketing efforts. The unit also seeks new opportunities to assist Iowa's private firms to find markets for their products. ~~Additionally, the~~ The unit provides Iowa livestock and grain producers with essential market information on a timely basis through the market news reporting service, a joint effort with the United States Department of Agriculture. Additionally, the unit assists the renewable fuel infrastructure board, provides for the administration

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

of the renewable fuel infrastructure programs, and provides for the management of the renewable fuel infrastructure fund.

ITEM 2. Adopt the following new 21—Chapter 13:

CHAPTER 13  
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

**21—13.1(84GA,SF531) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15G.201 as amended by 2011 Iowa Acts, Senate File 531, shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the purpose of this rule, must be at least B99.

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of these rules, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section 15G.202 as amended by 2011 Iowa Acts, Senate File 531.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 15G to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage, dispensing and distribution of E-85 gasoline, biodiesel or biodiesel blend.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel*,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2.

“*Retail*” means offered for sale to the public for final consumption.

“*Retail motor fuel site*” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank vehicle or transport.

“*Tank vehicle*” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

**21—13.2(84GA,SF531) Renewable fuel infrastructure board.**

**13.2(1) Duties.** The board shall make awards for renewable fuel infrastructure programs and perform other functions as necessary.

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

**13.2(2) Board structure.** The board shall consist of 11 voting members appointed for five-year terms by the governor. The board shall annually elect a chairperson, on a rotating basis, from among its members. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

**13.2(3) Staff.** Staff assistance shall be provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

**13.2(4) Meetings.** Board meetings will generally be held by telephone or at the department's offices. All meetings shall comply with Iowa Code chapter 21.

These rules are intended to implement Iowa Code section 15G.202 and 2011 Iowa Acts, Senate File 531.

ITEM 3. Adopt the following new 21—Chapter 14:

CHAPTER 14  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES

**21—14.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

**21—14.2(84GA,SF531) Eligible applicants.** To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

**14.2(1)** Be an owner or operator of a retail motor fuel site.

**14.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**14.2(3)** Meet the following eligibility requirements established by the board:

*a.* The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

*b.* The fuel storage tank may be on a tank vehicle or transport if regularly parked overnight in Iowa.

*c.* The storage tank must, however, be used exclusively for retail delivery to the final consumer.

*d.* If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of E-85 gasoline, biodiesel or biodiesel blended fuel at retail. The compartment used exclusively for the storage of E-85 gasoline, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

*e.* The tank and ancillary equipment must be approved for E-85 gasoline, biodiesel or biodiesel blended fuel use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

*f.* The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the five-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

*g.* Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal to be eligible for the E-85 grant.

These rules are intended to implement Iowa Code section 15G.203 and 2011 Iowa Acts, Senate File 531.

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

ITEM 4. Adopt the following **new** 21—Chapter 15:

CHAPTER 15  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS

**21—15.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

**21—15.2(84GA,SF531) Eligible applicants.** To be eligible to receive a biodiesel terminal grant, an applicant shall:

**15.2(1)** Be an owner or operator of a biodiesel terminal.

**15.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**15.2(3)** Meet the following eligibility requirements established by the board:

*a.* The terminal must not be a retail motor fuel site.

*b.* The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

*c.* The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

*d.* The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code section 15G.204 and 2011 Iowa Acts, Senate File 531.

ITEM 5. Adopt the following **new** 21—Chapter 16:

CHAPTER 16  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

**21—16.1(84GA,SF531) Allocation of awards by congressional district.** The board shall use the boundaries of the state's congressional districts and shall prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

**21—16.2(84GA,SF531) Form of award available; award amount.**

**16.2(1) *Form of award.*** Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

**16.2(2) *Prospective grants for projects not commenced.*** A grant may be awarded for an eligible project not yet commenced.

**16.2(3) *Amount of award.***

*a. Retail award site.*

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

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

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for Underwriters Laboratories upgrade. The purpose of an award for Underwriters Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation projects. The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriters Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

*b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.*

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.

*c. Tank vehicle.*

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.

**16.2(4)** *Time of payment.* The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

*a.* The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

*b.* The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

*c.* The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

**16.2(5)** *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

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

**16.2(6) Multiple awards for multiple fuel types.**

*a. At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

*b. At multiple fuel sites.* A person may receive multiple grants as described in paragraph 16.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the infrastructure board will make awards fairly and properly among applicants and geographic areas.

**16.2(7) Exhaustion of funds.** In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

**21—16.3(84GA,SF531) Application process.****16.3(1) Application procedures.**

*a.* Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

*b.* Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

**16.3(2) Contents of application.**

*a.* Statutory requirements. An application shall include the information required in Iowa Code section 15G.203.

*b.* Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant is designed and will be used exclusively to store or dispense E-85 gasoline, biodiesel or biodiesel blended fuel, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

(4) Assurance of compliance with any and all federal requirements for financial responsibility.

(5) Assurance of compliance with any and all state and federal laws and regulations.

(6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).

(7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer's written statement that the dispenser is "not incompatible."

**21—16.4(84GA,SF531) Review process.**

**16.4(1)** The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

**16.4(2)** Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

*a.* Submittal of a completed application, including supporting documentation.

*b.* Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.

*c.* Projected annual sales volume.

*d.* Other sources of funding.

*e.* Previous grants awarded.

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

**21—16.5(84GA,SF531) Contract administration.**

**16.5(1) *Notice of award.*** The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

**16.5(2) *Contract required.*** The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

- a. Describe the project in sufficient detail to demonstrate the eligibility of the project.
- b. State the total cost of the project expressed in a project budget included in sufficient detail to meet the requirements of the infrastructure board.
- c. State the project completion deadline.
- d. State the project completion requirements which are preconditions for payment of the grant by the board.

e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

**16.5(3) *Repayment penalty for nonexclusive renewable fuel use.*** In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

**16.5(4) *Repayment or board waiver.*** A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

**16.5(5) *Waiver criteria.*** The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. *Permanent waiver.*

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

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

2. Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

*b. Temporary waiver (temporary suspension of repayment and 25 percent penalty).* A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the three-year or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205 as amended by 2011 Iowa Acts, Senate File 531, and Iowa Code sections 15G.203 and 15G.204.

[Filed Emergency 6/9/11, effective 7/1/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9593B**

**BANKING DIVISION[187]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 535B.14, the Division of Banking hereby amends Chapter 18, "Mortgage Bankers and Mortgage Brokers," Iowa Administrative Code.

The amendments are primarily designed to implement 2010 Iowa Acts, Senate File 2348, which will become effective July 1, 2011, and which requires independent real estate closing companies to be licensed as closing agents by the Banking Division beginning July 1, 2011. 2010 Iowa Acts, Senate File 2348, requires applicants for closing agent licensure to submit to background checks and to post a bond to be licensed.

The amendments address the processes and requirements for applying for and renewing a closing agent license. Because Chapter 18 already addresses mortgage banker and mortgage broker licensees, the amendments clarify when the rules apply only to a mortgage banker or mortgage broker licensee and not to a closing agent. The amendments make some minor changes to requirements applicable to mortgage bankers and mortgage brokers and require mortgage bankers and mortgage brokers to maintain certain records in an electronic format. The amendments also address accounting requirements for closing agent trust fund accounting and internal controls, closing standards, and the hiring of individuals responsible for handling money. Finally, the amendments outline a reporting obligation in the event of defalcation

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

of trust funds and clarify when a real estate broker is engaged in the practice of real estate brokerage and, therefore, is exempt from the closing agent licensing requirement.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation are unnecessary because the Division obtained and incorporated feedback from affected parties prior to adopting the amendments.

In accordance with Iowa Code section 17A.5(2)“b”(2), it will be beneficial to licensees subject to these rules for the amendments to be effective on July 1, 2011, which is the same date the licensing requirement set forth in 2010 Iowa Acts, Senate File 2348, becomes effective, so that licensees will have appropriate guidance in various aspects of their operations upon receiving their licenses.

The Division has simultaneously submitted a Notice of Intended Action, which is published herein as **ARC 9592B**, to adopt these amendments pursuant to the normal rule-making process and to allow for public comment.

Jobs impact statement: The Banking Division does not believe the amendments will have a significant impact, either positive or negative, on private-sector jobs and employment opportunities in Iowa. It is possible a few very small companies that are currently providing real estate closing services will decide not to obtain a license and, as a result, will close, but if that happens, it will be the result of 2010 Iowa Acts, Senate File 2348, not the result of these amendments.

These amendments are intended to implement Iowa Code chapter 535B and 2010 Iowa Acts, Senate File 2348 [chapter 1111].

These amendments will become effective July 1, 2011.

The following amendments are adopted.

ITEM 1. Amend **187—Chapter 18**, title, as follows:

**MORTGAGE BANKERS, ~~AND~~ MORTGAGE BROKERS, AND REAL ESTATE CLOSING AGENTS**

ITEM 2. Amend rule **187—18.1(17A,535B)**, definition of “License application,” as follows:

“*License application*” means an electronic application submitted to the administrator for a license to operate as a mortgage banker, ~~or~~ mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

ITEM 3. Amend rule **187—18.1(17A,535B)**, definition of “Licensee,” as follows:

“*Licensee*” means a person who has a license to operate as a mortgage banker, ~~or~~ mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

ITEM 4. Amend subrule 18.2(1) as follows:

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

ITEM 5. Amend subrule 18.2(4) as follows:

**18.2(4)** The administrator shall approve or deny a license application in accordance with the provisions of 2009 Iowa Code Supplement section 535B.5 as amended by 2010 Iowa Acts, Senate File 2348, section 5. A person shall not be eligible for licensing as a mortgage banker or mortgage broker unless all mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the licensing requirements of ~~2009 Iowa Acts, Senate File 355~~ Iowa Code chapter 535D.

ITEM 6. Amend subrule 18.2(5) as follows:

**18.2(5)** An applicant for a mortgage banker or mortgage broker license must file with the administrator a bond complying with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2009 2010 Iowa Acts, Senate File 355 2348, section 32 7. The bond amount required to

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

be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, ~~and~~ underwritten, and serviced, as the case may be, by the applicant or licensee during the preceding calendar year:

Loans	Bond Amount
\$0 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

ITEM 7. Renumber subrule **18.2(6)** as **18.2(7)**.

ITEM 8. Adopt the following new subrule 18.2(6):

**18.2(6)** An applicant for a closing agent license must file with the administrator a bond in the amount of \$25,000 which complies with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2010 Iowa Acts, Senate File 2348, section 7.

ITEM 9. Amend rule 187—18.3(17A,535B) as follows:

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

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

**18.3(2)** Application to renew a license shall be submitted to the administrator before December 1 of the year of expiration through the NMLS&R. All requested information shall be provided to the administrator as directed by the NMLS&R. Applications for renewal of a license to transact business solely as a mortgage broker or closing agent must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. In addition, the mortgage banker or mortgage broker licensee shall pay a branch office renewal fee of \$40 per branch. The administrator may assess late fees of up to \$10 per day for applications submitted after December 1.

**18.3(3)** The administrator shall grant an application to renew a license if:

- a. The administrator receives the application by December 1, accompanied by the appropriate renewal fee, or the administrator receives the application after December 1 but before January 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee;
- b. The application is fully completed with all necessary information; and
- c. The application does not reveal grounds to deny a license.

**18.3(4)** A renewal application received by the administrator after December 31 may, at the discretion of the administrator, be rejected for processing or may be treated as a new application for a license. A licensee who fails to renew a license before the expiration date is not authorized to act as a mortgage banker, ~~or mortgage broker~~, or closing agent in Iowa after the expiration date.

ITEM 10. Amend rule 187—18.8(17A,535B) as follows:

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

**18.8(1)** No mortgage banker or mortgage broker licensee shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B under any name other than that stated on the license.

**18.8(2)** A licensee shall notify the administrator ~~in writing~~ through the NMLS&R of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

**18.8(3)** A mortgage banker or mortgage broker licensee shall maintain on file with the administrator, through the NMLS&R, a list of all mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay any fees assessed by the NMLS&R to add a mortgage loan originator to the licensee's list in the NMLS&R.

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**18.8(4)** When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a mortgage banker or mortgage broker licensee, the licensee shall notify the administrator, through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

**18.8(5)** A mortgage banker or mortgage broker licensee shall notify the administrator ~~in writing~~ through the NMLS&R of the addition of any mortgage loan originator, owner, officer, partner, or director within five business days of addition.

**18.8(6)** Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

**18.8(7)** NMLS&R system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

ITEM 11. Amend rule 187—18.16(17A,535B) as follows:

**187—18.16(17A,535B) Licensee records.**

**18.16(1)** *General record requirements.* A licensee must keep records that allow the administrator to determine the licensee's compliance with relevant statutes and regulations.

- a. The licensee may keep the records as a hard copy or in an electronic equivalent.
- b. The licensee shall keep records for at least ~~25~~ 36 months from the date of the final transaction with the borrower or a party in a real estate transaction.
- c. The licensee shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for disciplinary action against the licensee.
- d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring this requirement is met.
- e. Effective January 1, 2012, mortgage bankers and mortgage brokers shall have the capability to provide information on the characteristics of loan originations as described in subrule 18.16(11) in an electronic format prescribed by the administrator within 30 days of:

- (1) The end of each calendar quarter or some other regular interval determined by the administrator;
- or
- (2) Notice from the administrator in the case of an examination.

**18.16(2)** *Required records.*

- a. A mortgage broker shall keep an index, application log, and application files.
- b. A mortgage banker shall keep an index, application log, application files, loan register, and loan files. If the mortgage banker also services loans, the mortgage banker must also keep account ledgers.
- c. A mortgage banker who only services loans needs to keep only an index, a loan register, loan files, and account ledgers.
- d. A closing agent shall keep the general business records outlined in subrule 18.16(9). The general business records are records relating to the closing agent's general business and do not include records relating to individual customer files. A closing agent shall also keep the following records relating to individual files:

- (1) A closing register containing the information outlined in subrule 18.22(5); and
- (2) A closing file containing the information outlined in subrule 18.22(6).

**18.16(3)** *Index.* All mortgage banker and mortgage broker records shall be accessible by the borrower's name (including the name of any endorser, comaker, or surety who is indebted to the lender) and account number.

**18.16(4)** *Application log.* A mortgage banker or mortgage broker licensee shall maintain an application log. The application log is a chronological list of applications received. The application log shall include the name of the applicant, date the application was completed, the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification

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

number assigned to each, notes for action taken on applications (such as “approved,” “denied,” or “withdrawn”), and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender. For purposes of these rules, information from an applicant becomes an application when the licensee obtains the name and social security number of the applicant.

**18.16(5) *Loan register.*** A mortgage banker or mortgage broker licensee shall maintain a loan register. The loan register shall include the following information for every loan that is made: the date of the transaction, the name of the borrower, the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each, name of the lender, and the amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

**18.16(6) *Application file.*** A mortgage banker or mortgage broker licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any required disclosures. A copy of any adverse action taken on the application, including any documentation supporting that action such as an appraisal report or credit report, shall also be placed in the application file. The application file shall also contain the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification number assigned to each.

**18.16(7) *Loan file.*** A mortgage banker or mortgage broker licensee shall maintain a loan file for each loan made. The loan file consists of the application file, the appraisal report, underwriting verifications, the closing file described in subrule 18.22(6) including other supporting documentation, and documents from the loan closing. These documents include: note, mortgage, all truth-in-lending disclosures, and all Real Estate Settlement Procedures Act disclosures. ~~The loan file shall include documentation of how the loan proceeds were distributed.~~ The loan file shall also contain the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each.

**18.16(8) *Account ledger.*** A mortgage banker licensee shall maintain an account ledger for each loan that is serviced, which shall include the following information:

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

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

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

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

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

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

**18.16(9) *General business records.*** A licensee must keep the following general business records for at least 36 months:

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

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

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

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

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

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

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

**18.16(10) *Disposal of records.*** If the licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1) "a." The owners and directors of licensees and former licensees are responsible for ensuring this requirement is met.

**18.16(11) *Loan records required to be maintained electronically.***

a. Effective January 1, 2012, mortgage bankers and mortgage brokers shall maintain the following records electronically in a format prescribed by the administrator:

(1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, the mortgage broker (if applicable), and the lender for the loan.

(2) Information sufficient to enable a computation of key items in the federal truth-in-lending disclosures, including the annual percentage rate, the finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures.

(3) Information included in the "good faith estimate" (GFE) disclosure required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, and an itemization of settlement charges and all broker compensation.

(4) Information included in the final HUD-1 Settlement Statement.

(5) Information related to the terms of each loan, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, the duration of prepayment penalty, and the maximum amount of penalty).

(6) Information typically used in underwriting, including the appraised value of the property, the sales price of the property (if a purchase loan), each borrower's income, the monthly payment amount, the housing debt-to-income ratio, the total debt-to-income ratio, and the credit score of each borrower.

(7) Information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

b. Mortgage brokers shall provide information identified in paragraph 18.16(11) "a" unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format.

c. The administrator shall permit mortgage bankers and mortgage brokers to utilize compatible third-party software to provide information required under this subrule.

BANKING DIVISION[187](cont'd)

ITEM 12. Amend rule 187—18.17(17A,535B) as follows:

~~187—18.17(17A,535B) Annual report Mortgage call reports. On or before March 31 each year, a licensee shall file with the administrator an annual report for the preceding calendar year on forms prescribed by the administrator. For every day after March 31 that the report is not received, the administrator may assess late fees of \$10 per day. Each mortgage banker and mortgage broker licensee shall submit to the NMLS&R reports of condition, which shall be in such form and shall contain such information as the NMLS&R shall require.~~

ITEM 13. Amend subrule 18.18(1) as follows:

**18.18(1)** Any advertisement of mortgage loans which are offered by or through a mortgage banker or mortgage broker licensee shall conform to the following requirements:

- a. An advertisement shall be in compliance with Truth-in-Lending, Regulation Z, and any other applicable state and federal laws and regulations.
- b. An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.
- c. An advertisement shall not make any statement or fail to make any statement the result of which shall present a misleading or deceptive impression to consumers.
- d. An advertisement shall clearly show the licensee's unique NMLS&R identification number.

ITEM 14. Amend subrule 18.19(1) as follows:

**18.19(1)** The administrator may, at any time and as often as the administrator deems necessary, investigate a business licensee and examine the licensee's books, accounts, records, and files ~~used by a licensee.~~

ITEM 15. Amend subrule 18.20(2) as follows:

**18.20(2)** Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in Iowa Code section 535B.7 when the administrator finds any of the following:

- a. The licensee has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of ~~mortgage banking or mortgage brokering~~ the licensee's business, including but not limited to Iowa Code chapters 535 and 535A.
- b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the administrator to refuse to issue the original license.
- c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.
- d. The licensee has violated an order of the administrator.
- e. The licensee fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's last-known address on file with the administrator.
- f. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.
- g. The licensee continues to operate as a mortgage banker, ~~or mortgage broker,~~ or closing agent without an active and current license.
- h. and i. Reserved.
- j. The licensee fails to notify the administrator within five days of the occurrence of one of the significant events set forth in rule 187—18.7(17A,535B).
- k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage banker, ~~or mortgage broker,~~ or closing agent under the other state's or jurisdiction's law.
- l. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

BANKING DIVISION[187](cont'd)

ITEM 16. Adopt the following new rule 187—18.21(17A,535B):

**187—18.21(17A,535B) Trust fund accounting and internal controls.**

**18.21(1)** A closing agent shall establish and maintain a separate subsidiary ledger for each real estate transaction for which the closing agent performs real estate closing services.

**18.21(2)** A closing agent shall prepare a trial balance for each trust account and each subsidiary ledger at least once each calendar month.

**18.21(3)** A closing agent shall perform a three-way reconciliation of bank balance, book balance, and trust account trial balance for each bank trust account at least once each calendar month. A member of the closing agent's management team shall review and approve the reconciliation at least once each calendar month.

**18.21(4)** A closing agent shall design accounting processes with the appropriate level of internal controls and management oversight. The process shall include an appropriate segregation of duties. It is recommended that trust account reconciliations be prepared by a person other than a person who records receipts or makes deposits to the trust account. A closing agent may use an outside accountant to perform reconciliations.

ITEM 17. Adopt the following new rule 187—18.22(17A,535B):

**187—18.22(17A,535B) Closing standards.**

**18.22(1)** A closing agent shall read and comply with all closing instructions from the parties to the transaction.

**18.22(2)** A closing agent shall disburse or deliver funds only in accordance with closing instructions from the lender, the attorney's title opinion or title commitment, and the real estate purchase agreement, when applicable. All disbursements shall agree to the final signed settlement statement.

**18.22(3)** A closing agent shall obtain written payoff statements for any loan being paid off as part of the real estate transaction and shall make all loan payoffs as soon after the closing as is practical, but in no event more than two business days after the closing, or within one business day after the rescission period ends in the case of a refinance transaction. For the purposes of this rule, placing the loan payoffs with a delivery service for overnight delivery shall meet the requirements of this subrule.

**18.22(4)** A closing agent shall be responsible for ensuring that all documents for the real estate transaction that require recording are recorded with the appropriate county recorder's office in a timely manner, but in no event more than five business days after the date of the transaction.

**18.22(5)** A closing agent shall maintain a closing register and a closing index. A closing register is a chronological list of real estate closings. The closing register shall include for each closing the date of the transaction, the name of the buyer or borrower, the name of the seller, the name of the lender and the mortgage loan originator, and the property address, as applicable. A closing index shall be maintained so that all records are accessible by the names of the parties to the transaction (including the name of the buyer or borrower, the name of the seller, and the name of the mortgage loan originator) and file number. A searchable database containing the information required by this subrule satisfies the requirements of this subrule.

**18.22(6)** A closing agent shall maintain a closing file for each real estate transaction for which the closing agent performed real estate closing services. The closing file shall include, at a minimum, the following records:

*a.* An accounting ledger or disbursement sheet that details all receipts and disbursements with date, transaction type, check number, payee, amount, and the file's ending balance. All ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file.

*b.* A signed settlement statement that totals properly and is supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the settlement requires changes, a copy of the new settlement statement with changes clearly documented shall be maintained in the file.

*c.* A copy of the closing instructions from the lender and other parties to the transaction.

*d.* A copy of the signed real estate contract, if applicable.

BANKING DIVISION[187](cont'd)

- e. Detailed records of the individuals present at each closing, including copies of photo identification, and specifying where and when each closing is held.
- f. Properly executed affidavits, where required.
- g. Evidence that the real estate transaction documents were filed with the county recorder.

ITEM 18. Adopt the following new rule 187—18.23(17A,535B):

**187—18.23(17A,535B) Employees of closing agents.**

**18.23(1)** A closing agent shall exercise diligence in hiring practices including policies regarding background investigations. A closing agent shall conduct a background investigation and credit check for each employee responsible for handling funds.

**18.23(2)** A closing agent shall provide appropriate training to employees on real estate closing matters including trust account administration, real estate closing procedures, and fraud prevention.

ITEM 19. Adopt the following new rule 187—18.24(17A,535B):

**187—18.24(17A,535B) Reporting obligation.** If a closing agent detects defalcation regarding the closing agent's trust account funds, the closing agent must file the following notice with the division of banking within three days of discovering the defalcation. "We have detected circumstances regarding our trust account funds that may warrant an investigation by the banking division. The amount of funds involved is believed to be \$ \_\_\_\_\_."

ITEM 20. Adopt the following new rule 187—18.25(17A,535B):

**187—18.25(17A,535B) Real estate brokers.** For the purposes of applying the exemption in Iowa Code section 535B.2(6), a real estate broker performing real estate closing services shall be deemed to be engaged in practice as a real estate broker only when performing real estate closing services on a transaction in which the broker's brokerage represents one of the parties to the transaction and the closing is being administered through an account regulated by the real estate commission pursuant to Iowa Code chapter 543B.

ITEM 21. Amend **187—Chapter 18**, implementation sentence, as follows:

Rules 187—18.1(17A,535B) to 187—18.20(17A,535B) These rules are intended to implement Iowa Code chapter 535B and 2010 Iowa Acts, Senate File 2348.

[Filed Emergency 6/10/11, effective 7/1/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9582B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

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

The amendments provide the Department's annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for four levels of care in a medical institution.

The statewide average cost of nursing facility services to a private-pay resident is determined by a survey of nursing facilities, including freestanding facilities, hospital-based skilled nursing facilities, and facilities serving special populations. This monthly average cost has increased from \$4,842.72 to \$4,853.36 (equivalent to \$159.65 per day). This amount is used to determine the period of ineligibility for Medicaid payment of nursing facility care and other long-term care services that is required when a person has transferred assets for less than market value to obtain Medicaid eligibility. The amount

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

transferred is divided by this monthly average cost to determine the number of months of ineligibility. Since the cost has gone up, the resulting periods of ineligibility will be slightly shorter.

Iowa Code chapter 633C requires the Department to determine and publish the statewide average charges or maximum Medicaid rate for various levels of institutional care. These amounts are used to regulate the disposition of funds in a medical assistance income (Miller-type) trust. A medical assistance income trust allows a person whose income is above the Medicaid income limit for long-term care (currently \$2,022 per month) but is less than the cost of care in a medical institution to attain eligibility by depositing the income in a trust. Only the income released from the trust is counted as income in determining Medicaid eligibility. Changes in the average charge or maximum rate figures are as follows:

- Nursing facility care: increases from \$4,422 per month to \$4,594 per month (based on data from freestanding facilities only, since the cost of special care is considered separately).
- ICF/MR care: increases from \$23,845 per month to \$24,060 per month.
- Care in a mental health institute: decreases from \$16,720 per month to \$16,475 per month.
- Care in a psychiatric medical institution for children: increases from \$5,010 per month to \$5,312 per month.

These amendments do not provide for waivers in specified situations, since these amounts are derived through a standard methodology and are required by statute.

The Council on Human Services adopted these amendments on June 8, 2011.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the Department has no discretion in setting these amounts.

The Department finds that these amendments confer a benefit on the public by carrying out the Department's statutory responsibility to make available to the public the specific amounts for the thresholds referenced in the statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

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

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

These amendments shall become effective on July 1, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

**75.23(3) *Period of ineligibility.*** The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2010~~ 2011, through June 30, ~~2011~~ 2012, this average statewide cost shall be ~~\$4,842.72~~ \$4,842.72 ~~\$4,853.36~~ per month or ~~\$159.30~~ \$159.65 per day.

ITEM 2. Amend paragraph **75.24(3)"b"** as follows:

*b.* A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2010~~ 2011, to June 30, ~~2011~~ 2012, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$4,422~~ \$4,594 per month.

~~(2) and (3) Rescinded IAB 7/7/04, effective 7/1/04.~~

(4) ~~(2)~~ The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$23,845~~ \$24,060 per month.

~~(5) (3)~~ The average statewide charge to a resident of a mental health institute is ~~\$16,720~~ \$16,475 per month.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(6)~~ (4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$5,010~~ \$5,312 per month.

~~(7)~~ (5) The average statewide charge to a home- and community-based waiver applicant or recipient member shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.

[Filed Emergency 6/8/11, effective 7/1/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9586B**

## **WORKERS' COMPENSATION DIVISION[876]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment updates references to the tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(3), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 876—8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and the Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2011, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that this amendment will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency. Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that this amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

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

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment will become effective on July 1, 2011.

The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

**876—8.8(85,17A) Payroll tax tables.** Tables for determining payroll taxes to be used for the period July 1, ~~2010~~ 2011, through June 30, ~~2011~~ 2012, are the tables in effect on July 1, ~~2010~~ 2011, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [~~2010~~ 2011].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)

## WORKERS' COMPENSATION DIVISION[876](cont'd)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2010~~ 2011].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/9/11, effective 7/1/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

## ARC 9578B

## CORRECTIONS DEPARTMENT[201]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 356.36, the Iowa Department of Corrections hereby adopts amendments to Chapter 50, "Jail Facilities," and Chapter 51, "Temporary Holding Facilities," Iowa Administrative Code.

The purposes of the amendments to Chapter 50 are to provide better protection to jail staff and prisoners by permitting the sheriff discretion to determine if electronic control devices can be carried by staff in the jail; to correct a cross reference and to move text to the correct location in the chapter; and to comply with a newly enacted law requiring verification of veteran status of newly admitted prisoners.

The purposes of the amendments to Chapter 51 are to develop consistency between Chapters 50 and 51; to provide better protection to staff and detainees by permitting the facility administrator discretion to determine if electronic control devices can be carried by staff; to address installation of mirrors in facilities; to ensure that adequate meals are served; to comply with a newly enacted law requiring verification of veteran status of newly admitted detainees; and to require annual staff training on suicide prevention.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 6, 2011, as **ARC 9442B**. A public hearing was held on April 26, 2011, from 11 a.m. to 1 p.m. in the First Floor Conference Room of the Department of Corrections. One person attended the public hearing, and no other oral or written testimony was received. One minor, nonsubstantive change has been made in response to public comment. The definition of "weapons" in Items 1 and 6 has been revised by striking the word "primary" and, consequently, changing "a" to "an." The definition now reads as follows:

"*Weapons*" means any instrument, excluding restraining devices, chemical control agents and electronic control devices, with an intended use of self-defense, protection of another, or to gain or maintain compliance from an individual."

In addition, a technical change has been made in paragraph 51.13(6)"c" in Item 12 to clarify the number of items in a series.

These amendments were approved during the June 3, 2011, meeting of the Board of Corrections.

These amendments will become effective on August 3, 2011.

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

These amendments are intended to implement Iowa Code section 356.36.

The following amendments are proposed.

ITEM 1. Amend rule **201—50.1(356,356A)**, definition of "Weapons," as follows:

"*Weapons*" means any instrument, excluding restraining devices, ~~and~~ chemical control agents and electronic control devices, with a ~~primary~~ an intended use of self-defense, protection of another, or to gain or maintain compliance from an individual.

ITEM 2. Amend paragraph **50.4(8)"b"** as follows:

*b.* Adequate storage space for prisoners' personal clothing and property shall be provided. Space provided shall be secure, and the prisoner's name or identification number shall be affixed to the storage space. Property shall be inventoried and accounted for as provided in Iowa Code section 804.19.

ITEM 3. Adopt the following new paragraph **50.13(1)"h"**:

*h.* Jail personnel shall ask each prisoner within 24 hours of the prisoner's incarceration if the prisoner is a military veteran. If so, jail personnel shall advise the prisoner that the prisoner may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the prisoner with contact information for the county commission of veteran affairs and provide the prisoner the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

## CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 4. Amend subparagraph **50.13(2)“c”(1)** as follows:

(1) All prisoners and property entering or leaving the jail shall be thoroughly searched; searches of persons charged with a simple misdemeanor shall follow provisions of Iowa Code section 804.30. ~~Property taken from prisoners shall be inventoried and accounted for pursuant to Iowa Code section 804.19.~~ The prisoner's name or identification number shall be affixed to the property or storage space. Receipts shall be made for property taken from prisoners at the time of admission and returned to prisoners at the time of release.

ITEM 5. Amend subrule 50.14(2) as follows:

**50.14(2) Clothing, bedding, and hygiene items.** Prisoners held in excess of 24 hours shall be provided sanitary bedding and linens, sufficient to ensure comfort under existing temperature conditions. These items may be withheld by the jail administrator if deemed necessary pursuant to subrule ~~50.21(6)~~ 50.21(5). A standard issue shall include:

a. to d. No change.

ITEM 6. Amend rule **201—51.1(356,356A)**, definition of “Weapon,” as follows:

~~“Weapon Weapons”~~ means any instrument, excluding restraining devices, chemical control agents and electronic control devices, with a primary an intended use of self-defense, ~~or~~ protection of another, or to gain or maintain compliance from an individual. ~~See paragraph 51.11(2)“b.”~~

ITEM 7. Adopt the following new subrule 51.4(11):

**51.4(11) Mirrors.** Mirrors within detention areas shall be of tamper-resistant construction and securely fixed in place.

ITEM 8. Adopt the following new paragraph **51.11(1)“h”**:

h. Temporary holding facility personnel shall ask each detainee within 24 hours of the detainee's incarceration if the detainee is a military veteran. If so, facility personnel shall advise the detainee that the detainee may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the detainee with contact information for the county commission of veteran affairs and provide the detainee the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

ITEM 9. Amend paragraph **51.11(2)“a,”** introductory paragraph, as follows:

a. Supervision of detainees. The facility administrator shall develop and implement written policies and procedures for the facility which provide for the control of detainees and for the safety of the public and the facility staff. The policy and procedures shall include:

ITEM 10. Amend paragraph **51.11(2)“b”** as follows:

b. Weapons. Except in an emergency situation, no ~~firearms~~ weapons shall be allowed in an area occupied by detainees.

ITEM 11. Amend subparagraph **51.11(2)“g”(4)** as follows:

(4) The facility administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: bomb threats, riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plan shall be made ~~available~~ available to all applicable personnel and shall be reviewed by facility staff at least annually and updated as needed.

ITEM 12. Amend paragraph **51.13(6)“c”** as follows:

c. As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the facility. The intake procedure shall include screening for potential self-injury or suicide. Facility staff with actual knowledge that there is a substantial risk that a detainee intends to commit suicide shall take reasonable measures to abate the risk. The facility shall have a written suicide prevention plan. Essential elements of the plan shall include annual staff training to recognize the potential for suicide, communication between staff, ~~and~~ appropriate housing, and intervention procedures.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 13. Adopt the following **new** subrule 51.19(14):  
**51.19(14) Menu records.** This record shall include letters of documentation issued by a qualified dietitian.

[Filed 6/8/11, effective 8/3/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9573B****EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

This amendment is intended to clarify what constitutes a valid license for an individual seeking a Class B license. Class B licenses may not be issued to individuals who hold a substitute license or authorization, a statement of professional recognition, a career and technical license or endorsement, a behind-the-wheel authorization, or an intern license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 23, 2011, as **ARC 9382B**. A public hearing on the amendment was held on Wednesday, March 16, 2011. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective August 3, 2011.

The following amendment is adopted.

Amend subrule 13.11(1) as follows:

**13.11(1) Endorsement in progress.** The individual has a valid initial, standard, master educator, permanent professional, Class A (one-year extension of an initial, standard, or master educator), exchange, or professional service license and one or more endorsements but is seeking to obtain some other endorsement. A Class B license may be issued if requested by an employer and if the individual seeking to obtain some other endorsement has completed at least two-thirds of the requirements, or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for the endorsement. A Class B license may not be issued for the driver's education endorsement.

[Filed 6/1/11, effective 8/3/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9572B****EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 22, "Authorizations," Iowa Administrative Code.

2010 Iowa Acts, House File 2461, requires the Board to establish a new authorization for school business officials. These amendments are intended to meet the new statutory requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 23, 2011, as **ARC 9381B**. A public hearing on the amendments was held on Wednesday, March 16, 2011. One individual attended the public hearing, and no written comments were received. In subparagraph

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

22.3(4)“a”(3), the word “official” has been added since the Notice. The subparagraph now reads as follows:

“(3) If the applicant received a temporary school business official authorization, then the initial school business official authorization shall not exceed one year.”

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective August 3, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [22.3, 22.4] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9381B**, IAB 2/23/11.

[Filed 6/1/11, effective 8/3/11]

[Published 6/29/11]

[For replacement pages for IAC, see IAC Supplement 6/29/11.]

**ARC 9581B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

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

These amendments provide the annual update of the premium levels for the Medicaid coverage group for employed people who are disabled (known as MEPD). The Deficit Reduction Act of 2005 limits premiums and other cost sharing for most Medicaid coverage groups to 5 percent of an individual’s or family’s income. To ensure compliance with that limit, the Department has set MEPD premiums at less than 5 percent of income, leaving some of the 5 percent amount for other cost sharing.

Iowa Code section 249A.3(2)(a)(1) requires that “[t]he maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees’ group health insurance in this state.” The average cost to the state of state employees’ health insurance for a single person is now \$660. Therefore, the maximum premium must be set at that amount.

Together, increasing the maximum premium to \$660 and limiting all premiums to less than 5 percent of income require that most of the poverty level income increments and premium amounts be changed in order to maintain a sliding scale with a reasonable number of gradually increasing income and premium increments. Under the new schedule, some MEPD members will be required to pay a higher premium. However, all MEPD members assessed a premium will pay less than 5 percent of their household income in Medicaid cost sharing. (Only 5 percent of MEPD members have individual income higher than 200 percent of the federal poverty level. Currently, there are no MEPD members with individual income higher than 400 percent of the federal poverty level.)

These amendments also include a change to the address where premium payments are mailed. The Department is planning to require that payments be mailed to a designated lock box for processing. Members will have the choice of payment with a personal check or money order. Payment with cash will no longer be acceptable.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on April 20, 2011, as **ARC 9479B**. The Department received no comments on the Notice of Intended Action. There has been one change from the Notice. The new address for the lock box is not yet available, so subparagraph 75.1(39)“b”(8) is amended to read as follows: “(8) Premiums may be submitted in the form of money orders or personal checks to the address printed on the return envelope enclosed with Form 470-3902, MEPD Billing Statement.”

The Council on Human Services adopted these amendments on June 8, 2011.

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

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

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

These amendments are intended to implement Iowa Code section 249A.3(2)(a)(1).

These amendments will become effective August 3, 2011.

The following amendments are adopted.

ITEM 1. Amend subparagraph **75.1(39)“b”(3)** as follows:

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$33 <u>\$34</u>
180% <u>165%</u> of Federal Poverty Level	\$53 <u>\$44</u>
220% <u>180%</u> of Federal Poverty Level	\$73 <u>\$54</u>
250% <u>200%</u> of Federal Poverty Level	\$94 <u>\$65</u>
280% <u>225%</u> of Federal Poverty Level	\$109 <u>\$75</u>
310% <u>250%</u> of Federal Poverty Level	\$129 <u>\$86</u>
340% <u>300%</u> of Federal Poverty Level	\$154 <u>\$106</u>
370% <u>350%</u> of Federal Poverty Level	\$188 <u>\$127</u>
400% of Federal Poverty Level	\$221 <u>\$148</u>
430% <u>450%</u> of Federal Poverty Level	\$255 <u>\$169</u>
460% <u>550%</u> of Federal Poverty Level	\$295 <u>\$209</u>
510% <u>650%</u> of Federal Poverty Level	\$342 <u>\$250</u>
590% <u>750%</u> of Federal Poverty Level	\$396 <u>\$292</u>
680% <u>850%</u> of Federal Poverty Level	\$457 <u>\$335</u>
775% <u>1000%</u> of Federal Poverty Level	\$524 <u>\$399</u>
900% <u>1150%</u> of Federal Poverty Level	\$608 <u>\$469</u>
<u>1300%</u> of Federal Poverty Level	<u>\$560</u>
<u>1480%</u> of Federal Poverty Level	<u>\$660</u>

ITEM 2. Amend subparagraph **75.1(39)“b”(8)** as follows:

(8) Premiums may be submitted in the form of ~~cash~~, money orders, or personal checks to the ~~department at the following address: Department of Human Services, Supply Unit A-Level, Room 77, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319~~ printed on the return envelope enclosed with Form 470-3902, MEPD Billing Statement.

[Filed 6/8/11, effective 8/3/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9588B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 90, “Targeted Case Management,” Iowa Administrative Code.

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

These amendments:

- Clarify when contacts made by E-mail are an allowable case management activity.
- Clarify that targeted case management is not reimbursable when case management activities are provided through an assertive community treatment (ACT) program.
- Make the provision of 24-hour emergency access to the case manager optional.
- Correct outdated terminology and remove outdated effective dates and language on child welfare decategorization counties that is no longer applicable.

Notice of Intended Action on these amendments was first published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9367B**. An Amended Notice of Intended Action was published on April 6, 2011, as **ARC 9448B**. The Department received five comments on the Notices of Intended Action. The comments concerned the requirement for 24-hour access to a case manager and the burden of completing the case management comprehensive assessment form.

In response to these comments, the Department has revised the amendment to subparagraph 90.5(1)“b”(5) by deleting proposed numbered paragraph “3” and adding the following language to numbered paragraph “2”: “The interdisciplinary team shall determine which of the following options will be included in the crisis intervention plan:

“• After-hours contact information for all persons or resources identified for the member and an alternate contact to be used in the event that an individual provider not employed by an agency is not present to provide services as scheduled; or

“• After-hours contact information for an on-call system for the provider of case management to ensure that in the event of an emergency, members have access to a case manager 24 hours per day, including weekends and holidays.”

The Department was already aware of concerns with the assessment form. Earlier this year, a group of case management providers looked for ways that the form could be shortened but still gather the information needed. After several meetings, the group determined that they had no recommendations for shortening the form.

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

The Council on Human Services adopted these amendments on June 8, 2011.

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

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on September 1, 2011.

The following amendments are adopted.

ITEM 1. Rescind rule 441—78.33(249A) and adopt the following **new** rule in lieu thereof:

**441—78.33(249A) Case management services.** Payment will be approved for targeted case management services that are provided pursuant to 441—Chapter 90 to:

1. Members who are 18 years of age or over and have a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—90.1(249A).

2. Members who are under 18 years of age and are receiving services under the HCBS intellectual disability waiver or children’s mental health waiver.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Amend paragraph **79.1(1)“d”** as follows:

*d. Fee for service with cost settlement.* ~~Effective July 1, 2009, providers~~ Providers of case management services shall be reimbursed on the basis of a payment rate for a 15-minute unit of service based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in service provision.

(1) to (3) No change.

ITEM 3. Amend subparagraph **79.1(24)“a”(1)** as follows:

(1) ~~Effective July 1, 2009, a~~ A unit of case management is 15 minutes.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subparagraph **90.5(1)“b”(5)** as follows:

(5) Include an individualized crisis intervention plan that identifies the supports available to the member in an emergency. A crisis intervention plan shall identify:

1. Any health and safety issues applicable to the individual member based on the risk factors identified in the member’s comprehensive assessment.

2. An emergency backup support and crisis response system, including emergency backup staff designated by providers, to address problems or issues arising when support services are interrupted or delayed or the member’s needs change. The interdisciplinary team shall determine which of the following options will be included in the crisis intervention plan:

- After-hours contact information for all persons or resources identified for the member and an alternate contact to be used in the event that an individual provider not employed by an agency is not present to provide services as scheduled; or

- After-hours contact information for an on-call system for the provider of case management to ensure that in the event of an emergency, members have access to a case manager 24 hours per day, including weekends and holidays.

ITEM 5. Amend subparagraph **90.5(1)“e”(2)** as follows:

(2) The case manager shall have at least one contact per month with the member, the member’s legally authorized representative, the member’s family, service providers, or other entities or individuals. This contact may be face-to-face or by telephone. The contact may also be by written communication, including letters, E-mail, and fax, when the written communication directly pertains to the needs of the member. E-mail contacts are allowed only when other means of communication are not feasible for the member, representative or family and the necessity for E-mail communication is documented in the member’s comprehensive service plan. A copy of any written communication must be maintained in the case file. When E-mail communication is used, there must be clear two-way communication in the member’s record showing an exchange of information as well as follow-up activity related to the information.

ITEM 6. Amend subrule 90.5(2) as follows:

**90.5(2) Exclusions.** Payment shall not be made for activities otherwise within the definition of case management when any of the following conditions exist:

a. The activities are an integral component of another covered Medicaid service, including but not limited to assertive community treatment (ACT).

b. to e. No change.

ITEM 7. Rescind and reserve subrule **90.8(2)**.

[Filed 6/10/11, effective 9/1/11]

[Published 6/29/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9585B**

## **NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 462A.16 and 481A.38, the Natural Resource Commission hereby rescinds Chapter 88, “Fishing Tournaments,” Iowa Administrative Code.

The Department’s fishing tournament rules have been merged with other Department rules governing special events in 571—Chapter 44, “Special Events and Fireworks Displays.”

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 2011, as **ARC 9420B**, and a public hearing was held on March 30, 2011. No comments were received and no one attended the public hearing.

This amendment is intended to implement Iowa Code sections 462A.16 and 481A.38.

NATURAL RESOURCE COMMISSION[571](cont'd)

This amendment shall become effective August 3, 2011.

The following amendment is adopted.

Rescind and reserve **571—Chapter 88**.

[Filed 6/9/11, effective 8/3/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9568B**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Transliterators hereby amends Chapter 363, "Discipline for Sign Language Interpreters and Transliterators," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 23, 2011, as **ARC 9428B**. A public hearing was held on April 15, 2011, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Sign Language Interpreters and Transliterators on May 16, 2011.

This amendment will become effective August 3, 2011.

This amendment is intended to implement Iowa Code chapters 21, 147, 154E and 272C.

The following amendment is adopted.

Amend subrule 363.2(11) as follows:

**363.2(11)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 5/26/11, effective 8/3/11]

[Published 6/29/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/11.

**ARC 9575B**

## **SOIL CONSERVATION DIVISION[27]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 207.6, 207.7, 207.12(1)"b," 207.18 and 207.19, the Division of Soil Conservation hereby amends Chapter 40, "Coal Mining," Iowa Administrative Code.

The amendments update references to the applicable provisions in the Code of Federal Regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 20, 2011, as **ARC 9470B**. No comments were received from the public. These amendments are identical to the proposed amendments.

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

These amendments are intended to implement Iowa Code chapter 207.

SOIL CONSERVATION DIVISION[27](cont'd)

These amendments will become effective August 3, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 40] is being omitted. These amendments are identical to those published under Notice as **ARC 9470B**, IAB 4/20/11.

[Filed 6/6/11, effective 8/3/11]

[Published 6/29/11]

[For replacement pages for IAC, see IAC Supplement 6/29/11.]

## **ARC 9574B**

### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3 and chapter 15H, the Iowa Commission on Volunteer Service hereby adopts amendments to Chapter 8, "Iowa Youth Mentoring Program Certification," Iowa Administrative Code.

The current rules establish procedures for the certification of youth mentoring programs to ensure that certifications are handled in a fair and orderly manner. The amendments provide clarification on the certification process and bring the rules up to date.

Notice of Intended Action was published in IAB Volume XXXIII, Number 15, p. 1094, on January 26, 2011, as **ARC 9341B**. A public hearing was held on February 18, 2011, from 1 to 2 p.m. at the Iowa Department of Economic Development Tourism Conference Room. No persons attended the hearing or offered comments. One technical change has been made to the amendments published under Notice. Underscoring that was inadvertently omitted has been added to subrule numbers 8.3(1) and 8.3(2).

These amendments are intended to implement Iowa Code chapter 15H.

These amendments will become effective on August 3, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [8.1 to 8.6] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9341B**, IAB 1/26/11.

[Filed 6/2/11, effective 8/3/11]

[Published 6/29/11]

[For replacement pages for IAC, see IAC Supplement 6/29/11.]

AGENCY	RULE	DELAY
City Development Board[263]	7.2(2)“j,” 8.3(9) [IAB 6/1/11, <b>ARC 9546B</b> ]	Effective date of July 6, 2011, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011. [Pursuant to §17A.4(7)]
Pharmacy Board[657]	8.35(7) [IAB 6/1/11, <b>ARC 9526B</b> ]	Effective date of July 6, 2011, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011. [Pursuant to §17A.4(7)]



**EXECUTIVE ORDER NUMBER SEVENTY-THREE**

- WHEREAS, information technology in State government provides electronic access to government services and information to the people of Iowa; and
- WHEREAS, innovative improvements are necessary for the State's websites to more effectively and efficiently serve the people of Iowa with a cohesive, user-friendly approach to online access; and
- WHEREAS, State of Iowa eGovernment information should be designed from a citizen-centric viewpoint; and
- WHEREAS, the State web portal and online information should meet applicable federal standards for individuals with disabilities; and
- WHEREAS, Iowans are best served by information technology in state government that is managed from the perspective of the entire enterprise, thereby ensuring a unified vision and meaningful strategic approach with a common technology architecture and infrastructure.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the State web portal and online information technology presence should be improved to meet the needs of the citizens of Iowa. I hereby order and direct that a Website Standardization Committee is created to promote the implementation of accessibility improvements in technology on the Web.

1. Membership for the Website Standardization Committee ("Committee") shall include the following members, appointed by the Governor to serve at the pleasure of the Governor:
  - a. The Chief Information Officer, or interim Chief Information Officer for the State of Iowa
  - b. A representative of the Office of the Governor
  - c. An Executive Branch agency director
  - d. An Executive Branch agency Chief Information Officer or equivalent
  - e. The Director of the Department of Administrative Services
  - f. Three Executive Branch agency Public Information Officers whose primary role is to provide services to people and businesses in Iowa
  - g. Five Executive Branch webmasters or representatives with website expertise in developing and maintaining websites to include a representative from:
    - i. The Department of Human Rights
    - ii. One large agency
    - iii. One medium agency
    - iv. One small agency
    - v. A representative of the State of Iowa's web portal manager
2. The Committee shall be co-chaired by the member from the Office of the Governor and the Chief Information Officer for the State of Iowa. No representation by proxy shall be allowed.
3. The Committee shall adopt a State IT Enterprise Standard for the State's web presence to include:

- a. The design and standards to support website standardization for all Executive Branch Agencies; and
  - b. A recommendation for at least one and no more than two enterprise content management systems; and
  - c. A recommendation relating to a common sliver header; and
  - d. Recommendations for compliance with Section 508 of the Rehabilitation Act of 1973 to ensure full access for individuals with disabilities; and
  - e. Additional recommendations in other areas as requested by the Office of the Governor.
4. The Committee shall dissolve on May 1, 2013 or upon the date of completion of the work described herein, whichever is sooner.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 3<sup>rd</sup> day of May in the year of our Lord two thousand eleven

  
 TERRY E. BRANSTAD  
 GOVERNOR

ATTEST:

  
 MATTHEW SCHULTZ  
 SECRETARY OF STATE