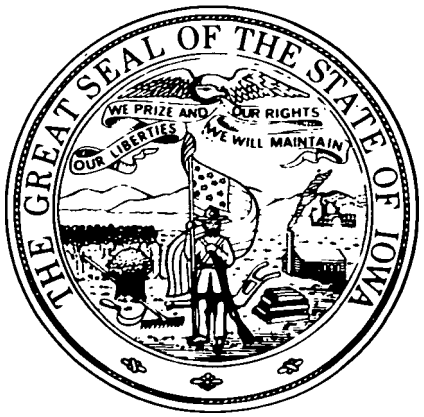

IOWA ADMINISTRATIVE BULLETIN

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STATE OF IOWA
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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and supersedes Part I of the Iowa Administrative Code Supplement.

The Bulletin contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form], all proclamations and executive orders of the Governor which are general and permanent in nature, and other "materials deemed fitting and proper by the Administrative Rules Review Committee."

The Bulletin may also contain economic impact statements to proposed rules and filed emergency rules, objections filed by Administrative Rules Review Committee, Governor or the Attorney General, any delay by the Committee of the effective date of filed rules, and agenda for monthly committee meetings.

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

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
9	**Friday, October 5, 1984**	**October 24, 1984**
10	**Friday, October 19, 1984**	**November 7, 1984**
11	**Friday, November 2, 1984**	**November 21, 1984**

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1984, to June 30, 1985	$117.00 plus $4.68 sales tax
Second quarter	October 1, 1984, to June 30, 1985	$ 88.00 plus $3.52 sales tax
Third quarter	January 1, 1985, to June 30, 1985	$ 58.00 plus $2.32 sales tax
Fourth quarter	April 1, 1985, to June 30, 1985	$ 31.00 plus $1.24 sales tax

Single copies may be purchased for $4.00 plus $0.16 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - $670.00 plus $26.80 sales tax
(Price includes Volumes I through XII, index and binder, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for $3.00 plus $0.12 tax.)

Iowa Administrative Code Supplement - $137.00 plus $5.48 sales tax
(Subscription expires June 30, 1985)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-5231

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RULEMAKING SCHEDULE

Schedule for Rulemaking
1984

FILING DEADLINE	PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 13	Feb. 1	Feb. 21	Mar. 7	May 2	July 30
Jan. 27	Feb. 15	Mar. 6	Mar. 21	May 16	Aug. 13
Feb. 10	Feb. 29	Mar. 20	Apr. 4	May 30	Aug. 27
Feb. 24	Mar. 14	Apr. 3	Apr. 18	June 13	Sep. 10
Mar. 9	Mar. 28	Apr. 17	May 2	June 27	Sep. 24
Mar. 23	Apr. 11	May 1	May 16	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	Aug. 22	Nov. 19
May 18	June 6	June 26	July 11	Sep. 5	Dec. 3
June 1	June 20	July 10	July 25	Sep. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Oct. 3	Dec. 31
June 29	July 18	Aug. 7	Aug. 22	Oct. 17	Jan. 14 '85
July 13	Aug. 1	Aug. 21	Sep. 5	Oct. 31	Jan. 28 '85
July 27	Aug. 15	Sep. 4	Sep. 19	Nov. 14	Feb. 11 '85
Aug. 10	Aug. 29	Sep. 18	Oct. 3	Nov. 28	Feb. 25 '85
Aug. 24	Sep. 12	Oct. 2	Oct. 17	Dec. 12	Mar. 11 '85
Sep. 7	Sep. 26	Oct. 16	Oct. 31	Dec. 26	Mar. 25 '85
Sep. 21	Oct. 10	Oct. 30	Nov. 14	Jan. 9 '85	Apr. 8 '85
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Jan. 23 '85	Apr. 22 '85
Oct. 19	Nov. 7	Nov. 27	Dec. 12	Feb. 6 '85	May 6 '85
Nov. 2	Nov. 21	Dec. 11	Dec. 26	Feb. 20 '85	May 20 '85
Nov. 16	Dec. 5	Dec. 25	Jan. 9 '85	Mar. 6 '85	June 3 '85
Nov. 30	Dec. 19	Jan. 8 '85	Jan. 23 '85	Mar. 20 '85	June 17 '85
Dec. 14	Jan. 2 '85	Jan. 22 '85	Feb. 6 '85	Apr. 3 '85	July 1 '85
Dec. 28	Jan. 16 '85	Feb. 5 '85	Feb. 20 '85	Apr. 17 '85	July 15 '85

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption.

180 days 17A.4(1)"b" says that if a noticed rule is not adopted by the agency within this time, the agency must either adopt the rule or file a notice of termination.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ARTS COUNCIL[100]		
Policies and procedures, 2.3 IAB 10/10/84 **ARC 5019**	Arts Council Office 1223 East Court Ave. Des Moines, Iowa	October 30, 1984 10:00 a.m.
BEER AND LIQUOR CONTROL DEPARTMENT[150]		
Leasing, state liquor stores, 9.10, 9.13 IAB 10/10/84 **ARC 5003**	Conference Room Iowa Beer and Liquor Control Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	November 1, 1984 1:00 p.m.
CONSERVATION COMMISSION[290]		
Falconry regulations, 18.1, 18.3 IAB 9/26/84 **ARC 4982**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 16, 1984 10:00 a.m.
Boating, special events, ch 35 IAB 9/26/84 **ARC 4987**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 17, 1984 10:00 a.m.
Wild turkey spring hunting regulations, 111.1 to 111.4 IAB 9/26/84 **ARC 4983**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 18, 1984 10:00 a.m.
COUNTY FINANCE COMMITTEE[292]		
Annual financial reports, 1.1(3), ch 5 IAB 10/10/84 **ARC 5028**	Conference Room State Comptroller's Office State Capitol Des Moines, Iowa	October 30, 1984 1:00 p.m.
EMPLOYMENT SECURITY[370]		
Determination of benefit rights, 4.7(2); Formula benefits for monthly payment of allowance, 8.13(9) IAB 9/26/84 **ARC 4985**	Department of Job Service 1000 East Grand Des Moines, Iowa	October 17, 1984 9:30 a.m.
HEALTH DEPARTMENT[470]		
Hospital and related institutions, records, 5.5 IAB 10/10/84 **ARC 5031**	Fourth Floor, No. 1 Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 30, 1984 1:00 p.m.
MERIT EMPLOYMENT DEPARTMENT[570]		
Vacation and leave, 14.10(5) IAB 9/26/84 **ARC 4991**	Conference Room South Half Grimes State Office Bldg. Des Moines, Iowa	November 8, 1984 9:20 a.m.

PUBLIC INSTRUCTION DEPARTMENT[670]		
Special education, ch 12 IAB 10/10/84 **ARC 5011**	Central Office Board Room First Floor Washington School 207 Scott St. Council Bluffs, Iowa	November 5, 1984 7:00 p.m.
	First Floor Grimes State Office Bldg. Des Moines, Iowa	November 7, 1984 1:00 p.m.
	Winter and Spring Conference Room Grant Wood Area Education Agency Building 10 4401 Sixth St. S.W. Cedar Rapids, Iowa	November 8, 1984 7:00 p.m.
TRANSPORTATION, DEPARTMENT OF[820]		
Contracts set aside for disadvantaged business [06,G] ch 2 IAB 9/12/84 **ARC 4938**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	October 23, 1984
Contracts set aside for disadvantaged business [09,A] ch 1 IAB 9/12/84 **ARC 4939**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	October 23, 1984
WATER, AIR AND WASTE MANAGEMENT[900]		
Operators, water and waste systems, certification IAB 10/10/84 **ARC 5025**	Fifth Floor Conference Room Henry A. Wallace Bldg. Des Moines, Iowa	October 30, 1984 10:00 a.m.

ARC 5019

ARTS COUNCIL[100]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 304A.4 and 304A.6, the Arts Council hereby gives Notice of Intended Action to amend Chapter 2, "Policies and Procedures," Iowa Administrative Code.

The proposed rule amends the final report deadline for touring arts team and county care programs to thirty days after completion of the program in accordance with final report deadlines in other agency programs. The rule removes the maximum five-year funding restrictions for touring artists and agrees to accept audio or video tapes for the purpose of auditioning first-time touring applicants. The rule also requires minigrant applicants to list either the employer's identification number or social security number necessary to process payment under the state's new IFAS system.

The new rule designates a time period of thirty days after notification of the Council's decision for appeals to be received. The rule also states that grantees must return contracts and revised budget forms within six months of funding notification or face the possibility of loss of funds. This will ensure the prompt payment of grant funds in the same fiscal year covered by the grant.

Any interested person may make written suggestions or comments on these rules prior to October 30, 1984. Such written materials should be directed to the director, Iowa Arts Council, State Capitol Complex, Des Moines, Iowa 50319. Persons who may want to convey their views orally should contact the director, Iowa Arts Council at (515) 281-4451, or in the council offices at 1223 East Court Avenue, Des Moines, Iowa. Also, there will be a public hearing on October 30, 1984, at 10:00 a.m. in the Iowa Arts Council office. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the director of the Council at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code sections 304A.4 and 304A.6.

ITEM 1. Amend subrule **2.3(1)**, paragraph "d":

d. Programs supported in any way by Iowa arts council funds must be open to the public. All reports *and contract-mandated requirements* from previous direct grants and programs must be correctly submitted and filed in the Iowa arts council office before financial assistance funds will be released.

ITEM 2. Amend subrule **2.3(2)**, paragraph "b," subparagraph (5) and add the following new subparagraph (7):

(5) The council cannot and will not permit grantees to become dependent on it for continuing funding of reoccurring projects. *Applicants requesting funds to tour may be excluded from this restriction provided that services are not limited to a group of reoccurring sponsors.* The projects may be considered a low priority after five years of council support unless circumstances encourage continued financial assistance.

(7) Projects funded through the grant program must occur within the contracted time period. Extensions are generally not available.

ITEM 3. Amend subrule **2.3(3)**, paragraph "c," subparagraph (3) and 2.3(3), paragraph "e":

(3) First-time applicants requesting performing assistance must arrange to be heard or seen in performance or audition by the council or its duly appointed representative within a year prior to making application to the Iowa arts council. *In those instances where live auditions may be impractical, such determinations to be made by council staff, electronic support materials may be submitted.*

e. Creative artists grants. The Iowa arts council conducts a program for professional creative writers (poets, playwrights, and fiction authors), musical composers or arrangers, ~~dance~~ choregraphers, *visual artists (for projects other than exhibitions which are funded separately),* and film or video artists. Creative artists may apply for matching grants to prepare works-in-progress for circulation to potential publishers, agents, sponsors or performers. Eligible projects may include: Hiring musicians to produce a demonstration tape of a new composition, studio recording fees, hiring a music copyist to prepare a score or parts, hiring dancers to produce a video tape of a new choreography, typist fees to finalize the manuscript of a novel, hiring consultants to prepare publications or other preparatory expenses. Creative artists grants are not fellowships.

ITEM 4. Amend subrule **2.3(5)**, paragraph "b," subparagraph (2), and 2.3(5), paragraph"g":

(2) Committees. There ~~are two~~ *is one* committees, literature ~~and expansion arts~~, *at present.* ~~Each~~ eCommittees consists of no less than six members, five chosen at large and at least one Iowa arts council member. The Iowa arts council member chairs the committee.

g. Contract. Recipients of grant awards are required to enter into formal contract with the Iowa arts council, using contract form G-3. Recipients must also fill out cash request form G-4. Grant moneys will be issued within the project year after the grantee has returned the Iowa arts council contract properly signed and notarized, and the cash request forms. *Recipients who fail to return signed contracts, revised budgets and other related materials within six months of funding notification face cancellation of the pledge for Iowa arts council funds.*

ITEM 5. Add to subrule **2.3(6)**, paragraph "a," a new subparagraph (10) and 2.3(6), a new paragraph "e":

(10) List employer's identification number for organizations or social security number for individuals.

e. Reporting. All grantees must submit financial report form G-5 and narrative report form G-6. These forms are due thirty days after completion of the project.

ITEM 6. Amend subrule **2.3(7)**, paragraph "a," subparagraph (5):

(5) The awards process is the same as stated in 2.3~~(4)~~ *(5)* "c" ~~and "d"~~ *through "h."*

ITEM 7. Amend subrule **2.3(8)**, paragraph "k":

k. Appeals. A formal appeals process is available only to applicants whose grants were declined on procedural impropriety or error as evidenced by one or more of the following reasons: (1) Application declined on the basis of

ARTS COUNCIL[100] *(cont'd)*

review criteria other than those appearing in the relevant guidelines, (2) application declined based on influence on the advisory panel or council member(s) willfully or unwillfully failing to discluse conflicts of interest, and (3) application declined based on highly erroneous information provided by staff, panelists, or council members at the time of review despite the fact that the applicant provided the council staff with accurate and complete information on regulation forms as part of the standard application process. Incomplete applications are specifically denied any appeals process whatsoever. Substantially revised applications may be recognized as new applications, or may be declared ineligible if constraints of time preclude accurate information being made available to panelists. A successful appeal will be determined at the sole discretion of the agency director, whose discretions may include full or partial funding of the aggrieved application at the next earliest occasion. *Requests for appeals must be received, in writing, within thirty days of the date of notification of the council's decision.*

ITEM 8. Amend subrule **2.3(9)**, paragraph "a," subparagraph (6):

(6) Sponsors must complete an evaluation-budget form for each program which must be received by the Iowa arts council within ~~two weeks~~ *thirty days* after completion of the program.

ITEM 9. Amend subrule **2.3(10)**, paragraph "a," subparagraph (7):

(7) Sponsors must ~~submit an evaluation form about their solo artists program immediately following the event and will not qualify for further funding if evaluations are outstanding. An artist will be paid by the Iowa arts council for a program as soon as it has taken place.~~ *notify Iowa arts council within forty-eight hours after the event to verify that the program has taken place in order to begin the Iowa arts council's payment to the artists.* The local sponsor's portion of the fee is due on the day of the artist's visit.

ITEM 10. Amend subrule **2.3(11)**, paragraph "d":

d. Sponsor reporting. The local co-ordinator must fill out and return report P-13 within ~~ten days~~ *thirty days* of the TAT residency.

ITEM 11. Add to subrule **2.3(13)**, paragraph "e," a new subparagraph (4):

(4) Sponsors must complete and return program final report form P-25 within thirty days of the completion of the project.

ITEM 12. Amend subrule **2.3(18)**, paragraph "c":

c. Contracts and reports. The sponsor must enter into a legal contract with the arts council using contract P-38. ~~Upon termination of the project,~~ *Within thirty days,* sponsors must complete and return final report form P-36.

ARC 5003

BEER AND LIQUOR CONTROL DEPARTMENT[150]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 123.20, subsections 2 and 3, the Iowa Beer and Liquor Control Department hereby gives Notice of Intended Action to amend Chapter 9, "Procurement Leasing of State Liquor Stores," Iowa Administrative Code. Item 1 gives this department's council the power of keeping lease bids active past ninety days. Item 2 gives this department's real estate committee the power to negotiate renewal leases without going through the formal bidding procedure.

Any interested party may make written suggestions or comments on these proposed amendments prior to November 1, 1984. Such written materials should be directed to the Licensing Supervisor, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the licensing supervisor, Iowa Beer and Liquor Control Department at 515/964/6831. Also, there will be a public hearing on Thursday, November 1, 1984, at 1:00 p.m. in the conference room in the department's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the licensing supervisor at least one day prior to the date of the public hearing.

The following amendments are proposed:

ITEM 1. Amend rule 150—9.10(123) as follows:

150—9.10(123) Opening of bids. Bids shall be opened publicly and read aloud on the date and hour designated on the "request for bid" form. Bids as received are to be tabulated and the tabulation made available to all interested parties. If a satisfactory bid has been received, an award shall be made within ninety calendar days of the formal bid opening. If an award is not made within ninety calendar days, the bids shall be deemed rejected and prices as quoted by bidders shall not deemed binding. *The department's council may, however, grant the real estate committee permission to keep bids active past the ninety-day period.*

This rule is intended to implement Iowa Code section 123.20, subsections 2 and 3.

BEER AND LIQUOR CONTROL DEPARTMENT[150] *(cont'd)*

ITEM 2. Subrule 9.13(1) is amended to read as follows:

9.13(1) Conditions requiring negotiation. Leases may be negotiated under the following conditions:

a. If determined to be necessary in the public interest during a period of natural disaster or emergency for a temporary period not to exceed one year.

b. If bids or quotations have been solicited and no response has been received.

c. If it is determined that the bid prices submitted after advertising or solicitation of quotations have not been independently arrived at.

d. If it is determined that the bid price or location submitted after advertising or solicitation of quotations are not reasonable to the department.

e. If it is determined that it is to the department's advantage to negotiate a renewal lease for an existing liquor store for up to two additional terms, each not to exceed five years.

This rule is intended to implement Iowa Code section 123.20, subsections 2 and 3.

ARC 5029

CIVIL RIGHTS COMMISSION[240]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 601A.5, the Iowa Civil Rights Commission hereby gives Notice of Intended Action to amend Chapter 1, "Rules of Practice," Iowa Administrative Code.

The current subrule 1.2(2), description of agency organization, does not accurately reflect the factual organizational structure of the agency. These amendments will amend 1.2(2) to accurately describe agency organization:

Any interested person may make written suggestions or comments on these proposed rules prior to October 30, 1984. Such written material should be directed to the Administration Director, Iowa Civil Rights Commission, 507 - 10th Street, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Administration Director at 515/281-8084 or in the commission office on the eighth floor of 507 - 10th Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 601A.5.

The following amendments to subrule **1.2(2)**, paragraph "c" are proposed:

c. Advocacy and affirmative action division. This division is responsible for the prevention of discrimination through educational, affirmative action, *contract compliance,* and ~~developmental~~ ~~disability~~ *fair housing outreach* programs. Its activities include training, community liaison, public outreach, public relations, individual or group consultation and intervention. The division may be reached during business hours at (515) 281-4121.

ARC 5022

COMMERCE COMMISSION[250]

TERMINATION OF NOTICE OF INTENDED ACTION

The Iowa State Commerce Commission hereby gives notice that on September 11, 1984, the Commission issued an order in Docket No. RMU-84-8, In Re: Energy Adjustment Clause II, "Order Terminating Rulemaking." In that order the Iowa State Commerce Commission terminated its proposal (**ARC 4712**, published in the Iowa Administrative Bulletin June 6, 1984) to add a new subrule, Iowa Administrative Code 250—20.9(4).

ARC 5028

COUNTY FINANCE COMMITTEE[292]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 1983 Iowa Code Supplement sections 331.403 and 333A.4, the County Finance Committee proposes to amend chapter 1 of the Iowa Administrative Code and to adopt a new chapter 5 on annual financial reports.

The amendment to chapter 1 changes a definition to comply with recent statutory changes.

The addition of chapter 5 establishes requirements for the form and content of annual financial reports.

Any interested person may make written suggestions or comments on these rules prior to October 30, 1984. Such written materials should be directed to Ronald J. Amosson, Chairman, County Finance Committee, State Comptroller's Office, State Capitol, Des Moines, Iowa 50319. There will be a public hearing on October 30, 1984, at 1:00 p.m. in the Conference Room, State Comptroller's Office, State Capitol, Des Moines, Iowa. Persons who wish to make oral presentations at the public hearing should contact the Chairman, County Finance Committee, at (515) 281-3078, at least one day prior to the date of the public hearing.

The following amendment and additions are proposed.

ITEM 1. Subrule 1.1(3) is amended to read as follows:

1.1(3) County budget. The term "county budget" refers to the budget ~~approved~~ *adopted* by the board of supervisors ~~as the levying board authorized in~~ *pursuant to Iowa Code* chapters ~~24 and 344~~ *331* ~~of the Code~~.

ITEM 2. A new chapter 5, "Annual Financial Reports", is added as follows:

292—5.1(70GA, ch 123) Responsibility. The preparation of the reports and plans required under rules 5.2(70GA, ch 123), 5.3(70GA, ch 123), and 5.4(70GA, ch 123) shall be the responsibility of the board of supervisors, appropriately assisted by other county officials and employees.

COUNTY FINANCE COMMITTEE[292] *(cont'd)*

292—5.2 (70GA, ch 123) Report summary. The summary of the annual financial report, as required by Iowa Code section 331.403, subsection 1, shall include for each major fund type:

1. The amounts of each class of expenditures, as defined in subrule 4.1(1).
2. Property tax levies, credits to taxpayers, and net current and delinquent property tax collections.
3. The amounts from sources of revenue other than property taxation, as defined in subrule 4.1(2).
6. Beginning and ending fund balances.
7. Other financing sources and uses.
8. Comparisons of the above amounts with budgeted amounts, as amended.

292—5.3(70GA, ch 123) Report details.

5.3(1) Report of results of operations. The report of the results of operations, as required by Iowa Code section 331.403, subsection 1, shall provide details for county revenues by fund and source, and details for county expenditures by fund and function.

5.3(2) Report of financial condition. The report of financial condition, as required by Iowa Code section 331.403, subsection 1, shall provide details for the assets, liabilities, and fund balances of the various county funds.

5.3(3) Other details. The committee may prescribe that additional information, including but not limited to details for county expenditures by department and object, shall be included in the report details.

5.3(4) Reporting forms. The committee through the state comptroller shall prescribe the forms to be used for reporting annual financial report details.

292—5.4(70GA, ch 123) Generally accepted accounting principles.

5.4(1) Compliance. The annual financial report summary and report details shall be prepared in conformity with generally accepted accounting principles.

5.4(2) Waiver. In accordance with Iowa Code section 331.403, subsection 3, the committee may waive the requirements of subrule 5.4(1) if a county presents evidence to the committee that it has substantially complied with the following requirements:

a. The committee may grant a waiver for the year ending June 30, 1985, if a county submits to the committee by June 1, 1985, an acceptable plan which incorporates, at minimum:

(1) A description of an organizational structure to coordinate the implementation of reporting in conformity with generally accepted accounting principles, and

(2) An analysis of the types of transactions that need to be considered to report in conformity with generally accepted accounting principles, and

(3) A review of existing accounting systems which addresses system weaknesses affecting conversion to reporting in conformity with generally accepted accounting principles, and

(4) A discussion of the progress towards compliance with subrule 5.4(1) made by June 1, 1985.

b. The committee may grant a waiver for the year ending June 30, 1986, if a county submits to the committee by June 1, 1986, an acceptable plan which incorporates, at minimum:

(1) The plan required by subrule 5.4(2) paragraph "a," and an evaluation of the progress towards the objectives in that plan, and

(2) A description of the necessary accounting procedures to collect information in a manner that will represent balance sheet reports in conformity with generally accepted accounting principles, and

(3) A description of the necessary accounting procedures to gather needed information and perform end-of-period adjustments to prepare reports in conformity with generally accepted accounting principles.

c. The committee may grant a waiver for the year ending June 30, 1987, if a county submits to the committee by June 1, 1987, an acceptable plan which incorporates, at minimum:

(1) The plan required by subrule 5.4(2), paragraph "b," and an evaluation of the progress towards the objectives in that plan, and

(2) The report required by subrule 5.3(2), prepared in conformity with generally accepted accounting principles, as of June 30, 1986.

292—5.5 (70GA, ch 123) Resubmission of plan. If any plan submitted by a county under the provisions of 5.4(2) is determined by the committee to be unacceptable, the county shall submit a revised acceptable plan to the committee within thirty days of being notified by the committee of the deficiencies in the plan.

ARC 5030

DENTAL EXAMINERS, BOARD OF[320]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapters 1, 5, 6, 7, 10, 13, 14, and 51 of the Iowa Administrative Code.

Iowa Code sections 258A.1(7) and 258A.1(8) include the definitions of "Peer review" and "Peer review committee." The Board has included these two definitions in Chapter 1 of the Board's rules for reference.

Iowa Code sections 147.22 and 147.24 refer to an annual meeting and election of officers with its own membership and per diem compensation. The rules in Chapter 5 have been addressed to bring the Board's rules in compliance with statutes.

Iowa Code section 147.102, as amended by 1983 Iowa Acts, chapter 206, section 9, includes the wording dentistry and dental hygiene. The Board has with these rules addressed that all references to "Department of Health" shall be deleted and substituted with "Iowa Board of Dental Examiners," all references to "department" shall be deleted and substituted with "board" or "board office," and all references to the office location shall be substituted with the Board's current address.

Any interested person may make written suggestions or comments on these proposed rules prior to October 30, 1984. Such written materials should be directed to the Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

DENTAL EXAMINERS, BOARD OF[320] *(cont'd)*

The proposed rules are intended to implement Iowa Code section 147.80.

ITEM 1. After rule 320—1.7(153) insert the following new rules:

320—1.8(153) "Peer review" as defined in Iowa Code section 258A.1(7) means evaluation of professional services rendered by a licensee.

320—1.9(153) "Peer review committee" as defined in Iowa Code section 258A.1(8) means one or more persons acting in a peer review capacity pursuant to these rules.

ITEM 2. Subrules 5.2(1) and 5.2(4) are amended to read as follows:

5.2(1) The board shall hold an annual meeting each year in Des Moines to elect officers and conduct such other business as may properly come before the board. Officers of the board shall consist of a chairperson, vice-chairperson, *and* secretary~~, and treasurer~~. Officers shall assume their duties ~~on July 1 following their election.~~ *immediately following their election at the annual meeting.*

5.2(4) The board may conduct ministerial business matters by mail. The chairperson or vice-chairperson may direct the ~~secretary~~ *executive director* to send such correspondence by ordinary mail. Members who shall make appropriate response shall do so to the ~~secretary~~ *executive director* within ten days of the original mailing.

ITEM 3. Rule 320—5.3(153) is amended to read as follows:

320—5.3(153) Budget. The ~~vice-~~chairperson and ~~treasurer~~ *executive director* shall prepare and submit ~~an annual~~ *the* budget to the board.

ITEM 4. Rule 320—5.4(153) is amended to read as follows:

320—5.4(153) Compensation. ~~The~~ *Each* board *member* shall receive ~~a forty-dollar~~ *the statutory* per diem in addition to necessary travel and other expenses incurred in the discharge of its duties.

ITEM 5. Rule 320—5.5(153) is amended to read as follows:

320—5.5(153) Office. The address of the board is the ~~State Department of Health, Third Floor, Lucas State Office Building,~~ *Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court,* Des Moines, Iowa 50319.

ITEM 6. Rule 320—6.1(153) is amended to read as follows:

320—6.1(153) Availability of information. All information regarding rules, orders, forms, time and place of meetings, minutes of meetings, records of hearings, and examination of records are available to the public at the ~~department~~*board office* between the normal working hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. The ~~department~~ *board* may charge its usual fee, if any, for the copying of information. Written information may be obtained from: Iowa Board of Dental Examiners, ~~Iowa Department of Health, Lucas State Office Building,~~ *Executive Hills West, 1209 East Court,* Des Moines, Iowa 50319. Requests for information should be in writing, dated, and signed. Submissions of materials to the board should be made to the ~~department~~ *board* unless stated otherwise and should enclose a cover letter stating the use for which the materials are intended.

ITEM 7. Rule 320—6.2(153), first sentence, is amended to read as follows:

320—6.2(153) Records of board. The ~~department~~ *board* shall maintain the following records of the board for public inspection:

ITEM 8. Rule 320—6.3(153) is amended to read as follows:

320—6.3(153) Change of address. Persons licensed in this state to practice dentistry or dental hygiene shall notify the ~~department~~ *board* within ten days of any change of office address.

ITEM 9. Rule **320—6.4(153)** is amended by adding at the end the following new board form:

24. Board Form 24: Application for Dental Hygiene License by Credentials.

ITEM 10. Subrule 7.1(4) is amended to read as follows:

7.1(4) Upon receipt of the petition, the board shall take the petition under advisement. The board may request additional information from the petitioner or the ~~department~~ *board office.*

ITEM 11. Subrules 10.2(1) and 10.2(2) are amended to read as follows:

10.2(1) Additional license certificates shall be obtained from the ~~department~~ *board* whenever a licensee practices at more than one address. No more than two additional license certificates shall be issued.

10.2(2) Duplicate licenses shall be issued by the ~~department~~ *board* upon satisfactory proof of loss or destruction of original license.

ITEM 12. Subrule 13.1(2) is amended to read as follows:

13.1(2) If a resident dentist licensee leaves the service of such institution during the tenure of residency, internship or graduate study, the license shall be returned immediately to the ~~department of health~~ *board* and the authority granted by the board to licensee shall be automatically canceled.

ITEM 13. Subrule 13.2(4) is amended to read as follows:

13.2(4) ~~A fee of fifteen dollars~~ *The appropriate fee as specified in chapter 15 of these rules* shall be paid by the applicant for issuance and renewal of the faculty permit.

ITEM 14. Rule 320—14.2(153) is amended to read as follows:

320—14.2(153) Notice of renewal. The ~~department~~ *board* will notify each licensee by mail of the expiration of ~~his or her~~ *the* license. A penalty may be assessed by the board for late renewal.

ITEM 15. Subrule 51.1(1) is amended to read as follows:

51.1(1) "Board" means the Iowa ~~state~~ board of ~~dentistry~~ *dental examiners.*

ARC 5009

DENTAL EXAMINERS, BOARD OF[320]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 147.80, the Iowa State Board of Dental Examiners gives Notice of Intended Action to amend Chapter 11, "Applications," of the Iowa Administrative Code relating to applications for licensure for dentists and dental hygienists.

Iowa Code section 147.80(9) refers to an application for license to practice dental hygiene issued under a reciprocal agreement. The Board has with these proposed rules addressed the requirements for such an application for licensure issued under a reciprocal agreement. These rules are to bring the department's rules into compliance with the statutes.

Any interested person may make written suggestions or comments on these proposed rules prior to October 30, 1984. Such written materials should be directed to the Director, Iowa State Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 147.80.

ITEM 1. Rule 320—11.1(153) is amended to read as follows:

320—11.1(153) Examination required for licensure to practice dentistry. Any person desiring to take the examination to qualify for licensure to practice dentistry in this state must make application to the Central Regional Dental Testing Service, Inc. (CRDTS), ~~2715 West Twenty-ninth Street~~ *5200 Huntoon*, Topeka, Kansas ~~66614~~ *66604*, and meet such other requirements as CRDTS may establish for purposes of the examination.

ITEM 2. Subrule **11.2(2)**, paragraphs "a," "c" and "d" are amended to read as follows and a new paragraph "f" added:

a. Satisfactory evidence of graduation *with a DDS or DMD* from an accredited dental college approved by the board.

c. ~~Certificate signed by the secretary of the Council of National Board of Dental Examiners evidencing~~ *Evidence of* successful completion of Part I and Part II of the examination, *with resulting scores*, administered by the ~~council~~ *Joint Commission on National Dental Examinations*. At the discretion of the board, any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this ~~certificate~~ *evidence*.

d. ~~Certification by the Central Regional Dental Testing Service, Inc.~~ *Evidence* of successful completion of the examination, *with resulting scores*, administered by ~~CRDTS~~ *the Central Regional Dental Testing Service, Inc.*

f. Successful completion of the jurisprudence examination administered by the board of dental examiners.

ITEM 3. Subrule **11.3(2)**, paragraphs "a," "b" and "e" are amended to read as follows:

a. Satisfactory evidence of graduation *with a DDS or DMD* from an accredited dental college approved by the board.

b. Evidence of successful completion of Parts I and II of the examination of the ~~Council of National Board of Dental Examiners~~ *Joint Commission on National Dental Examinations* with resulting scores, or evidence of having passed a written examination during the last ten years that is comparable to the examination given by the ~~Council of National Board of Dental Examiners~~ *Joint Commission on National Dental Examinations*.

e. ~~Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dentistry of having engaged in such practice for at least five years immediately preceding the date of application.~~ *Certification by a state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least five years immediately preceding the date of application and evidence of having engaged in the practice of dentistry in that state for five years immediately preceding the date of application or evidence of five years of practice satisfactory to the board.*

ITEM 4. Rule 320—11.4(153) is amended to read as follows:

320—11.4(153) Examination required for licensure to practice dental hygiene. Any person desiring to take the examination to qualify for licensure to practice dental hygiene in this state must make an application to the Central Regional Dental Testing Service, Inc. (CRDTS), ~~2715 West Twenty-ninth Street~~ *5200 Huntoon*, Topeka, Kansas ~~66614~~ *66604*, and meet such other requirements as CRDTS may establish for purposes of the examination.

ITEM 5. Subrule **11.5(2)**, paragraphs "c" and "d" are amended to read as follows and a new paragraph "f" added.

c. ~~Certification by the Council of National Board of Dental Examiners~~ *Evidence* of successful completion of the examination, *with resulting scores*, administered by ~~that council~~ *the Joint Commission on National Dental Examinations*.

d. ~~Certification by the Central Regional Dental Testing Service, Inc.~~ *Evidence* of successful completion of the examination, *with resulting scores*, administered by ~~CRDTS~~ *the Central Regional Dental Testing Service, Inc.*

f. Successful completion of the jurisprudence examination administered by the board of dental examiners.

ITEM 6. Amend chapter 11 by adding the following new rule and renumbering rules 320—11.6(153) and 320—11.7(153) accordingly:

320—11.6(153) Application for dental hygiene licensure by credentials. The following requirements must be satisfied prior to licensure to practice dental hygiene in Iowa through the procedure of licensure by credentials:

11.6(1) Applications for licensure by credentials to practice dental hygiene in this state shall be made to the board on the form provided by the board and must be completely filled out.

11.6(2) Applications must be filed with the board along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the board.

b. Evidence of successful completion of the examination of the Joint Commission on National Dental Examinations with resulting scores, or evidence of having

DENTAL EXAMINERS, BOARD OF[320] *(cont'd)*

passed a written examination that is comparable to the examination given by the Joint Commission on National Dental Examinations.

c. Evidence that the applicant has not failed the clinical examination of Central Regional Dental Testing Service or comparable state board examination within the last three years.

d. Evidence of a current, valid license to practice dental hygiene in another state, territory or district of the United States issued upon clinical examination.

e. Certification by the state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least three years immediately preceding the date of application and evidence of having engaged in the practice of dental hygiene in that state for three years immediately preceding the date of application or evidence of practice satisfactory to the board.

f. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dental hygiene that the applicant has not been the subject of final or pending disciplinary action.

g. List of professional societies or organizations of which the applicant is a member.

h. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dental hygienist.

i. Evidence that the state, territory or district from which the applicant comes, extends licensure without examination to Iowa dental hygienists who hold a current license and graduated from an accredited dental hygiene school. Submission of a copy of the dental hygiene licensing law and regulations of the jurisdiction will satisfy this requirement.

j. The fee for licensure by credentials as specified in chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the board are nonrefundable.

11.6(3) Applicant shall appear for a personal interview conducted by the board by request only.

11.6(4) The board may also require such examinations as necessary to evaluate the applicant for licensure by credentials, including jurisprudence examination.

11.6(5) Applications must be signed and verified as to the truth of the statements contained therein. The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of sixty days will be required for the investigation.

ARC 5031

HEALTH DEPARTMENT[470]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 135.11 and 145.3, the Iowa State Department of Health hereby gives Notice of Intended Action to amend Chapter 51 "Hospital and Related Institutions" Iowa Administrative Code.

This change will require hospitals to use the uniform hospital billing form (Form UB-82 HCFA - 1450) and manual (Iowa Billing Data Element Specifications) when billing patient services and posting hospital prices.

A public hearing on the proposed rules will be held on October 30, 1984 at 1:00 p.m. in the fourth floor conference room 1, Lucas State Office Building, Des Moines, Iowa. Any interested party may submit written comments on these rules, such will be accepted until October 30, 1984. Submissions should be addressed to Mark W. Wheeler, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, fourth floor, Des Moines, Iowa 50319.

This change is intended to implement Iowa Code section 145.3.

ITEM 1. Amend rule 51.5(135B) by adding the following new subrule:

51.5(3) All hospitals shall use the uniform hospital billing form (Form UB-82 HCFA-1450) and manual (Iowa Uniform Billing Data Element Specifications) when billing for inpatient or outpatient services in accordance with Iowa Administrative Code 465-5.3 (70GA,ch27) [Health Data Commission].

ITEM 2. Amend rule 51.5(135B) by adding the following new subrule:

51.5(4) All hospitals shall submit annually to the commissioner the Hospital Price Information Survey in accordance with Iowa Administrative Code 465-8.2(145) [Health Data Commission] and shall post hospital price information in accordance with Iowa Administrative Code 465—8.3(145).

ARC 5014

HEALTH DEPARTMENT[470]

BOARD OF PSYCHOLOGY EXAMINERS

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 147.80, the Board of Psychology Examiners gives Notice of Intended Action to amend Chapter 140 of the Iowa Administrative Code relating to fees and nomenclature of the licensure office.

The proposed rule amendments place the fees under one rule relating to fees, and change the name of the licensure office to Professional Licensure, and permit an appropriately licensed health care professional to sign disability waivers for continuing education.

Any interested person may make written comments concerning the proposed rule amendments not later than October 30, 1984, addressed to Peter J. Fox, Hearing and Compliance Officer, Professional Licensure, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

HEALTH DEPARTMENT[470] *(cont'd)*

The proposed rules are intended to implement Iowa Code sections 147.10, 147.80, and 258A.2.

ITEM 1. Subrule 140.4(3) is amended to read as follows:

140.4(3) Each application must be accompanied by a check or money order ~~for one hundred dollars, nonrefundable,~~ *in the amount provided in rule 470—140.10(154B),* payable to the Iowa state ~~department of health~~ *board of psychology examiners.*

ITEM 2. Subrule 140.4(9) is amended to read as follows:

140.4(9) Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall file an application for a limited permit to practice at least sixty days in advance of such practice on a form provided by the board. The limited permit expires one year after issuance and may be renewed only once for an additional twelve-month period.

The following fees, which are nonrefundable, shall be submitted payable to the Iowa state ~~department of health~~ *board of psychology examiners:*

a. The application for a limited permit to practice shall be accompanied by a check or money order ~~in the amount of one hundred dollars.~~ *as provided in rule 470—140.10(154B).*

b. The renewal fee ~~of seventy dollars~~ *as provided in rule 470—140.10(154B)* by check or money order shall be submitted at least thirty days prior to the expiration of the initial limited permit if the person intends to continue to practice in Iowa under the provisions of Iowa Code section 154B.3(5).

The rule is intended to implement Iowa Code section 147.80.

ITEM 3. Subrule 140.8(3) is amended to read as follows:

140.8(3) Examination dates will be announced by the board. The schedule for the written examination will establish the time, place, the final date by which the board must receive the applicant's written intention to be examined, and other pertinent information or instructions. The examination fee ~~is one hundred dollars and is to~~ *as provided in rule 470—140.10(154B) shall* be paid by check or money order to the Iowa state ~~Department of Health.~~ *board of psychology examiners.*

ITEM 4. Subrule 140.9(1) is amended to read as follows:

140.9(1) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay *the* renewal ~~fees~~ *fee as provided in rule 470—140.10(154B)* on or before the renewal date. ~~The biennial renewal fee is one hundred forty dollars.~~

ITEM 5. Subrule 140.9(2) is amended to read as follows:

140.9(2) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses and the practice of psychology must cease until all renewal fees are received by the board. In addition thereto a penalty fee ~~of fifty dollars~~ *as provided in rule 470—140.10(154B)* shall be paid.

ITEM 6. Subrule 104.9(3) is amended to read as follows:

140.9(3) If the renewal fees are not received by the board within one hundred eighty days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee ~~of seventy dollars~~ *as provided in rule 470—140.10(154B)* in addition to the renewal fee and the penalty.

ITEM 7. Subrule 140.101(6) is amended to read as follows:

140.101(6) If a licensee fails to complete the continuing education requirements during the continuing education period, the licensee shall pay a penalty ~~of twenty-five dollars~~ *as provided in rule 470—140.10(154B)* unless the failure is because of disability or illness documented by a statement from an appropriately licensed health care professional and is acceptable to the board.

ITEM 8. Rule 140.106(258A) is amended to read as follows:

470—140.106(258A) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the secretary of the board upon completion of the educational activity, but in no case later than February 1 of the following calendar year. The report shall be sent to the Iowa State Department of Health, ~~Licensing and Certification Section,~~ *Professional Licensure,* Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 9. Rule 140.201(67GA,Ch95) is amended to read as follows:

470—140.201(~~67GA,Ch95~~*258A*) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Psychology Examiners, ~~Licensing and Certification Section,~~ *Professional Licensure,* Lucas State Office Building, Des Moines, Iowa 50319. The complaint shall include complainant's address and phone number, be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

ITEM 10. Rule 470—140.10(154B) is rescinded and the following adopted in lieu thereof.

470—140.10(154B) Licensure fees. All fees are nonrefundable.

140.10(1) Application fee for license to practice psychology is one hundred dollars.

140.10(2) Examination fee for a license to practice psychology is one hundred dollars.

140.10(3) Application fee for a limited permit is one hundred dollars.

140.10(4) Biennial renewal fee for a license to practice psychology is one hundred forty dollars.

140.10(5) Renewal fee for a limited permit is seventy dollars.

140.10(6) Penalty fee for failure to submit renewal fee as required by subrule 140.9(2) is fifty dollars.

140.10(7) Reinstatement fee as required by subrule 140.9(3) is seventy dollars.

140.10(8) Delinquent penalty fee for failure to complete continuing education as provided in subrule 140.101(6) is twenty-five dollars.

140.10(9) Fee for a duplicate license if the original is lost or stolen is ten dollars.

140.10(10) Fee for a certified statement that a licensee is licensed in this state is ten dollars.

ITEM 11. Rule 470—140.107(67GA,Ch95) is amended to read as follows:

HEALTH DEPARTMENT[470] *(cont'd)*

470—140.107(~~67GA,Ch95~~258A) ~~Physical disability~~ *Disability* or illness. The board may, in individual cases involving ~~physical~~ disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and ~~a physician licensed by the board of medical examiners.~~ *an appropriately licensed health care professional, and the waiver is acceptable to the board.* Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the ~~physical~~ disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

ARC 5015

HEALTH DEPARTMENT[470]

(JOINT RULE WITH BOARD OF COSMETOLOGY EXAMINERS)

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 157.6 and 157.14, the State Department of Health and the Board of Cosmetology Examiners give Notice of Intended Action to amend Chapter 150 of the Iowa Administrative Code relating to germicidal solutions.

The proposed rule removes formalin as a germicidal solution and permits use of isopropyl alcohol from seventy up to and including ninety percent as a germicidal solution.

Any interested person may make written comments concerning the proposed rule not later than October 30, 1984, addressed to Grace M. West, Board Administrator, Board of Cosmetology Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 157.6.

Rule 470—150.9(157) is amended to read as follows:

470—150.9(157) Sanitation. Except as set forth in 150.9(3), all cosmetology, styling and hair cutting tools, instruments and equipment in a beauty salon or school of cosmetology which come into contact with a patron's hair or skin shall be sanitized before use on each patron by cleansing thoroughly, with soap and hot water and then immersed at least twenty minutes in an approved germicidal solution in a covered flat container large enough to immerse completely all tools, instruments, and equipment, after which they should be dried and placed in a closed cabinet. All germicidal solutions shall be labeled. The solution shall be ~~twenty percent formalin in water,~~ seventy ~~per cent~~ *to and including ninety percent* isopropyl alcohol in water, ~~a combination of twenty percent formalin in water with seventy per cent isopropyl alcohol in water,~~ quaternary ammonium compounds in one to five hundred solution in water, or other equivalent germicidal solutions approved by the state department of health.

150.9(1) Every cosmetologist shall wash ~~his or her~~ *their* hands with soap and water immediately before serving each patron.

150.9(2) Head coverings, hair pins, clips, rollers and curlers shall be washed and sanitized after each use as above directed.

150.9(3) All metallic instruments with a cutting edge shall be kept clean by wiping carefully after each use with cotton saturated with an approved disinfectant solution. It is recommended that the solutions used with metallic instruments be the isopropyl alcohol, seventy ~~per cent~~ *to and including ninety percent* solution.

ARC 4999

HEALTH DEPARTMENT[470]

BOARD OF EXAMINERS

FOR SPEECH PATHOLOGY AND AUDIOLOGY

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 17A.10, the Board of Examiners for Speech Pathology and Audiology gives Notice of Intended Action to amend Chapter 156 of the Iowa Administrative Code relating to disciplinary procedures for the Board.

The proposed rule provides a procedure for informal settlements or stipulations of contested cases.

Any interested person may make written comments not later than October 30, 1984, addressed to Peter J. Fox, Hearing and Compliance Officer, Professional Licensure, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 17A.10.

Chapter 156 is amended by adding the following new rule.

470—156.110(258A) Informal settlements. Informal stipulation or settlement negotiations may be initiated by either party to the controversy either prior to or during a contested case proceeding. However, neither party is obligated to utilize this informal procedure to settle the controversy pursuant to such informal procedures. The investigating board member charged with the responsibility of handling disciplinary and enforcement matters shall have the authority to negotiate an informal settlement. If the investigating board member believes it to be the best interest of the board and the public to informally settle controversy, the investigating board member shall recommend the terms of stipulation or

settlement to the board. If the board approves the terms, the investigating board member shall effectuate the settlement. The terms of the stipulation or settlement shall be in writing for entering and filing by the board.

ARC 5001

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 239.18, the Department of Human Services hereby amends Chapter 40, "Application for Aid," appearing in the Iowa Administrative Code. The Department has the authority to promulgate such rules and regulations as may be necessary to make the administration of the Aid to Dependent Children (ADC) program uniform in all the counties in the state.

This rule requires that eligibility for ADC recipients who are temporarily residing in another state, but who continue to receive ADC from Iowa on the basis that they are retaining Iowa residency, be redetermined monthly. Eligibility will be determined by requiring the recipients to complete the Public Assistance Eligibility Report, Form PA-2140-0.

Out-of-state assistance payments have become a factor in the payment error rate. A study conducted by Quality Control indicated that thirty-five percent of all out-of-state payments are in error. A monthly redetermination of eligibility will decrease the possibility of error.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 31, 1984.

This rule is intended to implement Iowa Code sections 239.6 and 239.8.

Amend subrule **40.7(1)** to add the following paragraph:

b. Eligibility for out-of-state assistance shall be reviewed monthly.

ARC 5002

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 78, "Amount, Duration, and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code. The Commissioner has the authority to make rules to determine the method and level of reimbursement for medical and health services.

This amendment deletes reference to Form XIX (Pharm-2), Signature Authorization which is seldom, if ever, used.

Medicaid rules originally required all prescriptions issued or filled in the state to be written. This is not required by state law except for controlled substances. Upon receipt of an oral prescription, pharmacists are required to put the oral prescription in writing by recording the same information required in a written prescription, including the name, address, and signature of the physician issuing the prescription.

At the time the Medicaid rule was changed to conform with state law, some pharmacists desired a procedure for the physician to authorize a pharmacist to enter the physician's name on oral prescriptions and renewals. Therefore, rules provide such a procedure, although the procedure is not required.

This procedure is not used and is, in fact, causing confusion.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa, on or before October 31, 1984.

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

Amend subrule **78.1(2)**, paragraph "c" as follows:

c. Prescription records are required for all drugs as specified in *Iowa Code* sections 155.33, 155.34 and 204.308 ~~of the Code~~. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions. ~~At the option of the pharmacist, a physician may authorize a pharmacist to enter the physician's name on oral prescriptions and renewals, except for schedule II controlled substances, by completing form XIX (Pharm-2), Signature Authorization.~~

ARC 5032

PAROLE, BOARD OF[615]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 906.3, the Iowa Board of Parole hereby gives Notice of Intended Action to amend Chapter 3 by adding a new rule concerning records.

Rule 3.10(906) refers to records review by parole board members.

Any interested person may make written suggestions or comments on these proposed rules prior to October 31, 1984. Such written materials shall be directed to the Executive Secretary, Iowa Board of Parole, Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309. Persons

PAROLE, BOARD OF[615] *(cont'd)*

who want to convey their views orally should contact the same at 515-281-4820.

This rule is intended to implement Iowa Code section 906.5.

The following rule is proposed.

615—3.10(906) Records review. The board may conduct a record review at the board office or other announced location for the following individuals: Those scheduled for a staff-initiated review, those reviewed at the board's request, individuals who are on work release status, and those who are on patient status at the Iowa Medical and Classification Center. The board may grant or deny parole or schedule the individual for an interview.

ARC 5033

PAROLE, BOARD OF[615]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 906.3, the Iowa Board of Parole hereby gives Notice of Intended Action to add the following provisions to the Parole Board administrative rules.

This division of Chapter 3 refers to rules of conduct of persons attending parole proceedings. These rules have become necessary because the board has had to open the proceedings to the public because of the requirements of the open meetings law.

Any interested person may make written suggestions or comments on these proposed rules prior to October 31, 1984. Such written materials shall be directed to the Executive Secretary, Iowa Board of Parole, Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the executive secretary at 515-281-4820.

These rules are intended to implement Iowa Code section 28A.7.

The following addition is proposed.

3.11 to 3.20 Reserved.

CONDUCT AT PAROLE PROCEEDINGS

615—3.21(906) Proceedings open to public. Parole proceedings shall be open to the public except as otherwise necessary or proper.

615—3.22(906) Conduct of inmate.

3.22(1) The inmate's conduct shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.

3.22(2) An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as directed by the panel or board.

3.22(3) The inmate should speak to the panel or board or counselor only when asked a question or directed otherwise to do so.

3.22(4) Each inmate will be given an opportunity to make an independent statement to the panel or board at some point during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. Specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted; i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.

3.22(5) Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding will result in a forfeiture of the right to an interview, and a request by the board to have the institutional staff remove the inmate.

3.22(6) An inmate who forfeits the right to an interview for reasons under 3.22(5) or for any other reason shall not be interviewed again until the inmate's next annual review except that an earlier interview may be requested. The request is to be made through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

615—3.23(906) Conduct of spectators.

3.23(1) Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel. An exception will be made for television camera operators.

3.23(2) Spectators may not enter or leave the room during interviews or between interviews, except that the board panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board does not take a break.

3.23(3) Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by the staff of the institution at which the session is being held.

3.23(4) Spectators shall make no utterances which are intended to or can be heard by the inmate or the panel. This includes any conversation among spectators.

3.23(5) Spectators shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body.

3.23(6) Any activity deemed inappropriate by the panel or institutional staff under the guidelines in the rules may result in a request by the panel of institutional staff for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may be given the first time and any subsequent offending activity will result in a request to leave. A warning need not be given before a person is asked to leave. Refusal to leave upon request will result in a request by the panel to have the person or persons removed by the institutional staff.

3.23(7) All spectator places shall be on a first-come first-served basis in accord with the rules of the institution or the department of corrections.

3.23(8) Any spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the

next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch, dinner or overnight.

615—3.24(906) Conduct of the media.

3.24(1) General. Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panels, including recesses between sessions, under the following conditions:

a. Permission first shall have been granted by the institution or department of corrections, which may prescribe such conditions and restrictions for bringing equipment into areas of the institution.

b. Media coverage is prohibited of any proceeding which is held in closed session under Iowa law.

c. The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines set out in the accompanying rules, and subject to the permission of the institution or department of corrections.

d. Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of equipment or techniques at variance therewith, provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the panel or board, subject to permission of the institution or department of corrections to bring in or move equipment.

e. The panel or board may limit or terminate photographic or electronic media coverage of any or all media participants at any time during the proceedings in the event the panel or board finds that rules established under this or additional rules imposed by the institution or department of corrections have been violated.

f. The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.

3.24(2) Advanced notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the institution in accord with department of corrections' rules.

3.24(3) Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings held at the institutions must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

a. Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

b. Television camera and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

c. Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

d. Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in rules 3.21(906) to 3.24(906). Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least fifteen minutes prior to the scheduled time of commencement of the proceeding.

3.24(4) Lighting. Other than light sources already existing in the interview, no flashbulbs or other artificial light device of any kind shall be employed in the interview room. With the concurrence of the panel and institutional staff, however, modifications may be made in light sources existing in the interview (e.g. higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

3.24(5) Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the interview room shall apply:

a. Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the interview room during a parole proceeding at any one time.

b. Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the interview room during a parole proceeding. All components must be contained within the area designated for the camera. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside of the interview room.

c. Audio. Not more than one audio system shall be set up in the interview room for broadcast coverage of a parole proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the interview room, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the interview room.

d. Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media and the panel or board shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular parole proceeding.

3.24(6) Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel or institutional staff or both. The area or areas designated shall provide reasonable access to the proceeding to be covered.

3.24(7) Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

3.24(8) Decorum. All still photographers and broadcast media personnel shall be properly attired and shall

PAROLE, BOARD OF[615] *(cont'd)*

maintain decorum appropriate for public meeting of a governmental body at all times while covering a parole proceeding.

ARC 5011

PUBLIC INSTRUCTION DEPARTMENT[670]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 257.9(2), 273.5 and 281.3, the Iowa Department of Public Instruction hereby gives Notice of Intended Action to rescind Chapter 12, "Special Education," Iowa Administrative Code, and the following proposed rules be adopted in lieu thereof.

The present rules have had only three minor changes since first adopted September 20, 1974. At that time the rules were drafted to implement newly passed state legislation which created the Area Education Agency and modified the law pertinent to education of children requiring special education, Iowa Code chapters 273 and 281, respectively. Experience since that time, emerging best special education practices, changes in federal statutes and regulations, case law and declaratory rulings indicate a need to update these rules and to make them more readable.

These proposed rules indicate the scope, general principles and definitions related to the provision of special education. The rules include authorized methods of providing special education. Local school district, Area Education Agency and state responsibilities are delineated. Rules are proposed to implement statute requirements for planning for special education.

Rules drafted to assist citizens, local school districts and Area Education Agencies in identifying children requiring special education and to require necessary documentation are proposed. One division of the rules addresses provision of related services and administration of medications.

Authorized special education personnel are identified and job roles specified. Applicable and identifiable needs for facilities, materials and equipment are specified.

The requirements for monitoring compliance with state and federal statutes, regulations and rules are detailed.

Other divisions provide rules for parent participation in providing special education and the process for special education appeals.

Rules regarding appropriate use of financial support, based upon statutes and legal interpretations, are included.

And, finally, rules to assist Area Education Agencies in submitting information for the state plan to obtain federal funds to support special education programs and services are specified.

Any interested person may make written suggestions or comments in support of or opposition to these proposed rules prior to November 8, 1984. Such written materials should be directed to the State Director, Special Education Division, Iowa Department of Public Instruction, Grimes State Office Building, Des Moines, Iowa 50319.

There will be three public hearings: Monday, November 5, 1984, at 7:00 p.m. in the Central Office Boardroom on the first floor of Washington School, 207 Scott Street, Council Bluffs, Iowa 51501; Wednesday, November 7, 1984, at 1:00 p.m. on the first floor of the Grimes State Office Building, Des Moines, Iowa 50319; and, Thursday, November 8, 1984, at 7:00 p.m. in the Winter and Spring conference rooms on the first floor of the Grant Wood Area Education Agency 10 building, 4401 Sixth Street S. W., Cedar Rapids, Iowa 52404. Persons may present their views at any of these public hearings either orally or in writing. Oral testimony will be tape recorded.

Persons who wish to make oral presentations at any of the public hearings should contact, by mail or telephone, the State Director of Special Education at least one day prior to the date of the public hearing indicating their desire to speak. The address is given above and the telephone number is 515/281-3176.

These rules are intended to implement Iowa Code chapters 257, 273 and 281.

The following rules are proposed.

CHAPTER 12
SPECIAL EDUCATION

DIVISION I
SCOPE, GENERAL PRINCIPLES AND DEFINITIONS

670—12.1(257,273,280,281,442) Scope. These rules apply to the provision of education to children requiring special education between birth and the age of twenty-one (and to a maximum allowable age in accord with Iowa Code section 281.8) who are enrolled or are to be enrolled in the public schools of this state or in nonpublic schools. In addition, they apply to children who require special education and are being educated at home, in hospitals or in facilities other than schools.

670—12.2(257,280, 281) General principles.

12.2(1) Availability required. Special education must be made available to all children requiring special education. For all persons referred to in 12.1(257,273,280,281, 442), required services include: Early identification; assessment and evaluation to ascertain whether a pupil is in need of special education instructional or special education support services or both; instruction for parents relating to their child's special education; transportation; and, counseling or other aid in order to permit each pupil requiring special education to benefit from appropriate educational experiences.

12.2(2) Responsibility for provision of program. The appropriateness of special education shall be determined by the area education agency director of special education. It is the responsibility of the pupil's resident school district to provide or make provision for special education adequate to meet the requirements of state and federal statutes and rules. This responsibility shall be met by one or more of the following: By each school district acting for itself; by action of two or more school districts through establishment and maintenance of joint programs; by the area education agency; by contract for services from approved public or private agencies offering the appropriate special education; or, by any combination of the foregoing.

12.2(3) Least restrictive placement preferred. Children requiring special education shall attend general education classes, participate in extra-curricular activities and receive services in a general education setting to the maximum extent possible. They shall be educated in facilities serving nonhandicapped pupils of a corresponding age range, receive instructional time equivalent to pupils who are not handicapped, and, shall be furnished such supplemental equipment, facilities, instructional materials, remediation, prereferral activities, specially designed interventions or other special education as may be necessary to enable them to perform satisfactorily in the appropriate, least restrictive environment of the school. Special education classes, facilities and services shall be provided outside the general education setting only to the extent that such other locations are necessary for the proper performance of medical or special education which requires personnel, equipment or facilities which cannot be accommodated within the general education setting.

670—12.3(281) Definitions. As used in these rules, unless the context otherwise requires:

"AEA" is the area education agency.

"Agency" is a public or nonpublic organization which offers special education in one or more disability areas.

"Appropriate program" is the term describing the educational program option selected and consisting of specially designed interventions serving to meet the needs of a pupil requiring special education. This program is individually designed by a diagnostic-educational team, including the parents, and is contained in the pupil's IEP. The program is consistent with applicable research findings and best educational practices. In the absence of empirical evidence on the efficacy of any one intervention strategy, the diagnostic-educational team and the parents shall outline a plan of education which would appear to meet the educational needs of the pupil. The program shall not include practices which are not authorized by statute or these rules. The responsible agency must provide special education in accord with the pupil's IEP but the agency, teacher or other person is not held accountable if a pupil does not achieve the growth projected in the annual goals and objectives.

"Behaviorally disordered" is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one's age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the pupil to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristics of pupils who are behaviorally disordered include: Cluster I - Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II - Significantly deviant withdrawn or anxious behaviors; Cluster III - Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both; and, Cluster IV - Significantly deviant behavior patterns characterized by deficits in cognition, communication, sensory processing or social participation or a combination thereof that may be referred to as autistic behavior. A pupil's behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the pupil's characteristic behavior is sufficiently distinct from that of the pupil's peer group to qualify the pupil as requiring special education programs or services on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged pupils and in the home or center-based setting for preschool-aged pupils. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the comprehensive educational evaluation for each pupil requiring special education, the following areas of data shall be gathered when identifying a pupil as behaviorally disordered which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be maintained by the director.

"Setting analysis data" is information gathered through informal observations, anecdotal record review and interviews describing the setting from which a pupil was referred; documented prior attempts to modify the pupil's educational program so as to make behavioral and academic achievement possible in the current placement; and, social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred pupil's interaction with peers.

"Pupil behavioral data" is measures of actual behavior that include the specific recording, through systematic formal observations, of a pupil's behavior, including the frequency of behaviors of concern; and, measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred pupil and the perception of the pupil's home and school behavior obtained from the parent or surrogate parent.

"Individual trait data" is information about the unique personal attributes of the pupil. This information, gathered through pupil and teacher interviews and relevant personality assessments, describes any distinctive patterns of behavior which characterize the pupil's personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

"Board" means the Iowa state board of public instruction.

"Career-vocational education for the handicapped" includes, as a minimum, all required curricular activities specified in federal and state statutes, (Iowa Code chapters 257, 258, 280, 281; sections 29 U.S.C. 794, and 20 U.S.C. 2301-2461 which are provided to individual pupils as a result of ongoing assessment of their career development needs and evaluation of their progress in meeting those needs from preschool through graduation.

"Children requiring special education" are those pupils handicapped in obtaining an education as specified in Iowa Code chapter 281, and as defined in these rules.

"Children who are handicapped in obtaining an education" are those pupils whose educational potential cannot be adequately realized in the general educational experience without the provision of special education as defined in these rules.

"Communication disability" is the inclusive term denoting deficits in language, voice, fluency, articulation and hearing.

"Deaf-blind" pupils have auditory and visual handicaps, the combination of which causes such severe com-

munication and other developmental and educational problems that the pupils cannot properly be accommodated in special education programs solely for the hearing impaired or the visually impaired, without appropriate modifications.

"Department" means the state department of public instruction.

"Director" means the director of special education of the AEA.

"Eligible pupil" means a pupil who has attained eighteen years of age and maintains majority rights.

"Extended evaluation" is a status which may be utilized for pupils below age three who are in need of special education but for whom the diagnostic-educational team cannot determine the primary educational disability. A pupil may receive special education for a maximum of one year within this status to provide an opportunity to gather additional data for determination of a primary disability. A pupil whose disability can be determined shall be so diagnosed in order to assist parents and agencies in planning for the pupil's needs. An extended evaluation is to be used only in unique situations when need for special education is imperative and time would assist with providing a definite educational diagnosis. A pupil receiving special education while placed in extended evaluation status must have on file an interdisciplinary staffing report which defines the educational, observational and medical information obtained prior to provision of special education.

"Handicapped pupils" means children requiring special education.

"Hearing impairment," a communication disability, is a loss of auditory sensitivity ranging from mild to profound which may affect one's ability to communicate with others.

1. "Deaf" pupils include those individuals whose hearing impairment is so severe that they do not learn primarily by the auditory channel even with amplification, and who need extensive specialized instruction in order to develop language, communicative and learning skills.

2. "Hard of hearing" pupils include those individuals whose level of communication ability is adequate to allow them to acquire speech and language and to learn by auditory means although they may experience difficulty, under certain circumstances, in oral communication, language and learning skills with or without amplification, and who may need various classroom and instructional modifications in order to make full use of school experiences.

"IEP" means individualized education program.

"Learning disability" is the inclusive term denoting the inability to learn efficiently, in keeping with one's potential, when presented with the instructional approaches of the general education curriculum. The inability to learn efficiently is manifested as a disability in an individual's reception, organization, or expression of information relevant to school function. This disability is demonstrated as a severe discrepancy between an individual's general intellectual functioning and achievement in one or more of the following areas: School readiness skills, basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, written expression and listening comprehension. A learning disability is not primarily the result of sensory or physical impairments, mental disabilities, behavioral disorders, cultural difference, environmental disadvantage, or a history of an inconsistent educational program. The following criteria shall be applied in identifying a pupil as learning disabled and in need of special education.

1. Hearing sensitivity must be within normal limits unless the hearing loss is temporary or not educationally relevant, such as a high frequency loss above the speech range.

2. Vision must be within normal limits after correction unless the impairment is temporary or not educationally relevant.

3. Intellectual functioning must be at or above one standard deviation below the mean as measured by an instrument recognized as a valid measure of intellectual functioning. A total or full-scale score shall be used in applying the intellectual criterion. In cases where measured intellectual functioning does not meet this criterion, but the results are suspect and the pupil's level of intellectual functioning is believed to be within the stated criterion, the individual responsible for assessing intellectual functioning shall state in writing the specific data which support that conclusion.

4. A severe discrepancy between current achievement and intellectual functioning exists when a pupil has been provided with learning experiences that are appropriate for the pupil's age and ability levels, and obtained scores in the achievement area(s) of concern are below the pupil's present grade placement and are more than one standard deviation below the mean on the distribution of achievement scores predicted from obtained intellectual functioning scores. In establishing the difference of one standard deviation, the effects of regression toward the mean and errors of measurement must be applied. If the technical data necessary to account for the effects of regression are not available, the discrepancy between the obtained achievement and intellectual functioning standard scores must be at least two standard errors of measurement for the difference.

If norm-referenced tests are not available in a particular achievement area, the diagnostic-educational team shall state in writing the assessment procedures used, the assessment results, the criteria applied to judge the importance of any difference between expected and current achievement, and whether a severe discrepancy is present that is not correctable without the provision of special education.

In cases where a pupil's obtained scores on norm-referenced tests are not severely discrepant from intellectual functioning, but the results are suspect and the diagnostic-educational team believes that the pupil's current achievement is severely discrepant, the team shall state in writing the specific nonnorm-referenced data, including a description of the assessment procedures used and the criteria applied to determine the presence of a severe discrepancy, which supports the team's conclusion. In such cases, a copy of the supportive documentation will be maintained by the director.

5. A member of the diagnostic-educational team must observe the pupil's performance in the general education classroom setting for school-aged pupils or in the home or center-based setting for preschool pupils. The primary purposes of the classroom observation are to seek evidence for the existence of a learning disability and to determine the degree to which the disability, if any, affects learning. The individual responsible for the observation must be someone other than the pupil's classroom teacher who is trained to use observation as a diagnostic procedure.

PUBLIC INSTRUCTION DEPARTMENT[670] *(cont'd)*

6. The severe discrepancy between achievement and intellectual functioning must not be primarily attributable to behavioral disorders, chronic health problems, physical impairments, environmental disadvantage, cultural difference or a history of an inconsistent educational program.

7. The degree of the achievement-intellectual functioning discrepancy may decrease as a pupil receives special education, progresses academically and maintains that progress. Consideration of these factors will be used to determine a pupil's movement along the continuum of special and general education options, and in targeting appropriate transfer from a special education instructional program. A pupil who attains an achievement level commensurate with expected performance, given current grade level placement and intellectual functioning, and is able to maintain satisfactory educational performance in the general classroom setting shall be transferred from the special education instructional program.

"Mental disability" is the term denoting a range and pattern of adaptive behavior deficits, subaverage academic achievement and subaverage general intellectual functioning.

1. "Adaptive behavior": Refers to the individual's effectiveness in meeting the demands of the school environment and represents an aggregate of communication, social, emotional, self-care, independent living and vocational behaviors that are appropriate for the individual's age and culture.

2. "Subaverage academic achievement" refers to performance deficits more than one standard deviation below the mean on reliable standardized tests of academic or preacademic achievement valid for the individual pupil.

c. "Subaverage intellectual functioning" refers to performance deficits more than one standard deviation below the mean on a reliable individual test of general intelligence valid for the individual pupil.

"Multicategorical" means special education in which the pupils receiving special education may have different disabilities.

"Parents" means a parent, a guardian, a person acting as the parent or a surrogate parent for special education purposes.

"Physical disability" is the inclusive term used in denoting physical or visual impairments of pupils requiring special education.

"Physical impairment," a physical disability, is manifested as an aberration of an essential body structure, system or function. Physical impairments are defined operationally in terms of orthopedic, neuromuscular, other health impairments, or any combination, which may be a result of congenital or acquired conditions of unknown or miscellaneous causes. These pupils may manifest functional impairments in body balance, ambulation and limb and hand utilization. The severity of these noncognitive functional limitations is such that the pupil needs special education.

"Preschool handicapped" are those pupils below the age of seven who require special education and who are not appropriately provided for within the scope of general education or other special education programs.

"Primary disability" is that disability with the most dominant characteristics and for which the greatest intervention is programmed. For those pupils with more than one disability, primary disability is a determination made by the director utilizing recommendations of the diagnostic-educational team.

"Profoundly multiply handicapped" is a pupil who may exhibit a combination of the following characteristics:

1. Use no means of communication beyond affect responses or use an augmented communication system that is not a standard symbol system to indicate needs and wants.

2. Are dependent in mobility or require supervision in order to meaningfully traverse between points in the environment.

3. Are dependent in all daily living activities.

4. Have minimal social interaction skills and may exhibit severe maladaptive behaviors.

5. Have mental, physical or sensory handicaps.

6. Have fragile medical conditions, including seizures.

"Pupil" means a person over seven and under sixteen years of age who, pursuant to the statutes of this state, is required to receive an education; a person under seven or over sixteen years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and, a person between the ages of twenty-one and twenty-four who, pursuant to the statutes of this state, is entitled to receive special education.

"School district of the child's residence" or "district of residence of the child" is that school district in which the parent or legal guardian of the pupil resides, with the following statutory and legal interpretations:

1. When full and complete control of the pupil is transferred from a parent or legal guardian to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the pupil is the district in which the pupil and those who have accepted full and complete control of the pupil reside, and that district becomes responsible for providing and funding the educational program.

2. If full and complete control of a pupil is transferred by a parent or legal guardian to others who reside in another school district for the purpose of obtaining an education, the district of residence remains with the parent or legal guardian who must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. "Certain children" are pupils requiring special education who are living in a state supported institution, charitable institution or licensed boarding home which does not maintain a school.

4. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court.

"Severely handicapped" are pupils with any severe disability including pupils who are profoundly multiply handicapped.

"Special education" is all instructional and support programs and services, provided in accord with Iowa Code chapter 281 and these rules, by the department, AEA, school district or other recognized agencies. Special education provides a continuum of program and service options in order to provide the least restrictive intervention which is required to meet the educational needs of each pupil, regardless of disability.

"Special education instructional programs" are those special education classroom and instructionally related activities for children requiring special education ordinarily provided by the school district but which, in some instances, may be contracted from the AEA or another recognized agency.

"Special education support programs and services" are those activities which augment, supplement or support

general or special education for pupils requiring special education and which are ordinarily provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by the school district or another qualified agency.

"Speech and language impairment," a communication disability, includes:

1. Impairment in language is a disability in verbal language resulting in a markedly impaired ability to acquire, use or comprehend spoken, read or written language due to difficulties in acquisition and usage of syntax, morphology, phonology and semantics.

2. Impairment in voice is an abnormality in pitch, loudness or quality resulting from pathological conditions, psychogenic factors or inappropriate use of the vocal mechanism which interferes with communication or results in maladjustment.

3. Impairment in fluency is a disruption in the normal flow of verbal expression which occurs frequently, or is markedly noticeable and not readily controllable by the pupil. The disruption occurs to the degree that the pupil or the pupil's listeners evidence reactions to the manner of the pupil's communication so that communication is impeded.

4. Impairment in articulation is defective production of phonemes which interferes with ready intelligibility of speech.

"Visual impairment," a physical disability, is characteristic of pupils whose vision deviates from the normal to such an extent that they require special education. Educational functioning and visual and adaptive skills are used in determining needs of pupils with visual impairments.

DIVISION II
METHODS OF PROVIDING SPECIAL EDUCATION

670—12.4(281) General education preferred.

12.4(1) Least restrictive alternative. Pupils requiring special education shall attend classes, participate in extra-curricular activities and receive services in a general education setting to the maximum extent possible and appropriate. Handicapped pupils shall be maintained in general education classes with special education support services when appropriate.

12.4(2) Continuum of options available. Special education shall provide a continuum of program and service options from birth to the maximum age provided by the Iowa Code, whereby systematic instruction and services are given in order to effectively meet the educational needs of each pupil.

670—12.5(281) Special education programs. Special education programs may be of eight types.

12.5(1) Self-contained special class. An educational program for pupils with similar educational needs who are severely handicapped and whose instructional program is provided by a special education teacher. The pupils shall be offered opportunities to participate in activities with nonhandicapped peers and adults. Preschool programs of this type may be operated on a multicategorical basis. (Reference Iowa Code section 281.9(1)"d")

12.5(2) Self-contained special class with little integration. An educational program for pupils with similar educational needs who require special education but who can benefit from limited participation in the general education curriculum with nonhandicapped pupils. Participation in the general education curriculum is less than one third of the school day as defined in Public Instruction Department subrule 3.2(11), Iowa Administrative Code. Preschool programs of this type may be operated on a multicategorical basis. (Reference Iowa Code section 281.9(1)"c")

12.5(3) Special class with integration.

a. An educational program for pupils requiring special education who have similar educational needs and who can benefit from participation in the general education curriculum. Participation in the general education curriculum is not less than one third of the school day and does not exceed two thirds of the school day as defined in subrule 3.2(11), Iowa Administrative Code. This program shall include provisions for ongoing consultation and demonstration with the pupil's teachers.

b. Programs of this type may be operated on a multicategorical basis with approval of the director. For approval to be granted, the following conditions shall be considered: Support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; served pupils have comparable educational needs; the chronological age range does not exceed six years; and, program curriculum consists of appropriate content for handicapping conditions served. (Reference Iowa Code section 281.9(1)"b")

12.5(4) Resource teaching program. An educational program for pupils requiring special education who are enrolled in a general education curriculum for a majority of the school day but who require special education in specific skill areas on a part-time basis. Pupils enrolled in this type of program require special education for at least thirty minutes per day but not more than one third of the school day as defined in subrule 3.2(11), Iowa Administrative Code. The teacher of a resource teaching program shall serve in no more than two attendance centers. This program shall include provisions for ongoing consultation and demonstration with the pupils' teachers and may be operated on a multicategorical basis. (Reference Iowa Code section 281.9(1)"b")

12.5(5) Itinerant services (school-based). Special education may be provided on an itinerant basis whenever the number, age, severity or location of pupils to be served does not justify provision by professional personnel assigned on a full-time basis to one or two attendance centers.

12.5(6) Itinerant home services or hospital services.

a. Pupils requiring special education shall not be denied special education when their condition precludes school attendance. Appropriate special education shall be provided through home or hospital instruction. The provision of special education through home or hospital instruction will be approved by the director only for those pupils with disabilities which preclude their participation in the general or special education conducted in schools or related facilities.

b. Home instruction may be provided to severely handicapped, medically fragile, and, preschool handicapped pupils when it is inappropriate for them to attend an instructional program within a school or facility due to age or hazards to their health or to the health of others. The status of pupils so placed will be periodically reviewed to substantiate the appropriateness of the placement.

c. When it is necessary, as determined by the director, to provide a home instruction program, the program shall be reviewed by the diagnostic-educational team, including the parents, at least every thirty calendar days to

review other alternatives or to determine that home instruction continues to be appropriate.

d. Procedural safeguards shall be afforded to pupils requiring itinerant special education home or hospital instruction. A diagnostic-educational team must make the program recommendations; parents must give consent or be given notice, as appropriate; and a new or a revised IEP must be developed.

Teachers primarily employed to provide special education in psychiatric units or mental health centers shall be certificated to serve pupils with behavioral disorders.

12.5(7) Supplemental services. Services provided by special education personnel to pupils requiring special education include:

a. Provision of information and support to classroom teachers, curriculum specialists, special education personnel and administrators.

b. Supervision and training of aides.

c. Inservice training of personnel providing or being prepared to provide special education.

d. Parent and pupil counseling and instruction.

e. Demonstration of special education procedures and techniques.

f. Curriculum development activities.

g. Assessment, consultation, prereferral activities, program planning, and, referral and co-ordination with community agencies and services.

12.5(8) Special adaptations (supplemental assistance). Handicapped pupils may be weighted in accord with Iowa Code section 281.9(1)"b," when the diagnostic-educational team recommends that through special adaptations the pupil can appropriately be served in the general education classroom. Authorized programs may include: Intensive short-term special education instructional intervention; interpreters for hearing impaired pupils; readers for visually impaired pupils; educational aides; aides for physically disabled pupils or other handicapped pupils for assistance in and about school; materials; and, specialized or modified equipment for use in the school.

670—12.6(281) Maximum class size. Maximum class size limits are set forth in 12.6(5) and are predicated upon one teacher to the specified class size. In instances where a teacher is employed less than full time, the maximum class size shall be proportionately equal to the full-time equivalency of the teacher employed.

12.6(1) Adjusted program report (12.30(2)"d"). If, in unique circumstances, it is necessary to exceed the class size maximum for a resource teaching program, a special class with integration or a self-contained special class with little integration, the director shall review the proposed placement for appropriateness in accord with Iowa Code section 273.5 and maintain documentation which records the following: The placement does not adversely affect the appropriateness of the program for all pupils in the class; support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; the need for additional instructional staff; served pupils have comparable educational needs; the chronological age range does not exceed six years; and, program curriculum consists of appropriate content for the handicapping conditions served.

12.6(2) Counting severely handicapped in alternative program. When circumstances necessitate placing a severely handicapped pupil in other than a self-contained special class for the severely handicapped, the pupil shall count as two pupils in determining class size maximum.

12.6(3) Staff-to-pupil ratio. The staff-to-pupil ratio in self-contained special classes for severely handicapped pupils shall be one teacher and one educational aide for each five pupils. When pupils numbering six through nine are added, an additional educational aide must be employed. When the tenth pupil is placed, another teacher must be employed for that program.

The chronological age range of pupils enrolled in a self-contained special class shall not exceed six years.

12.6(4) Secondary level classes. Self-contained special classes at the secondary level may be operated with an enrollment of fifteen students if an AEA work experience co-ordinator assists the local district in developing and co-ordinating community sites for exploration and preparation. Related instruction, in conjunction with site placement, is the responsibility of local district instructional staff.

12.6(5) Maximum class size.

Class Handicapped[c]	Itinerant Teacher	Resource Teaching Program	Special Class With Integration		Self-Contained Special Class With Little Integration			Self-Contained Special Class
			Elementary	Secondary	Preschool[a]	Elementary	Secondary	Severely Handicapped[b]
Speech and Language Impairment	Not an Option	18	12	15	8	8	10	5
Hearing Impairment	10	15	10	10	8	8	10	5
Behaviorially Disordered	10	18	12	15	8	8	10	5
Learning Disability	10	18	12	15	8	8	10	5
Mental Disability	10	18	12	15	8	8	10	5
Physical Impairment	10	18	12	15	8	8	10	5
Visual Impairment	10	15	12	15	8	8	10	5
Multicategorical	Not an Option	18	12[d]	12[d]	8	Not	An	Option
Profoundly Multiply Handicapped	Not An Option							5

[a] The staff-to-pupil ratio for handicapped preschool age pupils shall be one teacher and one educational aide for every eight pupils.
[b] See 12.6(4).
[c] See 12.6(3).
[d] See 12.5(3)"b".

670—12.7(281) Special school provisions.

12.7(1) Providers. Special schools for pupils who require special education outside the general education setting may be maintained by individual school districts; jointly by two or more school districts; by the AEA; jointly by two or more AEAs; by the state directly; or, by approved private providers. Reference 12.2(3).

12.7(2) Department recognition. Department recognition of special education agencies shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education in compliance with these rules.

b. Approval for the nonpublic agency to provide special education and to receive special education funds for the special education contracted for by a local school district or an AEA.

670—12.8(281) Transportation. Transportation of pupils requiring special education shall generally be provided as for other pupils, when appropriate. Specialized transportation of a pupil to and from a special education instructional program is a function of that program and, therefore, an appropriate expenditure of funds generated through the weighted enrollment.

12.8(1) Special arrangements. When, because of a pupil's disability or because of the location of the program, the director determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the local school district shall be required to provide one or more of the following transportation arrangements:

a. Transportation from the pupil's residence to the location of the special education instructional program and back to the pupil's residence.

b. Special assistance or adaptations in getting the pupil to and from and on and off the vehicle, to and from the instructional program.

c. Reimbursement of the actual costs of transportation when it is necessary for parents to provide transportation for the pupil to and from the special education instructional program.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency provided transportation.

12.8(2) Responsibility for transportation. Transportation of a pupil to and from a special education support program or service is a function of that program or service, shall be specified in the IEP and is an appropriate expenditure of funds generated for special education support services.

a. The AEA shall provide the cost of transportation of pupils to and from special education support services or programs. The AEA shall provide the cost of transportation which is necessary for the provision of special education support programs or services to nonpublic school pupils if the cost of that transportation is in addition to the cost of transportation provided for special education instructional programs. Transportation shall be provided by one or more of the following arrangements:

(1) The AEA shall provide the cost of special assistance or adaptations in getting the pupil to and from and on and off the vehicle, to and from the special education support program or service.

(2) The AEA shall reimburse the actual cost of transportation when it is necessary for the parents to provide transportation for the pupil.

(3) The AEA shall not be required to provide reimbursement to parents who elect to provide transportation in lieu of AEA provided transportation.

12.8(3) Dually enrolled pupils. When pupils enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional programs, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

12.8(4) Diagnostic purposes. Transportation of pupils, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support programs and services.

670—12.9(281) Special education centers. Special education centers may be established subject to approval by the board. Approval will be based on the following factors:

12.9(1) Need for center. A demonstrated need for such a center based on the estimated number of pupils in need of specialized diagnostic, therapeutic or instructional services.

12.9(2) Lack of provision by schools. A demonstrated inefficiency or inability in providing comprehensive and specialized diagnostic, therapeutic or instructional services in elementary and secondary schools.

12.9(3) Ability to provide better services. The ability of the center to provide diagnostic, therapeutic or instructional services that are more comprehensive and specialized than those services already available.

12.9(4) Nonduplicative services. The center does not duplicate the diagnostic, therapeutic or instructional services that are readily available to pupils in need of such services.

12.9(5) No conflict with state policy. The center does not conflict with the policy of the state to provide special education to pupils in need of such special education in a general education elementary or secondary school to the maximum extent possible and appropriate.

DIVISION III
DISTRICT AND AEA RESPONSIBILITIES

670—12.10(281) School district responsibilities. These provisions are applicable to each local school district, AEA, state institution and private agency which provides special education.

12.10(1) Provision of special education. In those cases where it is not expressly otherwise provided by state statute, it is the responsibility of each school district to provide each resident pupil appropriate special education. This responsibility may be fulfilled by using the service delivery alternatives and program options described in Division II of these rules and the support services of the AEA.

12.10(2) Evaluation and improvement. A school district, in conjunction with the AEA, the department, or both, shall implement activities designed to evaluate and improve special education.

12.10(3) Research. A school district shall co-operate in research activities designed to evaluate and to improve special education received by pupils requiring special education when sponsored by that district, an AEA or the department, or, another agency when approved by the department.

12.10(4) Contracts. School districts contracting with other districts or agencies to provide special education for individual pupils or groups of pupils shall maintain

responsibility for pupils receiving such special education by:

a. Ensuring that all the requirements related to the development of each pupil's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on delivery of special education in accord with the pupil's IEP.

12.10(5) Selection of sites. The school district and the AEA shall co-operate in selecting the site or sites of special education from among the several schools which may be within the AEA.

12.10(6) Policies and procedures. Policies and procedures related to the provision of special education shall be filed at the AEA.

12.10(7) Compliance with Federal Code. The school district shall adhere to the provisions of, and appending regulations to, 20 U.S.C. §1401 et seq. and applicable sections of 29 U.S.C. §794 pertaining to pupils requiring special education.

12.10(8) Extended year. The school district shall ensure that rules pertinent to special education are observed when extended year special education programs are provided.

12.10(9) Each school district's board adopted plan which makes provisions for special education, as required by subrule 3.5(8), Iowa Administrative Code, shall contain the following items:

a. A statement that pupils requiring special education shall participate in the school district's general education curriculum when appropriate, and in accord with each handicapped pupil's IEP.

b. A description of the special education instructional curriculum by handicap, program model and instructional level offered by the district and in accord with subrules 3.5(1), 3.5(3) and 3.5(8), Iowa Administrative Code.

c. A description of the performance criteria used in evaluating each pupil's progress.

d. A statement that the graduation of pupils requiring special education shall be based on accomplishment of graduation criteria established by district board policy.

12.10(10) Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

670—12.11(273, 281) AEA responsibilities.

12.11(1) Provide for special education. The AEA shall develop policy and provide special education to pupils requiring special education pursuant to Iowa Code chapter 273 and these rules.

12.11(2) Responsibility for quality of special education. AEAs contracting with school districts or other agencies to provide special education for individual pupils or groups of pupils shall maintain responsibility for the quality of such special education by:

a. Ensuring that all the requirements related to the development of each pupil's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on the delivery of special education in accord with the pupil's IEP.

12.11(3) Subject to audit. The AEA shall maintain sufficient records and reports for audit by the department pursuant to Iowa Code section 281.9.

12.11(4) Policies and procedures filed. AEA policies and procedures pertinent to the provision of special education shall be filed at the AEA.

12.11(5) Responsibility for compliance monitoring. The AEA shall conduct activities in each constituent district at least once every three years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of handicapped pupils.

12.11(6) Extended year. The AEA shall ensure that rules pertinent to special education are observed when extended year or summer school special education programs are provided.

12.11(7) Compliance with Federal Code. The AEA shall adhere to the provisions of, and appending regulations to, 20 U.S.C. §1401 et seq. and applicable sections of 29 U.S.C. §794 pertaining to pupils requiring special education.

12.11(8) Inservice education.

a. At least once every three years, the AEA shall determine, through needs assessment activities, the inservice needs of all persons employed within the AEA to provide special education to handicapped pupils.

b. At least once every three years, the AEA, in conjunction with constituent school districts, shall determine, through needs assessment activities, the information and training needs of general education staff related to the provision of appropriate special education to handicapped pupils.

c. The AEA in co-operation with school districts, shall plan for and conduct such inservice education identified through needs assessment activities.

12.11(9) Consultants. A consultant will serve only those special education instructional programs for which the consultant is appropriately authorized by the department. A consultant assigned to special education instructional programs for which the consultant is not appropriately authorized may be assigned to the special education instructional program if an appropriately authorized consultant is assigned to support the special education instructional program as needed.

12.11(10) Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted

by the department to ascertain if its special education complies with the rules of the board.

12.11(11) Appropriateness of out-of-state placement. When special education appropriate to a pupil's need is not available within the state, or when appropriate special education in an adjoining state is nearer than the appropriate special education in Iowa, the director may certify a pupil for appropriate special education outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education meets standards set forth in these rules.

12.11(12) Research. AEAs shall co-operate in research activities designed to evaluate and to improve special education received by children requiring special education when sponsored by that AEA, a local school district or the department, or, another agency when approved by the department.

DIVISION IV
PLANNING

670—12.12(273,281) Content and development of plan.

12.12(1) Timeline and components of plan. On or before November 1 of each year, for the school year commencing the following July 1, each AEA shall submit to the department, on forms provided, a plan for providing comprehensive special education programs and services for pupils requiring special education within the AEA. The plan shall contain:

a. A statement assuring that requirements of Iowa Code section 281.11 have been met and that all applicable federal and state statutes and regulations and rules to implement said statutes are observed.

b. A general description of the program and services activities that are presently being conducted.

c. A description of additional program and service needs that presently exist.

d. A description of the additional resources and activities that will be required to meet the program and service needs listed in response to 12.12(1)"c" above.

e. A list of anticipated contractual agreements necessary to serve pupils requiring special education within the AEA during the coming school year.

f. A listing, by full time equivalency, position title and funding source of currently employed and anticipated special education support personnel to be included in the AEA budget.

g. A table of organization for the next school year which represents the proposed staff relationship of AEA special education administration and special education staff. The full-time equivalency of personnel is to be indicated beside each position if less than full time.

h. Existing documents, which contain information requested above, may be used in lieu of a report specifically prepared for this plan.

i. A statement reflecting the AEA's efforts to involve other interested parties in the development of the plan.

12.12(2) Reserved.

670—12.13(273,281) Approval of plan: Exceptions. The department will notify each AEA in writing, of the approval or disapproval of its plan. If approval is denied, the written notice shall contain a statement of the reasons for disapproval. A plan may be approved in part, or subject to the remedying of deficiencies or omissions. A plan that is disapproved shall be revised and resubmitted by the AEA.

670—12.14(273,281) Plan implementation. To assist the department in carrying out provisions of Iowa Code section 281.9, each AEA shall, by April 15 each year, submit for the subsequent school year the following program and service information on forms provided:

12.14(1) Goals of the AEA. A list of the specific, measurable, special education goals and objectives of the AEA for the next three years.

12.14(2) Goals of the disability area or discipline. A list of the priorities and major activities for each disability area and support service discipline for the plan year.

12.14(3) Recommendations for change. Suggested statute changes, rule changes and specific department resource assistance required to meet 12.14(1) and 12.14(2).

12.14(4) Description of special assignments. A list and description of any special assignments of AEA personnel serving in a capacity different from positions described in these rules.

12.14(5) Programs operated by the AEA. A description of any special education instructional program to be operated directly by the AEA for the next school year, and the projected number and types of pupils to be served.

12.14(6) Use of existing documents. Existing documents which contain information asked for above may be used in lieu of a report specifically prepared for this document.

12.14(7) Description of special education centers. A description of special education diagnostic and evaluation centers to be operated by the AEA in the next school year.

12.14(8) Names of personnel. Names of professional personnel employed to fill the positions shall be submitted to the department by September 15 (an exception to the April 15 deadline) of the school year in which the plan is in force.

DIVISION V
SERVICES AND PROGRAM MANAGEMENT

670—12.15(281) Programs and procedures required. The AEA and school district shall establish and maintain procedures to provide the special education identified herein.

670—12.16(281) Pupil identification. Each AEA, in conjunction with each constituent school district, shall establish and maintain ongoing identification and evaluation activities to ensure early identification of and appropriate special education for pupils of all ages requiring special education as specified in 12.1(257, 273, 280, 281, 442) of these rules.

12.16(1) Early identification. The AEA shall employ a screening or other process for early identification of pupils requiring special education. The screening or other process will be established by AEA policy consistent with the following:

a. The population to be identified and the model or models to be used in identification shall be specified.

b. Qualified personnel shall conduct or supervise identification programs. Paraprofessional personnel, after receiving appropriate training, may assist in the identification process under supervision of a qualified professional person.

c. Measures shall be included to validate and, where necessary, to refine identification procedures.

d. Referral for further evaluation shall be arranged for those pupils who show problems significant enough to warrant further diagnostic study.

e. Adequate records of the results of identification shall be maintained.

12.16(2) Re-referral activities. Prior to referral for a comprehensive evaluation, the agency shall attempt to resolve the presenting problem or behaviors of concern. These attempts may include teacher consultation with special education personnel, however, special education personnel shall neither collect pupil-specific data nor conduct an evaluation. The attempts to resolve a problem shall be documented; the parameters of a comprehensive evaluation identified; and, both made a part of a referral if a referral is indicated.

12.16(3) Referral system. A referral system shall be implemented which includes interaction with pupils, teachers, school administrators, parents and others having specific responsibilities for or knowledge of pupils who may require special education and referral for appropriate evaluations.

12.16(4) Appropriate evaluation instruments. Specialized tests, materials and equipment appropriate to the evaluation process shall be available for use by qualified professionals. When assessment and diagnostic procedures and instruments are selected, adjustments shall be made, where necessary, to account for sensory and physical differences, behavioral and perceptual characteristics, sociocultural and linguistic background and home environment of pupils. The appropriateness of such procedures and instruments shall be considered in administering such tests and evaluating the results.

12.16(5) Certification of disability. A confidential record, subject to audit by the department, registering the name and certified disability of each pupil requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

670—12.17(281) Evaluation and placement.

12.17(1) Responsibility for evaluation. The AEA shall have written procedures for implementing evaluation and placement decisions consistent with these rules. The AEA and any school district therein, in discharging its responsibilities for providing special education, shall employ such procedures. These procedures shall be consistent with the following:

a. Completing a comprehensive educational evaluation of the pupil prior to determining eligibility for special education.

(1) A comprehensive educational evaluation must include, at a minimum, a health history, an educational history, the behavioral observation of the pupil in the educational setting by someone other than the pupil's teacher, screening of hearing, screening of vision, and, an evaluation of academic status. Other areas, such as intellect, motor functioning, social functioning, speech and language, adaptive behavior (in the school and community) and career-vocational education needs, will be screened or assessed, as necessary, in evaluating all areas related to the suspected disability and in determining an appropriate diagnosis. If the results of any area screened indicate the need for a more detailed evaluation, such an evaluation will be completed prior to determining a pupil's eligibility for special education.

(2) A pupil may be referred for evaluation in a single special education support service area. When this occurs, the qualified specialist will use evaluation procedures that are appropriate for the assessment of suspected disabilities in the specialist's area of expertise, and will review the pupil's records with the pupil's teacher to determine and document whether or not additional evaluation is indicated to determine the appropriate diagnosis.

(3) All screening and evaluation activities must have been conducted within twelve months prior to the initial determination of the pupil's eligibility for special education.

(4) Reports of the results for each area screened and evaluated are signed, dated and filed in the pupil's record.

b. Utilizing a multidisciplinary team to conduct the comprehensive educational evaluation. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct evaluations in the areas to be assessed.

12.17(2) Responsibility for determining eligibility. Based upon information from the diagnostic-educational team, decisions regarding a pupil's eligibility for special education shall be made by the director. The director shall certify the pupil's eligibility for special education. Pupils determined to be eligible for special education shall have an IEP developed prior to the provision of special education.

12.17(3) Dissenting opinions. Each AEA shall have written procedures for the filing of dissenting opinions by professional staff who do not agree with the team's conclusions or with the recommended special education for a pupil. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within thirty calendar days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith.

12.17(4) Review of pupil progress. As a pupil receives special education, the pupil's movement along the continuum of special and general education program options needs to be considered and the pupil's need for continued special education placement reviewed.

a. Each pupil's IEP and placement shall be reviewed and modified as appropriate at least annually. This annual review shall provide an analysis of the pupil's progress, growth, and improvement; a determination of current educational needs; a determination of the need for special education programs or services; and, the appropriateness of the categorical designation.

b. A comprehensive re-evaluation shall be conducted every three years or more frequently at the request of school personnel or the parent. This re-evaluation shall provide current evaluation data to be considered in that year's annual review. The comprehensive re-evaluation shall satisfy the requirements of subrule 12.17(1) or 12.17(2), as appropriate.

c. Prior to transfer from a special education program or service, a pupil may be provided a trial placement in the general education setting of not more than forty-five school days. A trial placement plan shall be incorporated into a pupil's IEP.

12.17(5) Programming beyond age twenty-one. Special education may be provided to pupils from age twenty-one to age twenty-four under statute provisions.

12.17(6) Length of school day. The length of the school day for pupils requiring special education shall be the same as that determined by the board of the school district for other pupils unless a shorter day is prescribed in the pupil's IEP.

12.17(7) Preschool handicapped in programs for nonhandicapped. A preschool handicapped pupil may be placed in a licensed preschool program for nonhandicapped pupils, provided that all of the following are met:

a. The pupil is also enrolled in a home instruction or center-based program in addition to placement in a preschool for nonhandicapped children.

b. The pupil's special education needs are of a unique nature and cannot be met in any other special educational alternative for preschool handicapped pupils.

c. Appropriate special education support services are provided in accord with the pupil's needs.

d. The length of any placement is for one academic year or less.

e. The director has approved the IEP and a procedure for ongoing evaluation.

f. The preschool teacher serving the handicapped pupil is certified as a prekindergarten-kindergarten teacher by the department's division of teacher education and certification.

g. An appropriate special education representative from the AEA is assigned to each pupil to monitor the pupil's progress through regularly scheduled on-site visits.

12.17(8) Extended year programming. Special education shall be provided to pupils during extended year periods if it is required to provide an appropriate program. Extended year special education programming content shall be included in the pupil's IEP. Decisions to provide extended year programming must be based upon the complexity and severity of the handicapping condition. Additional factors to be considered are:

a. Critical learning periods in acquiring a skill or critical learning periods in a curriculum sequence.

b. Demonstrated extent to which acquired skills are maintained.

c. Likelihood of substantial teaching time to reacquire skills mastered if there is an interruption in the program.

670—12.18(281) Delivery of special education.

12.18(1) Basis of delivery of special education. The special education provided shall be based on and responsive to assessment and diagnostic information and evaluation of the pupil's case history and present status.

12.18(2) Specified in IEP. The special education needed by each handicapped pupil shall be specified in a written IEP.

a. The IEP for each handicapped pupil shall be developed prior to the provision of special education. The IEP shall be implemented within thirty calendar days following the determination that a pupil requires special education. For pupils requiring continued special education from one year to the next, the IEP shall be in effect at the beginning of the school year.

b. A meeting shall be conducted for the purpose of developing the IEP for each newly identified handicapped pupil. Participants in the meeting shall include: A representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education; the pupil's teacher; a member of the diagnostic-educational team; a teacher or other specialist with knowledge in the identified disability area; one or both of the pupil's parents subject to rule 12.31(281); the pupil, if appropriate; and, other individuals as designated by the parents, school district or director.

c. After a pupil has been placed in a private school, meetings to review and revise the pupil's IEP may be conducted by the private school.

d. The IEP shall include the following:

(1) A statement of the pupil's present levels of educational performance in objective, measurable terms.

(2) A statement of annual goals describing the intended outcomes of the special education being provided.

(3) A statement of objectives for each annual goal describing the intermediate steps between the pupil's present levels of performance and the established annual goals.

(4) A statement of the specific special education to be provided and the extent of the pupil's participation in the general education program.

(5) A statement describing the "specially designed" physical education program of the pupil when the pupil is not enrolled or participating in the general education physical education program.

(6) A statement of the projected dates for initiation and anticipated duration of the special education for the period covered by the IEP.

(7) A statement of the criteria and methods to be applied in determining progress toward the goals and objectives of the IEP, unless specified in the statement of annual goals and instructional objectives.

(8) A statement of the projected date of graduation at least eighteen months in advance of said date and the criteria to be used in judging whether graduation shall occur. Prior to graduation, the IEP team must find that these criteria have been met.

e. A meeting shall be conducted at least annually for the purpose of reviewing and revising the IEP of each handicapped pupil. The participants in such meeting shall be the special education personnel serving the pupil; a representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education; the pupil's parents subject to rule 12.31(281) the pupil, if appropriate; and, other individuals as designated by the parents, school district or director.

f. An IEP shall be developed for pupils receiving only special education support services. To be eligible for special education support services, the pupil must be identified as having a handicapping condition which handicaps the pupil in obtaining an education. The IEP shall satisfy the requirements of 12.18(2)"a" and 12.18(2)"d" and be prepared by the specialist providing the service; the pupil's parents, subject to rule 12.31(281); and, the pupil's teacher, when involvement of the teacher is required in implementing the IEP; and, others designated by the parents, school district or director. The special education support services specialist shall have primary responsibility for recommending the need for support services, the extent of services to be provided and the frequency of direct and indirect contacts with pupils requiring special education support services. When a pupil receives special education support services in conjunction with placement in a special education instructional program, there shall be one written IEP covering all special education.

670—12.19(281) Other responsibilities. Other responsibilities of special education personnel include:

12.19(1) Parent conferences. Participation in parent conferences.

12.19(2) Pupil staffing. Participation in pupil staffings.

12.19(3) Consultation. Consultation with medical, teaching and other professional personnel.

12.19(4) Assessment and evaluation. Assessment and evaluation of pupils referred after the initial screening process.

12.19(5) Observation. Classroom observation of pupils.

12.19(6) Records and correspondence. Recordkeeping and correspondence.

670—12.20(281) Records and reports.

12.20(1) Information recorded and confidentiality maintained. For each pupil, all screening, assessment and evaluation results shall be recorded promptly. Educational records shall be confidential and shall not be disclosed except pursuant to 34 C.F.R. §99 and §300.

12.20(2) Reviewing records. Each agency shall permit parents or eligible pupils to review only those education records related to their child or the eligible pupil. The agency shall comply with a request to review the records without unnecessary delay and before any IEP meeting or hearing and in no case more than forty-five days after the request has been made. Upon request, the agency shall provide the following to the parents or eligible pupil:

a. Explanations and interpretations of the records.

b. Copies of the records, if failure to provide them would effectively prevent review of the records. Reasonable fees for copies are allowed unless the fee would prevent the parent or eligible pupil from reviewing the records.

c. A list of the types and locations of education records collected or used.

d. A review of records and decisions within a reasonable time when the parent requests that records be amended because they are believed to be inaccurate, misleading or violating the privacy or other rights of the pupil.

e. An opportunity for an agency level administrative hearing to challenge information in the education records.

12.20(3) Forms and procedures. The AEA shall adopt such forms and procedures as are necessary to document the meeting of all applicable statutes and rules.

12.20(4) Confidentiality of records. Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages and shall designate records custodians who shall have primary responsibility for insuring the confidentiality of records.

12.20(5) Record of access. A record of parties obtaining access to education records showing the name of the party, date access was given and the purpose for review will be maintained. This record shall be viewed only by the record custodian, the custodian's assistants, the parents or an eligible pupil.

12.20(6) Maintain records and reports. Records and reports shall be initiated and maintained in a current status in order to provide evidence of:

a. Certification of the existence of an individual's disability for pupils requiring special education.

b. Approval for pupil participation in special education.

c. Approval for special education personnel.

d. Continuity and sequential development of special education.

e. Nature and extent of present special education.

f. Assessment of present needs and projections for future needs.

g. Periodic special education evaluation by staff or outside consultants.

h. Data necessary to improve decision making, program planning and staff performance.

12.20(7) Destruction of records. Personally identifiable information on a pupil who is handicapped may be retained permanently unless the parents request that it be destroyed. When personally identifiable information is no longer needed to provide special education to the pupil, the agency shall inform parents or the eligible pupil. The agency must provide a reasonable amount of time for the parents or eligible pupil to respond before the records are destroyed. If the parents or eligible pupil request destruction of records, and when the agency has determined that the pupil's records are no longer educationally relevant, the records must be destroyed. When there is disagreement regarding the educational relevance or contents of the pupil's records, the parents or eligible pupil shall have an opportunity for a local records hearing. The local educational agency shall maintain a permanent record of a pupil's name, address, phone number, the pupil's grades, attendance record, classes attended, grade level completed and year completed.

DIVISION VI
RELATED SERVICES AND MEDICATIONS

670—12.21(281) Related services. In order to establish the responsibility of an agency to provide a specific related service to a pupil requiring special education, the following criteria shall be applied:

12.21(1) Routinely administered. The service can routinely be administered by school personnel.

12.21(2) Basic to goals of IEP. The service is basic to the goals and objectives of the IEP for the pupil.

12.21(3) Frequency and intensity of service. The pupil's special education necessitates service of a greater frequency and intensity than would be required if the pupil were not in school.

12.21(4) Administered during school hours. The service has to be administered during the school day, as defined in subrule 3.2(11), Iowa Administrative Code, in order to reasonably expect the pupil to be able to attend special education.

12.21(5) Exclusive of support services. Related services are not synonymous with special education support programs and services defined in these rules.

670—12.22(281) Included in IEP. All related services provided by the AEA shall be included in the pupil's IEP.

670—12.23(281) Medications. Each agency shall establish written policies concerning the administration of prescribed medication by school personnel during school hours. Medications shall not be administered unless the following requirements are met:

12.23(1) Directed by physician. A statement of the physician's directions specifying frequency, amount and method of administration signed by the prescribing physician must be filed at the school.

12.23(2) Reactions and side effects. A physician's description of anticipated reactions to and possible side effects of the medicine must be filed at the school.

12.23(3) Proper labeling. The medicine shall be maintained in the original prescription container which shall be labeled with:

a. Name of pupil.

b. Name of medicine.

c. Directions for use.

d. Name of physician.

e. Name and address of pharmacy.

f. Date of prescription.

12.23(4) Parent's written consent. A parental signature on a statement requesting and authorizing school personnel to administer the medicine in accord with the prescription shall be filed at the school.

12.23(5) Administering medication. The person responsible for administering the medication shall have ready access to and review of the information regarding the medication filed at the school.

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12.23(6) Record of administration. Each time medicine is administered a record shall be maintained to include the pupil's name, date, time and signature of the person administering the medicine.

12.23(7) Security. Each school or facility shall designate in writing the specific locked and limited access space within each building to store pupil medication.

a. In each building in which a full-time registered nurse is assigned, access to medication locked in a designated space shall be under the authority of the nurse.

b. In each building in which a less than full-time registered nurse is assigned, access to the medication shall be under the authority of the principal.

DIVISION VII
PERSONNEL

670—12.24(257, 281) Certification. Special education personnel shall meet the department certification and endorsement or recognition requirements for the position for which they are employed and shall meet the approval requirements of the department as provided for particular discipline areas of special education. In addition, any special education personnel who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold such license, certificate, or permit.

670—12.25(273, 281) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education provided.

12.25(1) Director of special education. "Director of special education" shall function as an advocate for pupils requiring special education and assist the state division of special education in meeting the intent of the special education mandate and complying with statutes and rules. The director shall be responsible for the implementation of special education for pupils requiring special education pursuant to Iowa Code section 273.5 and these rules. The director shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules to the department for appropriate action.

12.25(2) Special education instructional personnel. "Special education instructional personnel" serve as: Teachers or educational aides at the preschool, elementary or secondary levels for pupils requiring special education.

12.25(3) Special education support personnel. The following positions are those of special education support personnel who provide special education services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, inservice and referral services in accord with appropriate certification and endorsement or approval, or statement of professional recognition. When appropriately qualified, they may also engage in data collection, applied research and program evaluation.

a. "Assistant director of special education" provides specific area-wide administrative, supervisory and coordinating functions as delegated by the director.

b. "Consultant" is the special education instructional specialist who provides ongoing support to those special education instructional programs for which the consultant is authorized by the department to serve. The consultant participates in the identification and program planning of pupils who are handicapped; demonstrates instructional procedures and techniques; assists in the development of curriculum and special instructional materials; assists in attaining the least restrictive environment appropriate for each handicapped pupil; and, assists in providing inservice training to special education and general education staff regarding the education of handicapped pupils.

c. "Educational strategist" provides assistance to regular classroom teachers in developing intervention strategies for pupils who are mildly handicapped in obtaining an education but can be accommodated in the regular classroom environment.

d. "Itinerant hospital services or home services teacher" provides special education instruction through home or hospital instruction for pupils requiring special education.

e. "Itinerant teacher" provides special education instruction on an itinerant basis to pupils requiring special education.

f. "School audiologist" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, co-ordinate, and provide intervention strategies and services for pupils with hearing impairments.

g. "School occupational therapist" applies principles, methods and procedures for analysis of motor functioning to determine developmental and adaptive fine motor self help (feeding, dressing, vocational) competencies in order to plan, counsel, co-ordinate, and provide intervention strategies and services for pupils with physical impairments.

h. "School physical therapist" applies principles, methods and procedures for analysis of motor functioning to determine developmental and adaptive gross motor (positioning mobility) competencies in order to plan, counsel, co-ordinate, and provide intervention strategies and services for pupils with physical impairments.

i. "School psychologist" assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of pupils; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; counsels with parents, pupils, and families; provides parent and teacher inservice education; and, conducts applied research related to psychological and educational variables affecting learning.

j. "School social worker" enhances the educational programs of pupils requiring special education by assisting in identification and assessment of the pupils' educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and, serves as liaison among home, school and community.

k. "Special education co-ordinator" provides co-ordination of special education within a specific geographic area.

l. "Special education media specialist" is a media specialist who facilitates the provision of media services to handicapped pupils, provides consultation regarding media and materials used to support special education programming for handicapped pupils and aids in the effective use of media by special education personnel.

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m. "Special education nurse" is a professional registered nurse who assesses, identifies and evaluates the health needs of handicapped pupils; interprets the health needs to the families and educational personnel as those needs relate to the pupils' strengths and educational limitations; implements specific activities commensurate with the practice of professional nursing and integrates the health care into an acceptable pattern with the educational program.

n. "Speech and language clinician" applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

o. "Supervisor" is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

p. "Work experience co-ordinator" plans and implements, with local district staff, sequential secondary programs which provide on and off campus work experience for pupils requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

q. "Others" as approved by the department.

670—12.26(281) Paraprofessionals. Special education support aides and instructional aides may be employed to provide assistance to professionals in special education and shall:

12.26(1) Training. Complete appropriate preservice and inservice training specific to the functions to be performed. The agency shall make provision for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the pre-entry completion is not practicable.

12.26(2) Supervision. Work under the supervision of professional staff who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

12.26(3) Not a substitute. Not serve as a substitute for appropriately authorized professional personnel.

12.26(4) Authorized paraprofessionals. Authorized special education paraprofessional support personnel include:

a. "Audiometrist" provides hearing screening and other specific hearing related activities as assigned.

b. "Communication aide" provides certain language, articulation, voice and fluency activities as assigned.

c. "Educational interpreter" interprets or translates spoken language into sign language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

d. "Physical therapy assistant" provides physical therapy activities as assigned.

e. "Occupational therapy assistant" provides occupational therapy activities as assigned.

f. "Psychology aide" collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and, maintains psychological records.

g. "Vision aide" provides materials in the appropriate medium for use by visually impaired students and performs other duties as assigned.

h. "Others" as approved by the department.

12.26(5) Paraprofessional instructional personnel. Authorized special education paraprofessional instructional personnel are those described in subrule 3.4(5), Iowa Administrative Code.

DIVISION VIII
FACILITIES, MATERIALS AND EQUIPMENT

670—12.27(281) Facilities.

12.27(1) Equivalent to general education facilities. Each agency providing special education shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled pupils of comparable ages and meet the following criteria:

a. Rooms shall be provided for itinerant and permanently assigned staff and shall be regularly available for their use, of adequate size, with sufficient and appropriate work space, seating space and furnishings.

b. Physical mobility of pupils shall be considered in providing special education which is accessible to the pupils.

12.27(2) Personnel space and clerical help. Special education personnel shall be provided work space, secretarial and clerical assistance and telephone service.

12.27(3) Plan for emergencies. Each facility for pupils who require special education and who need assistance in meeting all potential emergencies and disasters, shall maintain a written plan containing emergency and disaster procedures which will be clearly communicated to and periodically reviewed with staff responsible for such pupils. The emergency plan shall include:

a. Plans for the assignment of personnel to specific tasks and responsibilities.

b. Instructions relating to the use of alarm systems and signals. If combination visual and auditory warning devices do not exist, the plan shall include specific provisions for warning hearing impaired pupils.

c. Information concerning methods of fire containment.

d. Systems for notification of appropriate persons and agencies.

e. Information concerning the location and use of fire fighting equipment.

f. Specification of evacuation routes and procedures.

g. Posting of plans and procedures at suitable locations throughout the facility.

h. Evacuation drills held as required in Iowa Code section 100.31. Evacuation drills shall include actual evacuation of pupils to safe areas.

i. An evaluation for each evacuation drill.

670—12.28(281) Materials and equipment.

12.28(1) Provision for materials and equipment. Each school district shall make provision for special education, facility modifications, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education, performance by the AEA shall be accepted in lieu of performance by the school district.

12.28(2) Acquire and maintain equipment. Each agency providing special education shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

12.28(3) Provide special equipment. The agency responsible for the operation of special education shall provide

special aids, equipment, materials or supplies as necessary, but shall not provide devices prescribed or designed on an individual basis for a particular pupil that could not be modified for another pupil.

12.28(4) Maintenance of hearing aids. The agency providing the special education shall ensure that individual and group hearing aids worn by hearing impaired pupils in school are functioning properly.

DIVISION IX
PROGRAM REVIEW

670—12.29(281) Reports and consultation.

12.29(1) Records and reports to department. Agencies shall submit to the department educational records and reports specifically requested.

12.29(2) Review for compliance. The department will evaluate each report submitted and may require the reporting agency to furnish additional information to ascertain the status of special education of the AEA in compliance with the requirements of Iowa Code chapters 257, 273 and 281 and these rules.

12.29(3) Department response. The department shall inform the agency in writing if any aspect of its report is unsatisfactory and, in such case, shall include the reasons. At the initiation of the agency or the department, conferences and consultations may be held on any matter relating to a report of special education of the agency.

12.29(4) Year-end report. On or before August 1 of each year, on forms provided, the AEA shall submit by special education disability areas and support services disciplines, an academic year-end report which identifies pupils served and progress toward or problems encountered in meeting the priorities and major activities of the current plan implementation document. Existing documents which contain information asked for may be used in lieu of a specifically prepared report.

670—12.30(273, 281) Rule exceptions.

12.30(1) Rule exception. Department approval. In unique circumstances, the director or, in a state operated program, the superintendent or designee, may request a rule exception from the department. These requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state operated program, the superintendent and, if granted, such an exception shall be valid for that academic year.

12.30(2) Adjusted program reports. For the following four circumstances, the director or, in a state operated program, the superintendent or designee, may grant an adjusted program status. An adjusted program report shall be filed with the department, on forms provided; within thirty days of the intended action.

a. Program model: A pupil is appropriately served in an instructional model other than that typically provided for pupils with similar special education needs.

b. Disability: A pupil is appropriately served in a categorical instructional program that does not typically serve the pupil's primary disability.

c. Age span of self-contained special class: The chronological age span of the pupils within the instructional program exceeds six years.

d. Maximum class size: When class size, including the size of a class served by a teacher employed less than full time, exceeds those limits specified in 12.6(281).

DIVISION X
PARENT PARTICIPATION

670—12.31(281) Information.

12.31(1) Parent involvement in IEP meetings. Each agency shall take steps to ensure that one or both parents of the handicapped pupil, or the eligible pupil, have the opportunity to be present at each meeting in which required components of the pupil's IEP are developed or revised. The agency shall:

a. Notify the parents early enough to give them an opportunity to attend.

b. Schedule the meeting at a mutually agreed time and place.

c. Notify the parents of the purpose, time and location of the meeting and who will be in attendance.

12.31(2) Pupil represented by parent. Notwithstanding any other provision of these rules, an eligible pupil who is determined by the diagnostic-educational team to need assistance in making independent decisions shall be represented or assisted by the natural parent or an individual acting as a parent on behalf of the pupil.

12.31(3) Documentation. If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent or eligible pupil if the parent or eligible pupil is unable to attend. In this case, the agency must have a record of its attempts to arrange a mutually agreed time including:

a. Detailed records of telephone calls made or attempted and the results of those calls.

b. Copies of correspondence sent to the parents and any responses received.

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

12.31(4) Interpreters for parents. The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for interpreters for parents who are deaf or whose native language is other than English.

12.31(5) Copy of IEP to parents. The agency shall give the parent, on request, a copy of the IEP.

12.31(6) Written notice required. Written notice must be given to parents a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement or to provide a free appropriate public education. The notice must include:

a. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action and a description of any options the agency considered and the reasons why those options were rejected.

b. A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal.

c. A description of any other relevant factors.

d. An explanation of all procedural safeguards available to parents.

12.31(7) Written consent required. Written parental consent must be obtained before the agency conducts a preplacement evaluation and before the initial placement of a handicapped pupil in special education. Consent is voluntary and may be revoked up until the time the proposed action takes place. If a dispute arises after the pupil is placed, the parents may request a hearing to review the placement decision.

12.31(8) Independent evaluation. Parents may obtain, at public expense, an independent educational evaluation for their child by an examiner who meets comparable Iowa licensure or certification standards if the parent disagrees with an evaluation obtained by the agency. However, the agency may initiate a hearing to attempt to show that the agency's evaluation is appropriate.

12.31(9) Complaints to the department. Parents, private individuals, organizations or public agencies may make complaints to the department regarding any actions contrary to these rules. The department shall review, investigate and act on any written complaint within sixty days of the receipt of such complaint. The department shall provide for negotiations, technical assistance or other remedial action if necessary to achieve compliance.

12.31(10) Initiating a hearing. The parent, eligible pupil or appropriate agency may initiate a hearing on any matter related to the provision of a free appropriate public education for a handicapped pupil for whom they have responsibility. The hearing will be conducted pursuant to Division XI of these rules by an impartial hearing officer.

12.31(11) Surrogate parent procedures.

a. Definitions.

"AEA" means area education agency.

"LEA" means local education agency.

"Parents" mean a parent, a guardian, a person acting as the parent or a surrogate parent for special education purposes.

"State agency program" as used here means a state agency which has the responsibility to educate children requiring special education.

"Surrogate parent" means an individual who acts in place of a parent in protecting the pupil's rights in the educational decision-making process. A surrogate parent is appointed for a pupil who is handicapped in obtaining an education when the parent is unknown, unavailable or the parents' rights have been severed and the pupil is under guardianship of the state.

"Unavailable" means the public agency, after reasonable efforts, cannot discover the whereabouts of a parent.

"Unknown" means the parent cannot be identified or ascertained by diligent inquiry.

b. Need for surrogate parents. Pupils under eighteen years of age requiring special education in LEA programs, AEA programs or state agency programs, or other agencies fulfilling the responsibility of the state agency, whose parents are unknown, unavailable, or whose parents' rights have been severed and who are under the guardianship of the state will be assigned a surrogate parent. Surrogate parents are not to be used merely because the parent is unco-operative or unresponsive to the special education needs of the pupil.

c. Eligible surrogate parents are persons who are at least eighteen years of age, known to be reliable and have had or will receive training in the education of handicapped pupils. A surrogate parent may not be an employee of the state or public agency which is involved in the education or care of the pupil. Foster parents, parents of other handicapped pupils or other interested and knowledgeable persons may be appointed to serve as surrogate parents. Group home directors and caseworkers may not be assigned as surrogate parents.

d. Appointment.

(1) A surrogate parent for special education is to be appointed whenever the AEA documents that the parent is unknown, unavailable, or when the parents' rights have been severed and the pupil is under the guardianship of the state and is known to be or is suspected of being handicapped.

(2) In appointing a surrogate parent, it must be assured that there is no conflict of interest regarding the surrogate parent's responsibility to protect the special education rights of the pupil; the surrogate parent is, or is willing to become, knowledgeable about the pupil's handicapping condition and educational needs; and, the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

(3) The AEA director will select a surrogate parent for special education purposes. The director will contact the department of human services district administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director will appoint the surrogate parent by letter. The letter must contain the pupil's name, age, educational placement and other information about the pupil determined to be useful to the surrogate parent, and must specify the period of time for which the person will serve. A copy of the letter will be sent to the department. Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined in section 34 C.F.R. 300.10.

e. Training.

(1) Training will be conducted as necessary by each AEA using a training procedure approved by the department which includes rights and responsibilities of surrogate parent, sample forms used by LEAs and AEAs, specific needs of handicapped pupils and resources for legal and instructional technical asistance.

(2) The department will provide inservice and assistance to EASs upon request.

f. Monitoring.

(1)The department will provide assistance to, and will monitor, surrogate parent programs.

(2) The department will develop guidelines to assist in the implementation of the surrogate parent program.

DIVISION XI
SPECIAL EDUCATION APPEAL PROCEDURES

670—12.32(17A, 281, 290) Definitions. As used in this division only:

"Appellant" means the party bringing a special education appeal to the department.

"Appellee" means the party in a matter against whom an appeal is taken.

"Department" means the state department of public instruction.

"Director" means the director of special education of the area education agency in the area of the pupil's resident school district.

"Parties" means the appellant, appellee and third parties named or admitted as a party.

"Presiding officer" means an administrative hearing officer designated by the superintendent from the list of approved hearing officers to hear the presentation of evidence and oral arguments in the hearing. The above referenced hearing officers are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as hearing officers who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in the education or care of the pupil. A listing of all hearing officers and their qualifications provided by the department shall be maintained by

all public agencies having the responsibility of serving pupils requiring special education.

"Superintendent" means the state superintendent of public instruction.

670—12.33(17A, 281) Manner of appeal.

12.33(1) Initiating a hearing. A child, parent or a public educational agency may initiate a hearing on any matter relating to the identification, evaluation or educational placement of a pupil or the provision of a free appropriate public education to a pupil.

12.33(2) Conducting a hearing. The hearing shall be conducted by the department.

12.33(3) Appeal by affidavit. An appeal shall be made in the form of an affidavit which generally sets forth the facts, the error or errors complained of or the reasons for the appeal in a plain and concise manner. An affidavit requires a sworn affirmation before a notary public or other officer authorized to administer oaths.

12.33(4) Notice. The superintendent or designee shall, within five days after the filing of such affidavit, notify the proper school officials in writing of the appeal and the officials shall, within ten days, file with the board a complete certified transcript of any record and proceedings related to the decision appealed and all relevant education records.

12.33(5) Legal and advocacy assistance. The department shall notify parents of the availability of low cost or free legal and advocacy assistance.

12.33(6) Written notice. The superintendent or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing to all parties. Such notice shall include the time and the place where the matter of appeal will be heard. A copy of the appeal hearing rules shall be included with the notice.

12.33(7) Mediation conference. Parties will be contacted by department staff persons to ascertain whether they wish to participate in a mediation conference. The involved parties shall be notified that participation in this conference is voluntary and that such a conference in no way will deny or delay a party's right to a full due process hearing. Such a conference, if held, will be scheduled at a time and place that is convenient to all involved persons. The mediation conference is designed to clarify the issues and, if possible, to resolve disagreements prior to a hearing. The mediation conference proceedings and offers of compromise during mediation shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in mediation.

12.33(8) Request for continuance. A request for continuance may be made by any party to the superintendent or administrative hearing officer, if appointed, upon reasonable cause.

12.33(9) Request for dismissal. A request for dismissal may be made to the superintendent or administrative hearing officer, if appointed, by the party initiating the appeal.

12.33(10) Granting continuance or dismissal. A continuance or dismissal may be granted upon the discretion of the superintendent or administrative hearing officer, if appointed.

12.33(11) Time and place of hearing. The hearing will be conducted at a time and place reasonably convenient to the parents and the pupil involved.

670—12.34(17A, 281) Participants in the hearing.

12.34(1) Conducting hearing. The hearing shall be conducted by the presiding officer.

12.34(2) Counsel. Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped pupils.

12.34(3) Opportunity to be heard: Appellant. The appellant or representative shall have the opportunity to be heard.

12.34(4) Opportunity to be heard: Appellee. The appellee or representative shall have the opportunity to be heard.

12.34(5) Opportunity to be heard: Director. The director or designee shall have the opportunity to be heard.

12.34(6) Opportunity to be heard: Third party. A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the presiding officer.

12.34(7) Resource persons. Representatives of the department may be present as resource persons and may be heard at the discretion of the presiding officer.

12.34(8) Presence of pupil. The pupil who is the subject of the hearing may be present at the parent's discretion.

12.34(9) Presence of eligible pupil. An eligible pupil may be present.

670—12.35(17A, 281) Convening the hearing.

12.35(1) Announcements and inquiries by presiding officer. At the established time, the name and nature of the case are to be announced by the presiding officer. Inquiries shall be made as to whether the respective parties or their representatives are present.

12.35(2) Proceeding with the hearing. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When any absent party has been properly notified, it shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the presiding officer.

12.35(3) Types of hearing. The presiding officer shall establish with the parties that the hearing will be conducted as one of three types:

a. A hearing based on the stipulated record.

b. An evidentiary hearing.

c. A mixed evidentiary and stipulated record hearing.

670—12.36(17A, 281) Stipulated record hearing.

12.36(1) Record hearing is nonevidentiary. A hearing based on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the presiding officer at the outset of the proceeding.

12.36(2) Materials to illustrate an argument. Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

12.36(3) One spokesperson per party. Unless the presiding officer determines otherwise, each party shall have one spokesperson.

12.36(4) Arguments and rebuttal. The appellant shall present first argument. The appellee then presents second

argument and rebuttal of the appellant's argument. A third party, at the discretion of the presiding officer, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

12.36(5) Time to present argument. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the presiding officer.

12.36(6) Written briefs. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the hearing, each party shall be afforded the opportunity to submit briefs and reply briefs within ten days of the conclusion of the hearing or at another mutually agreeable time. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record. Submission of the briefs shall be treated as a continuance.

12.36(7) Closing of hearing. The hearing is then closed upon order of the presiding officer.

670—12.37(17A, 281) Evidentiary hearing.

12.37(1) Testimony and other evidence. An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

12.37(2) Appellant statement. The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence will substantiate.

12.37(3) Appellee statement. The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusions which the appellee believes the evidence will substantiate.

12.37(4) Third party statement. With the permission of the presiding officer, a third party may make an opening statement of a general nature.

12.37(5) Witness testimony and other evidence. The appellant may then call witnesses and present other evidence.

12.37(6) Witness under oath. Each witness shall be administered an oath by the presiding officer. The oath may be in the following form: "You do solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

12.37(7) Cross-examination by appellee. The appellee may cross-examine all witnesses and may examine and question all other evidence.

12.37(8) Witness testimony and other evidence. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

12.37(9) Questions and other requests by presiding officer. The presiding officer may address questions to each witness at the conclusion of questioning by the appellant and the appellee. The presiding officer may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

12.37(10) Rebuttal witnesses and additional evidence. At the conclusion of the initial presentation of evidence and at the discretion of the presiding officer, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

12.37(11) Appellant final argument. The appellant may make a final argument not to exceed a length of time established by the presiding officer, in which the evidence presented may be reviewed, the conclusions outlined which the appellant feels most logically follow from the evidence and a recommendation of the action to the presiding officer.

12.37(12) Appellee final argument. The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the presiding officer.

12.37(13) Third party final argument. At the discretion of the presiding officer, a third party directly involved in the original proceeding may make a final argument.

12.37(14) Rebuttal of final argument. At the discretion of the presiding officer, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

12.37(15) Written briefs. Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the presiding officer. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the hearing or at a mutually agreeable time. The opportunity to submit reply briefs may be waived by any party and such waiver shall be entered into the record. Submission of the briefs shall be treated as a continuance.

12.37(16) Closing of hearing. The hearing is closed upon order of the presiding officer.

670—12.38(17A, 281) Mixed evidentiary and stipulated record hearing.

12.38(1) Written evidence of portions of record may be used. A written presentation of the facts or portions of the certified record which are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

12.38(2) Conducted as evidentiary hearing. All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing.

670—12.39(17A, 281) Witnesses.

12.39(1) Subpoenas. The superintendent shall have the power to serve subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them.

12.39(2) Attendance of witness compelled. Any party may compel by subpoena the attendance of witnesses.

12.39(3) Cross-examination. Witnesses at the hearing or a person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

670—12.40(17A, 281) Rules of evidence.

12.40(1) Receiving relevant evidence. Because the presiding officer must decide each case fairly, based on the information presented, and must also decide what is best in the public interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

12.40(2) Acceptable evidence. Irrelevant, immaterial or unduly repetitious evidence should be excluded. The kind of evidence which reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The hearing officer shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

12.40(3) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Upon objection, documentary evidence which is not disclosed to the other parties at least five days before the hearing shall be prohibited.

12.40(4) Independent evaluation. If deemed necessary, the presiding officer may order an independent evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

12.40(5) Opportunity to contest. The presiding officer may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the presiding officer. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the hearing officer determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

12.40(6) Presiding officer may evaluate evidence. The presiding officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

12.40(7) Decision. A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

670—12.41(17A, 281) Communications.

12.41(1) Restrictions on communications: Presiding officer. The presiding officer shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate. However, the presiding officer may communicate with staff members of the department and may have the aid and advice of persons other than those with personal interest in or those directly engaged in advocating the case under consideration or a pending similar case involving the same parties.

12.41(2) Restrictions on communications: Parties. Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the presiding officer except upon notice and opportunity for all parties to participate as are provided for by departmental rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication if oral, for inclusion in the record of the proceeding.

12.41(3) Sanctions. Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: Censure, suspension or revocation of the privilege to practice before the department or the rendering of a decision against a party who violates the rules.

670—12.42(17A, 281) Record.

12.42(1) Closed hearing. The hearing shall be closed to the public, unless the parents desire that it be open, and shall be recorded by mechanized means or by certified shorthand reporters. Oral proceedings in whole or in part may be transcribed at the request of any party with the expense of the transcription charged to the requesting party. Copies of recorded tapes of oral proceedings will be provided at no cost to parties.

12.42(2) Transcripts. All recording or stenographic notes of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

12.42(3) Hearing record. The record of a hearing under this division shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of matters officially noted.

d. All questions and offers of proof, objections and rulings thereof.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the presiding officer presented at the hearing.

670—12.43(17A, 281) Decision and review.

12.43(1) Decision. The presiding officer, after due consideration of the record and the arguments presented shall make a decision on the appeal.

12.43(2) Basis of decision. The decision shall be based on the laws of the United States and the state of Iowa, the rules and policies of the department and shall be in the best interest of the education of the pupil.

12.43(3) Time of decision. The presiding officer's decision will be reached and mailed to the parties within forty-five days after the department receives the original request for a hearing, unless extended for good cause at the request of either party or by the department.

12.43(4) Impartial decision maker. No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

670—12.44(17A, 281) Finality of decision.

12.44(1) Decision final. The decision of the hearing officer is final.

12.44(2) Civil action. Any party who is aggrieved by the findings and decision can bring civil action. The decision may be appealed to the state or federal district court pursuant to state or federal statutes.

670—12.45(17A, 281) Pupil's status during proceedings.

12.45(1) Placement during proceedings. Unless the parties agree otherwise, the pupil involved in the complaint must remain in the pupil's present educational placement during the pendency of any administrative or judicial proceedings.

12.45(2) Placement during initial admission hearing. If the hearing involves an application for initial admission to school or to special education, the pupil, with the consent of the parents, must be placed in the school program until the completion of all the proceedings.

DIVISION XII
FINANCE

670—12.46(281, 442) Contractual agreements. Any special education instructional program not provided directly by a school district or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board must approve contractual agreements for AEA operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than AEA.

670—12.47(281) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

670—12.48(281) Additional services. Additional special education for pupils requiring special education made available through the provisions of Iowa Code section 273.3, shall be furnished in a manner consistent with these rules.

670—12.49(273, 281, 442) Extended year programs. Approved extended year programs for special education support services, when provided by the AEA for pupils requiring special education, shall be funded through procedures as provided for special education support services. Approved extended year instructional programs shall be funded through procedures as provided for special education instructional programs.

670—12.50(281, 442) Special education centers. Special education centers, diagnostic and prescriptive, are authorized and funded in accord with special education support services provisions of Iowa Code sections 281.4 and 442.7. When the special educational needs of a pupil have been determined and when the weighted enrollment factor has been certified, the instructional program will be funded in accord with provisions of Iowa Code section 281.9.

670—12.51(281, 442) Program costs.

12.51(1) Nonresident pupil. The program costs charged by a school district or an AEA for an instructional program for a nonresident pupil requiring special education shall be the actual costs incurred in providing that program.

12.51(2) Contracted special education. An AEA or school district may make provisions for a resident pupil requiring special education through contracts with public or private agencies which provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

12.51(3) District responsibility. The resident district shall be liable only for instructional costs incurred by an agency for those pupils certified as eligible in accord with these rules.

12.51(4) Support service funds. Support service funds may not be utilized to supplement any special education programs authorized to use weighted instructional funds.

12.51(5) Responsibility for special education if facility does not have a school. For pupils living in a state-supported institution, charitable institution or licensed boarding home, the school district in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, will be paid by the district of residence of the pupil. If the district of residence of the pupil cannot be determined, and the pupil is not included in the weighted enrollment of any district in the state, the district in which the facility is located may certify the costs to the state superintendent of public instruction by September first of each year for the preceding fiscal year. Payment will be made from the general fund of the state.

12.51(6) Responsibility for special education for pupils placed by court. For pupils placed by the district court, and for whom parental rights have been terminated by the district court, the school district in which the facility or home is located must provide special education. Costs shall be certified to the state superintendent of public instruction by September first of each year for the preceding fiscal year by the director of the AEA in which the pupil has been placed. Payment will be made from the general fund of the state.

12.51(7) Proper use of weighted and support service funds. Weighted instructional funds may be utilized to provide special education instructional programs both in-state and out-of-state with the exceptions of itinerant home-hospital instructional services, itinerant teaching instructional services and consultative instructional programs which must utilize support service funds for both in-state and out-of-state placements.

12.51(8) Extended evaluation.Pupils in extended evaluation shall not be assigned a weighting.

670—12.52(281, 442) Audit. The department reserves the right to audit the records of any agency providing special education for pupils requiring special education and utilizing funds generated under Iowa Code chapters 273, 281, and 442.

670—12.53(281, 442) Independent evaluation.

12.53(1) Independent evaluation: AEA. If an independent educational evaluation is requested by the AEA, the cost of the independent evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

12.53(2) Independent evaluation: Hearing officer. If an independent educational evaluation is requested by a department hearing officer, the cost of the independent evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

12.53(3) AEA policy and procedures. The AEA shall establish policy and procedures for paying costs of an independent evaluation authorized under 34 C.F.R. §300.503.

670—12.54(273, 281, 442) Sanctions.

12.54(1) Suspension of financial aid. Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting those requirements.

12.54(2) Noncompliance. When it has been determined that an area of noncompliance exists, the department will notify the involved agency in writing of the violation, the required corrective action with time lines, appeal rights and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the state comptroller so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period.

DIVISION XIII
STATE PLAN

670—12.55(257, 273, 281) State plan of education for all handicapped pupils. In accord with 20 U.S.C. §1413 the state must submit a plan with certain requisite features.

12.55(1) Planning process.

a. The three-year state plan shall be developed in accord with all applicable federal statutes and regulations. Copies of such applicable regulations can be obtained at no cost by contacting the department. Beginning with fiscal year 1981, each state plan shall be effective for a period of three fiscal years.

b. A state level advisory panel shall be established and shall serve in an advisory capacity to the department in matters relating to the education of handicapped pupils. This advisory panel will meet as often as necessary to conduct its business, but at least semiannually.

12.55(2) Public participation. Public participation and opportunity to participate. The department, in order to provide the general public a reasonable opportunity for participation in the development of the state plan for 20 U.S.C. §1401 et seq., will utilize the following procedures:

a. Consult with relevant advisory committees, local agencies, interest groups and experienced professionals in the development of each proposed state plan.

b. Publish a description of each proposed state plan, in a manner that will ensure circulation throughout the state, at least sixty days prior to the date on which the plan is submitted to the secretary of education or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the proposed plan to be accepted for at least thirty days.

c. Hold public hearings on the proposed state plan as required by the secretary of education or by regulation.

d. Provide an opportunity for interested agencies, organizations and individuals to suggest improvements in the administration of programs and to allege that there has been a failure by an entity to comply with applicable statutes and regulations.

12.55(3) Applicability of final approved plan. The provisions of the state plan, 20 U.S.C. §1413, are applicable to, and shall be adopted and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of handicapped children. These would include:

a. The state education agency.

b. Local education agencies.

c. AEAs.

d. Other state agencies, including correctional facilities.

These rules are intended to implement Iowa Code sections 257.9(2), 273.5 and 281.3.

ARC 5010

PUBLIC INSTRUCTION DEPARTMENT[670]

TERMINATION OF NOTICE

Pursuant to the authority of Iowa Code section 275.10(12), the State Board of Public Instruction hereby terminates proposed amendment to rule 670—40.5(273), "Area education agency media center responsibility." The current rule provides for printing services but does not include specific rules for printing beyond the general stipulation that all Area Education Agency Media Center services "shall be made available to all students and teachers of local school districts within the boundaries of a given area education agency and which may be made available to nonpublic students from prekindergarten through secondary schools." Notice of Intended Action published in Iowa Administrative Bulletin July 18, 1984, as **ARC 4828** is hereby terminated.

Rules were initiated by the Department regarding printing services by AEA Media Centers in response to a legislative resolution which was itself in response to concern expressed by the Printing Industries of Iowa on the scope of printing activities conducted by some AEA Media Centers. In development of proposed rules, every attempt was made by the Department to draft rules that complied with the existing provisions and authority of the law authorizing printing (capability for production of media-oriented instruction materials) by AEA Media Centers. The basic response to the rules has been that they "restrict or limit printing services for nonpublic schools." Similar concerns have been raised by members of the Administrative Rules Review Committee. The "nonpublic-public school issue" was not and does not currently appear to be a concern of the printing industry whose initial interest generated the rules promulgation effort. Since there is no support for the rules as proposed by the Department and since representatives of the printing industry in Iowa appear to be satisified with their current relationships with AEA Media Directors, no reason currently appears to exist for the Department to continue with any amendments or additions to existing rules concerning printing by AEA Media Centers.

ARC 5037

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 16,

"Taxable Sales" and Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

The chapters are amended to reflect recent changes in the law. Under those changes, the services of engraving, photography, retouching, printing, binding, vulcanizing, recapping and retreading are, henceforth, for the purposes of sales and use tax law to be treated as sales of tangible personal property rather than as sales of services. The rule also explains that the change is applicable to services sold after certain dates and explains some of the peculiarities resulting from the fact that the Act mandating the change in treatment of vulcanizing, recapping and retreading services is retroactive to January 1, 1979, but allows no refunds to be claimed which result from treatment of the services as tangible personal property or assessments to be made for treatment of the services as property rather than services for the period beginning January 1, 1979 and ending with the effective date of the Act. Also, Department rules which treated these services, now tangible personal property, as services are amended. Various definitions and characterizations of the services contained in the amended rules are transferred to the new rule. Also, the term "photography," previously undefined, is defined in the new rule and the appropriate amended rule.

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

The agency has determined that this proposed rule may have an impact on small business. The agency has considered the factors listed in 1984 Iowa Acts, Senate File 475, section 1(4a-l). The agency will issue a regulatory flexibility analysis as provided in 1984 Iowa Acts, Senate File 475 if a written request is filed by delivery or by mailing postmarked no later than October 30, 1984 to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. The request may be made by the administrative rules review committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with this agency under the Act.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 9, 1984. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact Clair R. Cramer, Policy Section, Technical Services Division, Iowa Department of Revenue, at 515/281-4250 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 2, 1984.

The amendments are intended to implement 1983 Iowa Code Supplement sections 422.43 and 423.1 as amended by 1984 Iowa Acts, Senate File 2354 and House File 2503.

The following amendments are proposed:

ITEM 1. The following new rule is proposed.

730—16.51(422,423) Sales of services treated as sales of tangible personal property.

16.51(1) Effective July 1, 1984, the sale of engraving, photography, retouching, printing and binding services is no longer the sale of enumerated services but the sale of tangible personal property. For the purposes of this subrule these services will be referred to as "property."

a. Definitions and characterizations.

(1) Binding. Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of property, the gross receipts of which are subject to tax.

(2) "Engraving" includes the business of engraving on wood, metal, stone or any other material.

(3) "Photography" is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy.

(4) "Printing" includes, but is not limited to, any type of printing, lithographing, mimeographing, typing incidental to multiple reproduction(s) listed herein, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: Printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

(5) "Retouching" includes the renovation or retouching of an existing likeness or design.

16.51(2) Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as "property."

a. "Vulcanizing" means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

b. The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer's treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979 and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

This rule is intended to implement Iowa Code sections 422.43 and 423.1 as amended by 1984 Iowa Acts, Senate File 2354 and House File 1503.

ITEM 2. Rule 26.17(422) is amended to read as follows:

730—26.17(422) Engraving, photography and retouching. *Prior to July 1, 1984,* ~~P~~persons engaged in the business of engraving on wood, metal, stone or any other material, taking photographs, or renovating or retouching an existing likeness or design are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. *"Photography" is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy. For treatment of these services on and subsequent to July 1, 1984, see rule 16.51(422,423).*

ITEM 3. Rule 26.39(422) is amended to read as follows:

730—26.39(422) Printing and binding. *Prior to July 1, 1984,* ~~P~~persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or

REVENUE DEPARTMENT[730] *(cont'd)*

performing a service, the gross receipts from which are subject to tax. "Printing" shall include any type of printing, lithographing, mimeographing, typing incidental to multiple reproduction(s) listed herein, photocopying and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: The printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, *matchbook covers* ~~matches~~, campaign posters and banners for the users thereof. *For the treatment of printing and binding on and after July 1, 1984, see rule 16.51(422,423).*

ITEM 4. Department rule 26.48(422) is amended to read as follows:

730—26.48(422) Vulcanizing, recapping or retreading. *Prior to May 18, 1984,* ~~P~~persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purposes of this rule, vulcanizing shall mean the act or process of treating crude rubbers, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity. *On and after May 18, 1984, the sale of vulcanizing, recapping or retreading is treated as a sale of tangible personal property. See rule 16.51(422,423) for the effects of this change and for certain changes in the treatment of vulcanizing, recapping or retreading for the period beginning January 1, 1979, and ending May 17, 1984.*

ARC 5025

WATER, AIR AND WASTE MANAGEMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455B.105, and 455B.222, the Water, Air and Waste Management Commission hereby gives Notice of Intended Action to amend 900—Chapter 81, Iowa Administrative Code, relating to certification of operators of water and wastewater systems. The amendment is to implement 1984 Iowa Acts, House File 2387, section 2, which authorizes the Department to issue certificates without examination and continuing education requirements to operators of water distribution systems serving not more than 250 persons. The proposal reflects the advice of the Board of Operator Certification on how this provision should be implemented.

Any interested person may make oral comments on these proposed amendments on October 30, 1984, at 10:00 a.m. in the Fifth Floor Conference Room, Henry A. Wallace Building, Des Moines, Iowa. Any interested person may submit written comments on these proposed amendments prior to November 9, 1984, by submitting those comments to the Executive Director, Department of Water, Air and Waste Management, Henry A. Wallace Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code Chapter 455B, Division III, Part 2.

ITEM 1. Amend rule 900—81.9(455B) by amending subrule 81.9(1) and adding a new subrule 81.9(8) as follows:

81.9(1) All applicants not addressed in 81.9(4) *and 81.9(8)* for certification shall successfully complete and pass an examination prior to receiving certification.

81.9(8) *Upon written request, the board will consider the issuance of a certificate without examination to an operator for a water distribution system serving not more than 250 people. The certificate will only be issued after proof to the board that the operator is qualified by education, training or experience to be responsible for the operation of the system, that the system owner is unable to obtain a properly certified operator either by direct hiring or by affidavit pursuant to 81.12(455B), and that continuing education courses are unavailable or would serve no substantial purpose in ensuring proper operation of the system. The certificate shall be restricted to the one system for which the operator is responsible at the time of certification and shall be exempt from continuing education requirements for renewal.*

ITEM 2. Amend subrule 81.10(6), as follows:

81.10(6) Continuing education must be earned during two-year periods beginning on April 1, 1979, and April 1 of odd-numbered years thereafter. A Grade III or IV certified operator must earn two units or twenty contact hours per certificate during each two-year period. *Except as provided in 81.9(8),* ~~A~~all other certified operators must earn one unit or ten contact hours per certificate during each two-year period. Newly certified operators (previously uncertified) who become certified after April 1 of a two-year period will not be required to earn CEU's until the next two-year period. If an operator upgrades a certificate after April 1 of a two-year period and that upgrade increases the CEU requirement, the operator will not be required to meet the higher CEU requirement until the next two-year period but must earn the lower CEU value for that period.

These rules are intended to implement Iowa Code Chapter 455B, Division III, Part 2, as amended by 1984 Iowa Acts, House File 2387, section 2.

NOTICE - USURY

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

December 1, 1982 - December 31, 1982	13.00%
January 1, 1983 - January 31, 1983	12.50%
February 1, 1983 - February 28, 1983	12.50%
March 1, 1983 - March 31, 1983	12.50%
April 1, 1983 - April 30, 1983	12.75%
May 1, 1983 - May 31, 1983	12.50%
June 1, 1983 - June 30, 1983	12.50%
July 1, 1983 - July 31, 1983	12.50%
August 1, 1983 - August 31, 1983	12.75%
September 1, 1983 - September 30, 1983	13.50%
October 1, 1983 - October 31, 1983	13.75%
November 1, 1983 - November 30, 1983	13.75%
December 1, 1983 - December 31, 1983	13.50%
January 1, 1984 - January 31, 1984	13.75%
February 1, 1984 - February 29, 1984	13.75%
March 1, 1984 - March 31, 1984	13.75%
April 1, 1984 - April 30, 1984	13.75%
May 1, 1984 - May 31, 1984	14.25%
June 1, 1984 - June 30, 1984	14.75%
July 1, 1984 - July 31, 1984	15.50%
August 1, 1984 - August 31, 1984	15.50%
September 1, 1984 - September 30, 1984	15.25%
October 1, 1984 - October 31, 1984	14.75%

ARC 5018

HEALTH DEPARTMENT[470]

BOARD OF PSYCHOLOGY EXAMINERS

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby adopts amendments to Chapter 140 of the Iowa Administrative Code relating to the Board of Psychology Examiners. The new rules provide standards for certified health service providers in psychology and establish fees for certification.

Notice of Intended Action regarding the proposed rules was published in the Iowa Administrative Bulletin August 15, 1984, as **ARC 4893**. No comments were received. The rules were adopted September 20, 1984.

The Board of Psychology Examiners finds the rules are required by statute and confer a benefit on the public by making available to the public certified health service providers in psychology. Therefore, the rules are filed pursuant to Iowa Code section 17A.5(2)"b"(1) and (2) for emergency implementation.

The rules are the same as published under notice except that for clarification the word "Biennial" was added to subrule 140.12(4), paragraph "c."

The rules are intended to implement 1984 Iowa Acts, Senate File 414, section 2.

The rules shall become effective September 20, 1984 upon filing.

Chapter 140 is amended by adding the following new rules:

SPECIALTY CERTIFICATION

470—140.11(70GA, SF414) Definitions.

140.11(1) "Certified health service provider in psychology" means a person licensed to practice psychology who has a doctoral degree in psychology, or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was prior to January 1, 1984, licensed as a psychologist in this state and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology, and who has at least two years of clinical experience in a recognized health service setting or meets the standards of a national register of health service providers in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders, and to treat mental illnesses and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

The board of examiners for psychology after determining a person meets the qualifications for certification may issue a certificate designating the person as a health service provider in psychology.

140.11(2) "Doctoral degree in psychology" means a doctoral degree in any program which meets the following criteria:

a. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serve as a model for professional psychology training, or all of the following criteria, "b" through "j."

b. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

c. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

d. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

e. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

f. The program must be an integrated, organized sequence of study.

g. There must be an identifiable psychology faculty and a psychologist responsible for the program.

h. The program must have an identifiable body of students who are matriculated in that program for a degree.

i. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

j. The curriculum shall encompass a minimum of three academic years of graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

(3) Social bases of behavior: Social psychology, group processes, organizational and systems theory.

(4) Individual differences: Personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology will include course requirements in specialty areas.

140.11(3) "Two years of clinical experience" means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in subrule 140.11(4) and one year is postdoctoral or for a person who prior to July 1, 1984, was licensed as a psychologist in this state means two years of experience in health service in psychology supervised by a licensed psychologist.

Those psychologists licensed at the subdoctorate level prior to January 1, 1985, who then seek licensure recognition at the doctorate level may be allowed credit for licensure supervision and experience that was done at the subdoctorate level.

140.11(4) An organized health service training program shall meet the following criteria:

a. An organized health service training program is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training.

b. The organized health service training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed or certified by the state board of examiners in psychology in the state in which the program exists.

c. The organized health service training program has two or more psychologists on the staff as supervisors, at least one of whom is actively licensed as a psychologist by the state board of examiners in psychology in the state in which the program exists.

d. Supervision is provided by a staff member of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one or more psychologists.

e. The organized health service training program provides training in a range of assessment and treatment activities conducted directly with patients seeking psychological services.

f. At least twenty-five percent of trainees' time is in direct patient contact (minimum 375 hours).

g. The organized health service training program includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as: Case conferences involving a case in which the intern is actively involved; seminars dealing with clinical issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

h. Training is post clerkship, post practicum, and post externship level.

i. The organized health service training program has a minimum of two interns at the internship level of training during any period of training.

j. The internship level trainees have a title such as "intern," "resident," "fellow," or other designation of trainee status.

k. The organized health service training program has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainee's work and is made available to prospective interns.

l. The training experience (minimum 1500 hours) shall be completed within twenty-four consecutive months.

140.11(5) "Recognized health service setting" means a setting in which the delivery of direct preventive, assessment, and therapeutic intervention services are provided to individuals whose growth, adjustment or functioning is actually impaired or is demonstrably at high risk of impairment; delivery of the aforementioned services includes, but is not limited to the diagnosis or evaluation and treatment of mental illness and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illness and nervous disorders.

470—140.12(70GA, SF414) Requirements for certification.

140.12(1) Any person currently licensed as a psychologist in the state of Iowa and listed in the 1983 National Register of Health Service Providers in Psychology as published by the Council for Health Service Providers in Psychology or the Cumulative Summer 1984 Supplement to the National Register of Health Service Providers in Psychology is eligible for certification as a health service provider in psychology upon making application and payment of the required certification fee.

140.12(2) Any person, who is not listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement, making application for certification as a health service provider in psychology shall comply with the following requirements:

a. Current licensure to practice psychology in the state of Iowa; and

b. Doctoral degree in psychology or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was licensed as a psychologist in Iowa prior to January 1, 1984, and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology; and

c. Completion of at least two years of clinical experience in a recognized health service setting.

140.12(3) Applications. All applications shall be made upon a form furnished by the board.

140.12(4) Fees. All fees are nonrefundable:

a. Application fee for a person who is listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement is thirty dollars.

b. Application fee for a person who is not listed in 1983 National Register of Health Service Providers or the Cumulative Summer 1984 Supplement is one hundred forty dollars.

c. Biennial renewal fee for certification as a certified health service provider in psychology is forty dollars, which shall be paid at the same time as the psychology license renewal fees are due.

d. Fee for a duplicate certificate if the original is lost or stolen is ten dollars.

e. Fee for a certified statement that a licensee is certified in this state is ten dollars.

[Filed emergency after notice 9/20/84, effective 9/20/84]

[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5026

AGRICULTURE DEPARTMENT[30]

Pursuant to the authority of Iowa Code sections 159.5(11) and 189.2(2), the Iowa Department of Agriculture hereby adopts rules created as Chapter 36, titled "Bulk Food Operations" as Item 1 and amends Chapter 38, "Food Establishments," as Item 2, Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin Number 4, August 15, 1984, as **ARC 4880**. A public hearing was held on September 6, 1984. No written or oral comments were received, therefore, these rules are identical to those published under notice.

These rules are intended to implement Iowa Code chapter 170 and sections 170.16, 189.14 and 189.15.

These rules will become effective November 14, 1984.

ITEM 1. The following rules are adopted to appear in reserved Chapter 36:

CHAPTER 36
BULK FOOD OPERATION

30—36.1(170) Definitions. For the purpose of this chapter:

"Bulk food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. The term does not include fresh vegetables, fresh fruits, nuts in the shell, salad bars and potentially hazardous foods.

"Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

"Potentially hazardous food" shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms. The term does not include foods that have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less under standard conditions.

"Product module" means a food contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

"Servicing area" means a location or locations designed and equipped for cleaning, sanitizing, drying or refilling product modules or for preparing bulk foods for sale.

30—36.2(170) Food supplies. Food shall be obtained from approved sources that comply with applicable state and federal laws relating to food safety and sanitation. Food shall be in sound condition and safe for human consumption. Food prepared in a home shall not be used or offered for sale.

30—36.3(170) Food storage. Bulk foods shall be stored and handled in compliance with the provisions of Iowa Code chapter 170 and Iowa Administrative Code chapter 38.

Labels or marking pens shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

30—36.4(170) Food protection. Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage.

36.4(1) Loaves of bread must be packaged or sacked to minimize possible contamination by handling.

36.4(2) Containers of bulk pet foods and bulk nonfood items shall be separated from food product modules by an effective barrier, aisle or open space.

36.4(3) Bulk food returned for any reason by the customer shall not be returned to the module, but shall be discarded.

36.4(4) No "personal" container shall be filled with bulk food.

30—36.5(170) Food display.

36.5(1) Potentially hazardous foods shall not be provided for customer self-service.

36.5(2) Bulk food product modules shall be labeled with the manufacturer or processor's bulk container labeling plainly in view, or a sign, counter card or other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in proper order of predominance, declaration of artificial color or flavor and chemical preservatives, if contained in the product.

36.5(3) Bulk foods shall be dispensed only from product modules which are protected by close fitting, individual covers. If opened by the customer, the covers shall be self-closing and shall remain closed when not in use.

36.5(4) Customer access to bulk food contained in upright product modules shall be at a height of thirty inches or more above the floor. Product modules in displays which allow customer access below thirty inches shall be used to display only those foods that have natural protection, such as nuts in the shell, or other food items that are individually wrapped.

36.5(5) Product modules with customer access from the top shall have a depth no greater than eighteen inches.

30—36.6(170) Dispensing utensils.

36.6(1) To avoid unnecessary manual contact, either mechanical dispensing devices (including gravity-fed pumps, extruders or augers) or manual dispensing utensils (including tongs, scoops, ladles or spatulas) are to be used.

36.6(2) Manual dispensing utensils shall be stored in a protective sleeve or housing attached or adjacent to the display unit when not in use or by utilizing a utensil designed so that the handle cannot contact the product if left in the product module.

36.6(3) Since it is not practical to store ladles or spatulas (usually used to dispense sticky or semiliquid foods) in sleeves or protective housings, they shall be stored in the food with handles extending up through the outside of the product module. Handles shall not prevent lids from being self-closing.

30—36.7(170) Equipment and utensils—materials.

36.7(1) Product modules and utensils shall be constructed of safe materials; shall be smooth, nonabsorbent, corrosion resistant, easily cleanable and durable under conditions of normal use.

Product containers originally filled by the food manufacturer or processor may be used in lieu of multi-use modules provided they are discarded when empty, are not refilled, meet the specifications stated above, meet the eighteen-inch maximum depth and comply with cover and dispensing requirements.

36.7(2) Single-service plastic bags or liners used in product modules shall be made of safe materials and be of sufficient weight and thickness to resist tears and cuts.

36.7(3) Cloth, burlap, cardboard, fiberboard, paper bagging and wood are not acceptable materials for food contact surfaces because of absorbency and lack of cleanability. These may be used only when in contact with nuts in the shell, wrapped candy or similarly protected food items.

30—36.8(170) Design and fabrication.

36.8(1) Product modules, lids, dispensing units and utensils shall be designed and fabricated to meet the requirements for food contact surfaces.

36.8(2) Individual product modules shall be designed to be easily removable from the display for servicing unless they are so designed and fabricated that they can be effectively cleaned and sanitized when necessary through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect other bulk food or equipment in the adjoining display area.

36.8(3) Nonfood contact surfaces in product module display units and all display equipment or materials (not intended for food contact, but may be exposed to spills, splash, food debris or other soiling) shall be designed and fabricated to be smooth, cleanable, durable, free of unnecessary ledges, projections or crevices and shall be made of nonabsorbent material or made nonabsorbent by being finished and adequately sealed to make a smooth, cleanable, coated surface.

36.8(4) Existing facilities and equipment that can be modified to meet these requirements are acceptable.

30—36.9(170) Cleaning frequency.

36.9(1) Scoops, tongs, ladles or spatulas used by customers, shall be cleaned and sanitized daily, or more frequently, depending upon the type of food and the amount of food particle accumulation or soiling on the utensil.

36.9(2) Product modules, lids and other equipment shall be cleaned when soiled, prior to restocking, or at regular intervals, based upon the type of food and amount of particle accumulation.

36.9(3) Food-contact surfaces shall be cleaned and sanitized immediately if contamination is observed or suspected.

30—36.10(170) Manual cleaning and sanitizing.

36.10(1) For manual cleaning and sanitizing of product modules, lids, utensils or equipment involved in bulk food sales, proper facilities or equipment as provided in 30—subrule 38.8(1) of the Iowa Administrative Code, shall be made available, either in the servicing area or other suitable location designated for this purpose.

36.10(2) Each compartment of the sink must be large enough to accommodate the container, module, lid, utensil or piece of equipment to be washed or sanitized.

36.10(3) Sinks must be properly equipped with both hot and cold potable running water under pressure and adequate drain boards so that all items can be air dried.

36.10(4) It is recognized that in some cases appropriate cleaning results may be obtained by vacuum methods. If such is used, all items that will touch food-contact surfaces must first be washed or properly sanitized.

30—36.11(170) Sanitary facilities.

36.11(1) If suitable handwashing facilities are not provided for employees and customers in or near the bulk food display area, upon request, customers shall have access to lavatories in restroom facilities nearby.

36.11(2) For minor handsoiling, individual sanitary paper towels or disposable towelettes shall be provided, along with easily cleanable waste receptacles in the display area.

30—36.12(170) Single-service articles. Take-home containers (bags, cups, lids, etc.) provided in the bulk food display area for customer use, shall be stored and dispensed in a sanitary manner.

30—36.13(170) Maintaining sanitation—personnel.

36.13(1) The sale of bulk foods requires close supervision by store employees who must be either assigned to the bulk display area or be close by to assist customers and maintain a clean and sanitary food display area at all times.

36.13(2) Customers must be advised, either by proper signs or store employees, of the proper method to use dispensing utensils and their responsibilities for protecting displayed foods from contamination.

36.13(3) Customers must be advised not to smoke or handle any food products with their hands while in the bulk food display area and "tasting" or "sampling" of bulk food products by customers is not to be permitted except when provided by a designated employee of the store.

ITEM 2. Amend subrule 38.8(1) as follows:

38.8(1) For manual washing, rinsing and sanitizing of equipment and utensils in meat departments and other food preparation areas, a sink of not fewer than ~~three~~ *two* compartments shall be provided which is equipped with hot and cold running water under pressure and adequate drain boards so that equipment and utensils can be inverted and air dried.

These rules are intended to implement Iowa Code chapter 170 and sections 170.16, 189.14 and 189.15.

[Filed 9/21/84, effective 11/14/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5004

BEER AND LIQUOR CONTROL DEPARTMENT[150]

Pursuant to the authority of Iowa Code section 123.21, subsection 11, the Iowa Beer and Liquor Control Council, on August 31, 1984, adopted an amended rule in 150—Chapter 4 entitled "Liquor Licenses—Beer Permits."

Notice of Intended Action was published in the Iowa Administrative Bulletin, June 20, 1984, as **ARC 4725.**

This rule amendment allows licenses and permits to be transferred an unlimited number of times if the transfers are approved by the local authority.

A representative of the department appeared in front of the Administrative Rules Review Committee on July 11, 1984, at which time this rule amendment was discussed. The public hearing scheduled for July 10, 1984, in the department was not held because no one attended it. The department received no written or oral comments from the general public on these rules.

The adopted rule is identical to the one published under Notice.

The rule is intended to implement Iowa Code section 123.38.

This rule will become effective November 14, 1984.

The following rule amendment is adopted.

Subrule 4.18(2) is amended as follows:

4.18(2) Temporary transfers. If the transfer of a license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at twenty-four hours and transfer time shall not exceed seven days. A letter from the local authority granting the temporary transfer must be sent to the department. ~~Temporary transfers cannot be made more than three times a year for any one licensee or permittee.~~ The insurance company holding the dramshop policy must be notified of any change of address.

This rule is intended to implement Iowa Code section 123.38.

[Filed 9/17/84, effective 11/14/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5005

BEER AND LIQUOR CONTROL DEPARTMENT[150]

Pursuant to the authority of Iowa Code section 123.21, subsections 1 and 2, the Iowa Beer and Liquor Control Council, on August 31, 1984, adopted 150—Chapter 13 entitled "Operation Of State Liquor Stores."

Notice of Intended Action was published in the Iowa Administrative Bulletin, July 4, 1984, as **ARC 4765**.

Item 1 gives Chapter 13 the title of "Operation Of State Liquor Stores." Item 2 renumbers rule 4.32(123) to rule 13.1(123). Item 3 lets the general public know that this department's two hundred fourteen liquor stores are going to start selling gift certificates.

Two representatives of the department appeared in front of the Administrative Rules Review Committee on August 17, 1984, at which time this rule amendment was discussed. The public hearing scheduled for July 26, 1984, in the department was not held because no one attended it. The department received no written or oral comments from the general public on these rules.

The adopted rules are identical to those published under notice.

The third item is intended to implement Iowa Code section 123.21, subsections 1 and 2.

These rules will become effective November 14, 1984.

The following new rules are adopted.

ITEM 1. **Chapter 13** is adopted and will be entitled "Operation Of State Liquor Stores."

ITEM 2. Rule **4.32(123)** is renumbered rule **13.1(123)**, and number 4.32 is reserved.

ITEM 3. Rule 13.2(123) is added to chapter 13.

150—13.2(123) Gift certificates. The department's liquor stores shall sell gift certificates in specific amounts set by the department's council. Only persons of legal drinking age can purchase gift certificates. The department's liquor stores can accept cash or traveler's checks as payment for the gift certificates. Although gift certificates are not redeemable for cash only, partial refunds can be made providing at least one bottle of merchandise is purchased by the customer when redeeming a gift certificate. The department shall not charge any fee for issuing the gift certificates.

This rule is intended to implement Iowa Code section 123.21, subsections 1 and 2.

[Filed 9/17/84, effective 11/14/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5023

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on September 14, 1984, the Commission issued an order in Docket No. RMU-84-7, In Re: Uniform Extension Policies II, "Order Adopting Rules," pursuant to Iowa Code section 17A.4.

On May 4, 1984, the Commission, on its own motion, issued an order commencing a rulemaking to amend the extension policy rules in Iowa Administrative Code 250—chapters 19, 20 and 21. The Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 1984, as **ARC 4676**. Written comments were filed on or before June 12, 1984. At the request of the Homebuilders Association an oral presentation was held July 30, 1984.

The Commission adopted the proposed rules without modification. The reasons for rejecting proposed modifications are set forth in the Commission's "Order Adopting Rules," issued September 14, 1984, in Docket No. RMU-84-7.

These rules are intended to implement Iowa Code sections 476.1 and 476.8.

These rules will become effective on November 14, 1984, pursuant to Iowa Code section 17A.5(2).

ITEM 1. Amend 250—**19.3(10)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, *no more than thirty days prior to commencement of construction,* the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

ITEM 2. Amend 250—**19.3(10)**"b"(2) "2" and the first paragraph of (3) to read as follows:

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer *no more than thirty days* prior to commencement of construction.

(3) Advances for construction costs for distribution main extensions for customers who will not attach within the agreed-upon attachment period. Where the customer

will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit, *no more than thirty days* prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

ITEM 3. Amend 250—**20.3(13)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, *no more than thirty days prior to commencement of construction,* the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

ITEM 4. Amend 250—**20.3(13)**"b"(2)" 2" and the first paragraph of (3) to read as follows:

2. If the estimated construction cost to provide an extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for the extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer *no more than thirty days* prior to commencement of construction.

(3) Advances for construction costs for extensions for customers who will not attach within the agreed-upon attachment period. Where the customer will not attach within the agreed-upon attachment period after completion of the extension, the applicant for the extension shall contract with the utility and deposit, *no more than thirty days* prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

ITEM 5. Amend 250—**21.3(12)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all water plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, *no more than thirty days prior to commencement of construction,* the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

ITEM 6. Amend 250—**21.3(12)**"b"(2) "1" and "2" and the first paragraph of (3) to read as follows:

1. If the estimated construction cost to provide a distribution main extension is less than or equal to ~~three~~ *five* times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the *main* extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than ~~three~~ *five* times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit an advance for construction equal to estimated construction costs less ~~three~~ *five* times the estimated annual revenue to be produced by the customer *no more than thirty days* prior to commencement of construction.

(3) Advances for construction costs for distribution main extensions for customers who will not attach within the agreed-upon attachment period. Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit, *no more than thirty days* prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

[Filed 9/21/84, effective 11/14/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5024

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on September 12, 1984, the Commission issued an order in Docket No. RMU-84-1 In Re: Amendments Of Rules Regarding Service Supplied By Water Utilities, "Order Adopting Rules," pursuant to the authority of Iowa Code section 17A.4.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on July 18, 1984, as **ARC 4846.**

The purpose of the proposed revisions to Chapter 21 was to neutralize terms of gender, clarify definitions and procedures concerning general information, records and reports, general service requirements, customer relations, engineering practices, meter testing and meter records, and standards of quality of service, the result being more streamlined, less complex rules governing services supplied by water utilities.

Written statements of position were filed by the Office of Consumer Advocate (OCA), Davenport Water Company and Clinton Water Works Company, and pursuant to these statements certain changes have been made to the proposed rules. Item 2, subrule 21.2(2)"a"(2)"3," third line, has been amended to correct a typographical error by adding the words "revised, amended or" between the words "part" and "eliminated." A correction was made to 21.2(2)"a"(2)"4" by placing a comma between the words "rate" and "treatment." Item 3, subrule 21.3(3)"d"(1), second paragraph, third line, was amended by adding the word "to" between the words "customer" and "supply."

These rules will become effective on November 14, 1984, pursuant to Iowa Code section 17A.5(2).

ITEM 1. Rescind rule 21.1(476) (General information) and insert in lieu thereof:

250—21.1(476) Application of rules. The rules apply to any water utility operating within the state of Iowa under

the jurisdiction of the Iowa state commerce commission and are established under Iowa Code chapter 476.

These rules are intended to promote service to the public, provide standards for uniform practices by utilities, and establish a basis for determining the reasonableness of the demands made by the public upon the utilities.

If unreasonable hardship to a utility or to a customer results from the application of any rule prescribed, application may be made to the commission for the modification of the rule or for temporary exception from its requirements.

These rules shall not relieve a utility from its duties under the laws of this state.

ITEM 2. Rescind rule 21.2(476) (Records and reports) and insert in lieu thereof:

250—21.2(476) Records and reports.

21.2(1) Notice of location and retention of records. Unless otherwise specified in this chapter, the utility shall keep the commission informed in writing of the location at which the utility keeps the various classes of records, such records to be kept in accordance with the applicable provisions of Iowa Administrative Code 250—chapter 18, "Utility Records."

21.2(2) Tariffs. The utility shall maintain its tariff filing in a current status.

The schedules of rates and rules of all rate-regulated utilities shall be filed with the commission.

The form, identification and content of tariffs shall be in accordance with these rules.

a. Form and identification:

(1) The tariff shall be printed, typewritten or otherwise reproduced on 8½ x 11 inch sheets so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding.

(2) The title page of every tariff and supplement shall specify the following:

1. The first page shall be the title page, which will show:

Name of Public Utility
Water Tariff
Filed With
The Iowa State Commerce Commission

2. When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced; for example:

Tariff No. _____

Supersedes Tariff No. _____

3. When a new part of a tariff revises, amends, or eliminates an existing part of a tariff, it shall so state and identify the part revised, amended or eliminated.

4. Any tariff modifications, as defined in "3" above, replacing tariff sheets shall be marked in the right margin with symbols as described below to indicate the place, nature and extent of the change in text:

Symbol	Meaning
(C)	A change in regulation.
(D)	A discontinued or deleted rate, treatment or regulation.
(I)	An increased rate or new treatment resulting in increased rate.
(N)	A new rate, treatment or regulation.
(R)	A reduced rate or new treatment resulting in a reduced rate.
(T)	A change in text but no change in rate, treatment or regulation.

(3) All sheets except the title page shall have, in addition to the above requirements, the issue date.

(4) All sheets except the title page shall have the following form:

(Company Name) (Part identification)
Water Tariff (This sheet identification)
Filed with ISCC (Canceled sheet identification, if any)
(Content of tariff)
Issued: (Date) Effective Date:
(Proposed Effective Date:)

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date is to be left blank by the utility and shall be determined by the commission. The utility may propose an effective date.

b. Content of tariffs. A tariff filed with the commission shall contain:

(1) Table of contents.

(2) Rates, including all rates of utilities subject to rate regulation for service with indication for each rate of the type of water service and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, and the number of units per billing period to which the prices apply, the period of billing, the minimum bill, method of measuring demands and consumptions, including method of calculating or estimating loads or minimums, and any special terms and conditions applicable. There shall be specified any discount for prompt payment or penalty for late payment and the period during which the net amount may be paid, and both shall be in accordance with subrule 21.4(4).

ITEM 3. Renumber subrule **21.3(12)** as **21.3(5)** and rescind subrules 21.3(1) through 21.3(11) and insert in lieu thereof:

250—21.3(476) General service requirements.

21.3(1) Disposition of water.

a. Metered measurement of water. All water sold by a utility shall be on the basis of metered measurement except that the utility may at its option provide flat rate or estimated service for the following:

(1) Temporary service where the water use can be readily estimated.

(2) Public and private fire protection service.

(3) Water used for street sprinkling and sewer flushing.

b. Separate metering for premises. Separate premises shall be separately metered and billed. Submetering shall not be permitted.

21.3(2) Temporary service. When the utility renders temporary service to a customer, it may require that the customer bear all the costs of installing and removing the service in excess of any salvage realized.

21.3(3) Meter requirements.

a. Meter installation. Each water utility shall adopt a written standard method of meter installation. Copies of standard methods shall be made available upon request. All meters shall be set in place by the utility.

b. Records of meters and associated metering devices. Each utility shall maintain for each meter and associated metering device the following applicable data.

(1) Meter identification.

1. Manufacturer.
2. Meter type, catalog number and serial number.
3. Meter capacity, multiplier and constants.
4. Unit registration measures (gallons or cubic feet).
5. Number of moving digits or dials in register.
6. Number of stationary or pointed zeros on register.
7. Pressure rating of the meter.

(2) Meter location history.

1. Dates of installation and removal from service.
2. Location of installations.
3. All customer names with readings and read out dates (Remote register readings shall be maintained identical to readings of the meter register).

c. Registration devices for meters. Where a constant or multiplier is necessary to determine the meter reading, it shall be indicated on the face of the meter. Where remote meter reading is used, the customer shall have a readable meter register at the meter.

d. Meter readings.

(1) Meter reading interval. Reading of all meters used for determining charges to customers shall be scheduled at least quarterly. An effort shall be made to read meters on corresponding days of each meter reading period. The meter reading date may be advanced or postponed no more than ten days without adjustment of the billing for the period.

The utility may permit the customer to supply the meter readings on a form supplied by the utility, or in the alternative, may permit the customer to supply the meter reading information by telephone, provided a utility representative reads the meter at least once every twenty-four months and when there is a change of customer.

(2) Readings and estimates in unusual situations. When a customer is connected or disconnected, or the regular meter reading date is substantially revised causing a given billing period to be longer or shorter than usual, such bills shall be prorated on a daily basis.

An estimated bill may be rendered in the event that access to meter cannot be gained and a meter reading form left with the customer is not returned in time for the billing operation. Only in unusual cases shall more than three consecutive estimated bills be rendered.

21.3(4) Filing published meter and service installation rules. A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the commission.

Further amend rule **21.3(476)** by renumbering subrules 21.3(13) and 21.3(14) as 21.3(6) and 21.3(7).

ITEM 4. Rescind rule 21.4(476) (Customer relations) and insert in lieu thereof:

250—21.4(476) Customer relations.

21.4(1) Customer information. Each utility shall:

a. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility are available for public inspection.

b. Maintain up-to-date maps, plans, or records of its entire water system.

c. Upon request, assist the customer or proposed customers in selecting the most economic rate schedule available for the proposed type of service.

d. Upon request, inform its customers as to the method of reading meters and the method of computing the customer's bill.

e. Notify customers affected by a change in rates or rate classification as directed in the ISCC rules of practice and procedures.

f. Make certain that employees responsible for receiving customer telephone calls or office visits requesting information or regarding a complaint are properly instructed in the screening of those matters so that the request or complaint is promptly referred to the person capable of effective handling of the matter.

21.4(2) Customer deposits.

a. Deposit required. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

b. Amount of deposit. The total deposit shall not be less than five dollars nor more in amount than the maximum estimated charge for service for ninety days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

c. New or additional deposit. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than twelve days from the date of mailing to comply. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

d. Customer's deposit receipt. The utility shall issue a receipt of deposit to each customer from whom a deposit is received.

e. Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. Rate-regulated utilities shall compute interest on customer deposits at twelve percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

f. Deposit refund. The deposit shall be refunded after twelve consecutive months of prompt payment, unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit shall be refunded upon termination of the customer's service.

g. Unclaimed deposits. The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest escheats to the state pursuant to Iowa Code section 556.4 at which time the record and deposit, together with accrued interest, less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

21.4(3) Customer bill forms. The utility shall bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

a. The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

b. The number of units metered when applicable.

c. Identification of the applicable rate schedule.

d. The gross and net amount of the bill.

e. The delayed payment charge and the latest date on which the bill may be paid without incurring a penalty.

f. A distinct marking to identify an estimated bill.

21.4(4) Bill payment terms. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last known address of the party responsible for payment. There shall be not less than twenty days between the rendering of a bill and the date by which the account becomes delinquent.

A rate-regulated utility's late payment charge shall not exceed one and one-half percent per month of the past due amount.

Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period.

The company rules shall state how the customer is notified the eligibility has been used.

21.4(5) Customer records. The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 21.4(6), but not less than three years.

21.4(6) Adjustment of bills. Bills which are incorrect due to meter or billing errors are to be adjusted as follows:

a. Fast meters. Whenever a meter in service is tested and found to have overregistered more than two percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half of the time since the meter was last tested, or one-half the time since the meter was installed. If the recalculated bill indicates that more than one dollar is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last known address.

b. Nonregistering meters. Whenever a meter in service is found not to register, the utility may render an estimated bill.

c. Slow meters. Whenever a meter is found to be more than two percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in 21.4(6)"a" unless otherwise ordered by the commission.

21.4(7) Refusal or disconnection of service. Service may be refused or discontinued only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least twelve days, excluding Sundays and legal holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued.

a. Without notice in the event of an emergency.

b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.

c. For violation of or noncompliance with the utility's rules on file with the commission.

d. For failure of the customer to permit the utility reasonable access to its equipment.

e. For nonpayment of bill provided that the utility has: (1) Made a reasonable attempt to effect collection; (2) Given the customer written notice that the customer has at least twelve days, excluding Sundays and legal holidays, in which to make settlement of the account. In the event there is dispute concerning a bill for water service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to forty-five days after the rendering of the bill. The forty-five days shall be extended by up to sixty days if requested of the utility by the commission in the event the customer files a written complaint with the commission.

f. When a prospective customer is refused service, the utility shall notify the prospective customer promptly of the reason for the refusal to serve and of the applicant's right to appeal the utility's decision to the commission.

21.4(8) Reconnection and charges. In all cases of discontinuance of service where the cause for discontinuance has been corrected, the utility shall promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

21.4(9) Insufficient reasons for denying service. The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Nonpayment for service by someone who is no longer an occupant of the premises to be served, except in cases of immediate family occupation or cohabitation of adults at the premises.

b. Failure to pay the bill of another customer as guarantor thereof.

c. Failure to pay for a different type or class of public utility service.

21.4(10) Customer complaints. A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

a. Each utility shall investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.

b. All complaints caused by a major service interruption shall be summarized in a single report.

c. A record of the original complaint shall be kept for a period of three years after final settlement of the complaint.

ITEM 5. Rescind rule 21.5(476) (Engineering practice) and insert in lieu thereof:

250—21.5(476) Engineering practice.

21.5(1) Requirement of good engineering practice. The design and construction of the utility's water plant shall conform to good standard engineering practice.

21.5(2) Inspection of water plant. Each utility shall adopt and follow a program of inspection of its water plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice.

ITEM 6. Rescind rule 21.6(476) (Meter testing) and insert in lieu thereof:

250—21.6(476) Meter testing.

21.6(1) Periodic and routine tests. Each utility shall adopt schedules approved by the commission for periodic and routine tests and repair of its meters.

21.6(2) Meter test facilities and equipment. Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters, or mail for test of its meters by another utility or agency equipped to test meters subject to approval by the commission.

21.6(3) Accuracy requirements. All meters used for measuring quantity of water delivered to a customer shall be in good mechanical condition. All meters shall be accurate to the following standards.

a. Test flow limits. For determination of minimum test flow and normal test flow limits, the company will use as a guide the appropriate standard specifications of the American Water Works Association for the various types of meters.

b. Accuracy limits. A meter shall not be placed in service if it registers less than ninety-five percent of the water passed through it at the minimum test flow, or overregisters or underregisters more than one and one-half percent at the intermediate or maximum limit.

21.6(4) Initial test and storage of meters. Every water meter shall be tested prior to its installation either by the manufacturer, the utility, or an organization equipped for meter testing.

If a meter is not stored as recommended by the manufacturer, the meter shall be tested immediately before installation.

21.6(5) As found tests. To determine the average meter error in accordance with these rules for periodic or complaint tests, meters shall be tested in the condition as found in the customer's service. Tests shall be made at intermediate and maximum rates of flow and the meter error shall be the algebraic average of the errors of the two tests.

21.6(6) Request tests. A utility shall test any water meter upon written request of a customer provided a request is not made more than once each eighteen months. The customer shall be given the opportunity to be present at the request tests.

21.6(7) Commission ordered tests. The commission shall order tests of meters as follows:

a. Application. Upon written application to the commission by a customer or a utility, a test shall be made of the customer's meter as soon as practicable.

b. Guarantee. The application shall be sent by certified or registered mail and accompanied by a certified check or money order made payable to the utility in the amount indicated below:

(1) Capacity of 80 gallons per minute or less	$24.00
(2) Capacity over 80 gallons, up to 120 gallons per minute	$26.00
(3) Capacity of over 120 gallons per minute	$30.00

c. Conduct of test. On receipt of a request from a customer, the commission shall forward the deposit to the utility and notify the utility of the requirement for the test. The utility shall not knowingly remove or adjust the meter until tested. The utility shall furnish all instruments, load devices and other facilities necessary for the test and shall perform the test and shall furnish verification of the accuracy of test instruments used.

d. Test results. If the tested meter is found to overregister to an extent requiring a refund under the provisions of 21.4(6)"a," the amount paid to the utility shall be returned to the customer by the utility.

e. Notification. The utility shall notify the customer in advance of the date and time of the commission ordered test.

f. Utility report. The utility shall make a written report of the results of test which shall be sent to the customer and to the commission.

21.6(8) Sealing of meters. Upon completion of adjustment and test of any water meter the utility shall place a suitable register seal on the meter in a manner that adjustment or registration of the meter cannot be changed without breaking the seal.

21.6(9) Record of meter tests. Meter test records shall include:

a. The date and reason for the test.

b. The meter reading prior to any test.

c. The accuracy as found at each of the flow rates required by 21.6(3)"a."

d. The accuracy as left at each of the flow rates required by 21.6(3)"a."

e. Statement of any repairs.

f. If the meter test is made using a standard meter, the utility shall retain all data taken at the time of the test sufficient to permit the convenient checking of the test method, calculations, and traceability to the National Bureau of Standards' volumetric standardization.

The test records of each meter shall be retained for two consecutive periodic tests or at least for two years. A record of the test made at the time of the meter's retirement, if any, shall be retained for a minimum of three years.

ITEM 7. Rescind rule 21.7(476) and insert in lieu thereof:

250—21.7(476) Standards of quality of service.

21.7(1) Pressures. Under normal condition of water usage the pressure (pound per square inch gauge) at a customer's service line shall be not less than 25 PSIG and not more than 125 PSIG.

At regular intervals, a utility shall make a survey of pressures in its water system. The survey shall be of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. Surveys should be conducted during periods of high usage at or near the maximum usage during the year. The pressure charts for these surveys shall show the date and time of beginning and end of the test, and the test location. Records of these pressure surveys shall be maintained at the utility's principal office in the state and made available to the commission upon request.

21.7(2) Interruption of supply.

a. A utility shall make a reasonable effort to prevent interruptions of service. When an emergency interruption occurs the utility shall re-establish service with the shortest possible delay consistent with the safety to its customers and the general public. If an emergency

interruption affects fire protection service, the utility shall immediately notify the fire chief or other responsible local official.

b. When a utility finds it necessary to schedule an interruption of service, it shall make a reasonable effort to notify all customers to be affected by the interruption. The notice shall include the time and anticipated duration of the interruption. Interruptions should be scheduled at hours which create the least inconvenience to the customer.

c. A utility shall retain records of interruptions for a period of at least five years.

21.7(3) Supply shortage. The utility shall attempt to furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of water delivery.

a. If a utility finds that it is necessary to restrict the use of water, it shall notify its customers, and give the commission notice, before the restriction becomes effective. The notification shall specify:

(1) The reason for the restriction.
(2) The nature and extent of the restriction.
(3) The effective date of the restriction.
(4) The probable date of termination of the restriction.

b. During times of threatened or actual water shortage, the utility shall equitably apportion its available water supply among its customers.

[Filed 9/29/84, effective 11/14/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5027

CORRECTIONS, DEPARTMENT OF[291]

Pursuant to the authority of Iowa Code section 217A.5, the Department of Corrections hereby adopts rules of admittance and conduct at Iowa Board of Parole inmate interviews. These rules are necessitated by a consent decree dated May 31, 1984, requiring the Iowa Board of Parole to conduct parole interviews in accordance with Iowa Code Chapter 28A, "Official Meetings Open to Public." Since said interviews are conducted in correctional institutions, it is incumbent upon the Department of Corrections to protect the safety of the public entering the institution and to protect the good order and security of the institution.

These rules were filed emergency, to be effective June 8, 1984.

The rules placed under notice June 8, 1984, have been revised, and the revisions are contained herein. Deletions have been shown as crossed out and additions have been underlined.

Clarifications have been made in the initial paragraph and in 20.13(1).

"Individuals under indictment" has been removed from 20.13(2)"c."

Subrule 20.13(3)"a"(1)"1" has been deleted.

Subrule 20.13(3)"c"(4) and (7) are amended.

Subrule 20.13(4) is amended by deleting the last sentence.

Subrule 20.13(5)"a" is deleted and new "a" is amended.

A new subrule 20.13(7) is added.

Notice of Intended Action - Hearing was published in IAB, Volume VII, Number 1, on July 4, 1984, as **ARC 4754**.

These rules were adopted by the Board of Corrections on September 20, 1984.

These rules shall become effective November 14, 1984.

Emergency rule 291—20.13(217A), effective June 8, 1984, is amended as follows:

291—20.13(217A) Board of parole interviews. Each institution provides space for the conduct of interviews between the Iowa board of parole and institutional inmates. When these meetings are held ~~pursuant to Iowa Code, chapter 28A, public meetings,~~ *in correctional institutions* attendance is subject to security and safety regulations as stated herein.

20.13(1) Persons desiring to attend a board of parole interview *who are not on an inmate's visiting list* shall notify the warden or superintendent of the respective institution of their intent to attend. A visitor's application will be sent to the person, and the completed application must be received back by the institution at least fifteen days prior to the scheduled date of the parole interview *in order that* ~~These persons are subject to~~ a background investigation with law enforcement officials *may be completed* prior to attendance at the parole interview. *Following a successful background investigation, authorization to attend parole interviews will be continuous subject to these rules and any subsequent background investigations conducted at the discretion of the warden or superintendent.*

20.13(2) Due to security considerations, those persons excluded from applying for visitation privileges pursuant to subrule 20.3(1), paragraph "f," subparagraphs (1) to (7), inclusive, are also excluded from attending parole board interviews as listed below:

a. Individuals who have been discharged from a correctional institution within the last eighteen months.

b. Individuals whose behavior represents a control problem or is counterproductive to the rehabilitation of the inmate. This may be reflected in the background investigation report which shows the individual having a record of carrying concealed weapons, irresponsible or illegal use of a controlled substance, previous violation of institutional rules, or similar behavior.

~~c. Individuals under indictment.~~

c.~~*d.*~~ Individuals on probation, work release or parole.

d.~~*e.*~~ Individuals who have been convicted of incidents of aiding an escape or introducing contraband in any detention or supervised correctional setting.

e.~~*f.*~~ Individuals who intentionally give false information.

f.~~*g.*~~ Ex-felons.

g.~~*h.*~~ When the interview is held inside the institution~~,~~ *proper*, no children under age eighteen are allowed.

20.13(3) Due to security considerations the following rules shall apply:

a. Written notification of approval or denial will be given to the requester.

(1) When approved, the requester shall be informed on the notification:

~~1. The capacity of the room in which the interviews will be conducted. The total number of people in the room shall not exceed the capacity set by the fire marshal. (Subrule 20.13(4))~~

1.~~*2.*~~ That the attendee may be subject to a search (subrule 20.13(3), paragraph "f") when a staff member

has an articulable reason to believe that the attendee is concealing contraband;

~~2.~~3. That the search may include a pat down, a strip search, or a visual body cavity probe search; and

~~3.~~4. That the requester need not submit to a strip search although refusal may result in the forfeiture of attendance.

(2) When denied, the applicant shall be apprised of the reasons for denial.

b. All requesters shall present proper identification upon entrance to the institution. Photo identification is preferred, but all identification shall identify personal characteristics, such as color of hair and eyes, height, weight and birth date.

(1) Signature cards may be required from requesters.

(2) All requesters may be required to be photographed for future identification purposes only.

c. Individuals may be required to leave the institution when:

(1) The inmate or attendee engage in behavior that may in any way be disruptive to order and control of the institution.

(2) The attendee fails to follow the established rules and procedures of the institution.

(3) The attendee and inmate directly exchange any object or article.

(4) The attendee talks or communicates with an inmate. ~~without the prior approval of the parole board and the warden or superintendent of the facility.~~

(5) The effect of alcohol or narcotic drugs is detected on the attendee before or during the interview.

(6) There is detriment to the health of the inmate or attendee.

(7) The attendee does not manage children. ~~to prevent them from interfering with or disrupting the interview.~~

d. Minors outside the immediate family shall have written permission from their parent or guardian and be accompanied by an adult. All children shall have adult supervision. Exceptions shall have prior approval of the warden, superintendent or designee.

e. Attendees shall be properly attired as would be expected in a public meeting place. Adults and teenagers shall wear shoes and may not wear miniskirts, shorts, muscle shirts, see-through clothing, halter tops, clothing with obscene or lewd slogans, pictures or words, and similar apparel. Attendees may be required to remove, for the duration of the interview, outerwear such as, but not limited to, coats, hats, gloves, and sunglasses. A medical need for sunglasses must be verified by prescription.

f. Attendees may be requested to submit to a personal search (pat down) or review by an electronic device for weapons or contraband. When the electronic device alarm is activated, the attendee shall produce the item, or a personal search may be made to find the item that set off the alarm. Attendees may be requested to submit to a strip search when there is an articulable reason to believe the person is concealing a weapon or contraband. Each institution shall designate the level of authority required to request a search through institutional policy. This person shall authorize the search in writing. The designation required pursuant to subrule 20.3(9) for visitation will suffice for this subrule as well. Entrance may be denied when the attendee is not willing to submit to a search. The request for a search shall be conducted in an inconspicuous manner. The attendee may verbally request a review by the warden, superintendent, or designee at the time of request for a search.

(1) Strip search means having a person remove or arrange some or all of their clothing so as to permit an inspection of the genitalia, buttocks, anus, female breasts, or undergarments of that person or a physical probe of any body cavity. Personal search means a pat down search on top of the attendee's clothing.

(2) The search will be to the degree deemed appropriate or necessary. A strip search will be conducted only when the following conditions exist:

1. The search is conducted in a place where it cannot be observed by persons not conducting the search.

2. The search is conducted by a person of the same sex as the visitor, unless conducted by a medical practitioner or licensed registered nurse. A second correctional employee of the same sex as the attendee shall also be present during the search. In addition, the attendee may request a third person of the same sex as the attendee to be present during the search.

3. A visual search or probing of any body cavity shall be performed under sanitary conditions. A physical probe of a body cavity other than the mouth, ear, or nose shall be performed only by a medical practitioner. In the absence of a medical practitioner, a licensed registered nurse will conduct the search and report the findings to the on-call medical practitioner.

4. It will be permissible and not considered a body cavity search to request *that* a female attendee ~~to~~ remove a sanitary napkin or tampon.

(3) An attendee accompanied by a minor child has the option of not having the child present during a strip search or pat down. The child will be attended by a staff person. When attendee refuses to leave the child with a staff person and does not want the child present during the search, attendance will be denied. At all times when a minor child is searched, the supervising adult may be present in the room.

(4) When an attendee is arrested, the attendee may be searched for weapons which may inflict harm on the arresting officer.

(5) Records shall be kept of all strip searches and shall include the name of the person subjected to the search, the names of the persons conducting and in attendance at the search, the time, date, and place of the search. The written record shall reflect the reason for the search and the results of the search. The written authorization for the search shall be included in the record.

(6) Attendees found in possession of contraband shall be referred to the county attorney for prosecution.

20.13(4) The space provided for the parole interviews shall have a posted maximum capacity set by the fire marshal. The number of individuals in the room shall not exceed the maximum capacity. Individuals will be admitted on a first-come, first-serve basis. ~~If there are more attendees present than space allows and if more than one representative of the media has been admitted to the interviewing room, it is incumbent upon the media representatives to form a press pool and select a representative to serve the function of the media.~~

20.13(5) Cameras and recording devices are permitted with the following exceptions:

~~a. Persons who disrupt or obstruct the meeting by the use of a camera or recording device beyond what is reasonably required to operate said equipment shall be requested to cease such behavior or to cease using the~~

~~equipment. The presiding officer shall exclude any person who fails to comply with the request.~~

a.~~b.~~ Media equipment is subject to search prior to admittance and at any time said equipment is inside the institution. *Search shall be conducted in the presence of the photographer.*

b.~~c.~~ Should the attendees be required to pass through areas of the institution where for reasons of security or right to privacy media equipment is disallowed, the use of such equipment is prohibited in those areas.

20.13(6) Interviews may be temporarily modified or suspended in the following circumstances: Riot, disturbance, fire, labor dispute, space restriction, natural disaster, or other extreme emergency.

20.13(7) Refer to Iowa Administrative Code, Parole, Board of(615) for rules governing conduct at the hearings as required by the Iowa Board of Parole.

These rules are intended to implement Iowa Code chapter 217A.

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ARC 5006

HEALTH DATA COMMISSION[465]

Pursuant to the authority of Iowa Code sections 145.1, 135.11, and 505.8, the Iowa Health Data Commission adopts an amendment to Chapter 6, "Submission of Data," to require third-party payers to retain insurance group numbers with the other data required to be submitted to the Health Data Commission. This rule was adopted at the Health Data Commission's September 14, 1984 meeting.

Notice of Intended Action was published in the June 20, 1984 Iowa Administrative Bulletin as **ARC 4726.**

This rule is identical to that published as Notice of Intended Action.

This rule is intended to implement 1983 Iowa Code Supplement section 145.3(3)"b" and 145.3(4)"d."

This rule will become effective November 14, 1984.

Rule 465—6.3(70GA,ch27) is amended by adding the following subrule:

6.3(5) Third-party payers shall retain insurance group numbers from field number seventy of the uniform hospital billing form with all of the data described in subrule 6.3(2), but shall remove the insurance group number from the data submitted to the commission.

[Filed 9/18/84, effective 11/14/84]

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ARC 5007

HEALTH DATA COMMISSION[465]

Pursuant to the authority of Iowa Code sections 145.1, 135.11, and 505.8, the Iowa Health Data Commission adopts Chapter 8, "Posting and Submission of Hospital Price Information." This rule was adopted at the Iowa Health Data Commission's September 14, 1984 meeting.

Notice of Intended Action was published in the June 20, 1984 Iowa Administrative Bulletin as **ARC 4727.**

1983 Iowa Code Supplement section 145.3(4)"c" provides that the commission may mandate, through the commissioner of health, the annual submission of price information by hospitals. Additionally, the commission may mandate, through the commissioner of health, the posting of price information in individual hospitals. These rules implement that authority.

These rules differ from that published as Notice of Intended Action at subrule 8.2(1).

These rules are intended to implement 1983 Iowa Code Supplement section 145.3(4)"c."

These rules will become effective on November 14, 1984.

CHAPTER 8
POSTING AND SUBMISSION OF HOSPITAL PRICE INFORMATION

465—8.1(145) Definitions. For the purposes of this chapter the following definitions shall apply:

"Commissioner" means the commissioner of public health.

"Hospital" is as defined by Iowa Code section 135B.1(1).

"Report" means the Report on Comparative Hospital Price Information as adopted by the Iowa health data commission.

"Survey" means the Hospital Price Information Survey form as adopted by the Iowa health data commission.

465—8.2(145) Submission of price information.

8.2(1) Initial submission of price information. All hospitals shall complete the survey based on their most current price schedule as of July 1, 1984, and shall submit the survey to the commissioner by January 1, 1984.

8.2(2) Annual submission of price information. Following July 1, 1984, hospitals shall submit the survey within thirty days following the beginning of their fiscal year.

8.2(3) Address for data submission. Data required to be submitted pursuant to this chapter shall be sent to the Iowa Health Data Commission, 601 Locust, Suite 330, Des Moines, Iowa 50309.

465—8.3(145) Postings of price information.

8.3(1) The following information shall be posted in hospital admissions and emergency rooms in a publicly visible place and manner.

a. The current prices for routine daily room service, special care daily room service, delivery room service, operating room service, and emergency room service as prescribed in the survey.

b. A notice reading as follows: "The Iowa Health Data Commission Hospital Price Information Survey for this hospital and the Report on Comparative Hospital Price

HEALTH DATA COMMISSION[465] *(cont'd)*

Information are available in (to be designated by the hospital) during normal business hours. The survey for this hospital contains the information listed above as well as charges for anesthesiology services, the twenty-five most common laboratory, radiology, and pharmacy services as defined by the Health Data Commission, and additional information on this hospital's pricing policies. The comparative report presents certain prices for hospitals across the state, including this hospital."

8.3(2) Prices posted pursuant to subrule 8.3(1), paragraph"a" shall be the current prices used. Any changes in those prices shall be reported to the commissioner within thirty days of such changes.

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ARC 5000

HEALTH DEPARTMENT[470]

MEDICAL EXAMINERS, BOARD OF

Pursuant to the authority of Iowa Code sections 148C.7 and 258A.5, the Iowa Board of Medical Examiners hereby adopts amendments to Chapter 136, "Physicians' Assistants," Iowa Administrative Code.

These rules include a portion that would better define the utilization of a physician's assistant. The changes also set out the methods and grounds for discipline and allow for the establishment of a peer review committee. Portions of 470—chapter 135, Iowa Administrative Code relative to administrative hearings and appeals are adopted by reference.

These rules are identical to those published in Iowa Administrative Bulletin 3, August 1, 1984 as **ARC 4873** except a change in item 3.

These rules will become effective November 14, 1984 and are intended to implement Iowa Code chapters 148C and 258A.

The following amendments are adopted.

ITEM 1. Subrule 136.5(1) is amended as follows:

136.5(1) The ultimate role of the assistant to the ~~primary care~~ physician cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility an assistant to the ~~primary care~~ physician may assume, requires that *at* the conclusion of ~~his~~ *the* formal education, ~~he~~ *the physician's assistant* possess the knowledge, skills and abilities necessary to provide those services appropriate to the ~~primary care~~ *practice* setting. These services would include, but need not be limited to, the following:

Further amend **136.5(1)**, paragraph "g" as follows:

g. Independent performance of evaluation, ~~and~~ treatment *and institution of* procedures essential to providing an appropriate response to life threatening~~,~~ emergency situations.

Subrule **136.5(1)** is further amended by adding the following new paragraphs:

j. Admit patients to a health care facility after receiving approval of the supervising physician.

k. Order laboratory tests and x-ray procedures when the supervising physician has delegated these tasks to the assistant.

l. Order diets, physical therapy, inhalation therapy, or other rehabilitative services when the supervising physician has delegated these tasks to the assistant.

m. Order medications with the prior approval and direction of the supervising physician.

n. Administer any drug (a single dose) with the prior approval and direction of the supervising physician.

ITEM 2. Subrule 136.5(2) is amended to read as follows:

136.5(2) The physician's assistant must clearly *be* ~~identify~~ *identified* ~~himself~~ as such when performing ~~his~~ *the* duties~~.~~ *of a physician's assistant.* ~~He~~ *The assistant* shall at all times while on duty wear a name tag with a designation of physician's assistant thereon.

ITEM 3. Subrule 136.5(3) is amended to read as follows:

136.5(3) The *physician's* assistant must generally function in reasonable proximity to the physician. *Reasonable proximity is the usual practice area in which the physician performs medical services and sees patients. The physician must be readily available to respond to a request by a patient or the assistant.* ~~If he is to perform duties away from the responsible physician, such physician must clearly specify to the board those circumstances which would justify this action and the written policies established to protect the patient.~~

ITEM 4. Subrule **136.5(4)**, paragraph "d" is amended by rescinding and inserting the following in lieu thereof:

d. The responsible physician shall be present in the remote office to see patients and review patient records twenty percent of the time the office is open or two one-half days per week, whichever is less or as otherwise specified by the board in unusual or special circumstances.

ITEM 5. Subrule **136.5(5)**, paragraph "a" is amended to read as follows:

a. The best interests of ~~his~~ *their* patients are served by the utilization of a physician's assistant.

Further amend subrule **136.5(5)**, paragraph "b," (2) and (3) as follows:

(2) In the temporary absence of the supervising physician, the physician's assistant may carry out those tasks for which ~~he is registered~~ *approval has been granted* if the supervisory and review mechanisms are provided by ~~a delegated alternative physician supervisor.~~ *an alternate supervising physician approved by the board. A temporary absence means a period of time during which the supervising physician is not in the usual practice area or is otherwise unavailable to respond to a request by the assistant.*

(3) The physician's assistant may not ~~function as such~~ *perform medical services except as provided in subrule 136.5(1), paragraph "g" above,* if these supervisory and review functions are impossible.

Subrule **136.5(5)**, paragraphs "c" and "d" are amended as follows:

c. No physician's assistant ~~in his employ~~ *may* ~~advertises~~ *advertise* ~~himself~~ in any manner which would tend to mislead the public generally or the patients of the physician as to ~~his~~ *the* role~~.~~ *of the assistant.*

d. The *employed* physician's assistant ~~in his employ~~ performs only those tasks which have been authorized by the board. If the physician's assistant is being trained to perform additional tasks beyond those authorized, such training may be carried out only under the direct personal supervision of the supervising physician or a qualified person designated by ~~him.~~ *the responsible physician.*

ITEM 6. Subrule 136.5(6) is amended as follows:

136.5(6) The assistant must be prepared to demonstrate upon request to a member of the board or to other persons designated by the board, ~~his~~ *the* ability to perform those tasks assigned ~~to him~~ by ~~his~~ *the* responsible physician.

ITEM 7. Rule 470—136.6 (148C,258A) is amended by striking existing language and inserting in lieu thereof the following:

470—136.6(148C,258A) Discipline—denial, suspension, revocation.

136.6(1) Methods of discipline. The board may impose any of the following disciplinary sanctions:

a. Revocation of approval.

b. Suspension of approval until further order of the board or for a specified period.

c. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.

d. Probation.

e. Require additional education or training.

f. Require a re-examination.

g. Order a physical or mental examination.

h. Impose a civil penalty not to exceed one thousand dollars.

i. Issue citation and warning.

j. Such other sanctions allowed by law as may be appropriate.

136.6(2) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the assistant.

136.6(3) Grounds for disciplinary action.

a. The use of presigned prescriptions, or the use of a rubber stamp to affix a signature to a prescription or the independent completion of a prescription.

b. Fraud in procuring approval to practice as a physician's assistant.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or a practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Failure to possess and exercise that degree of skill, learning, and care expected of a reasonably prudent physician's assistant acting in the same or similar circumstances.

e. The excessive use of alcohol, drugs, narcotics, chemicals, or other agents which may impair an assistant's ability to practice the profession with reasonable skill and safety.

f. Conviction of a felony related to the profession or the conviction of a felony that would affect the ability to practice within this profession. A copy of the record of conviction or plea of guilty shall be clear and convincing evidence.

g. Willful or repeated violations of the provisions of these rules and Iowa Code chapter 148C.

h. Failure to report a certification revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

i. Inability to practice as a physician's assistant with a reasonable degree of skill and safety due to a mental or physical impairment or chemical abuse.

j. Willful or repeated violation of a lawful rule or regulation promulgated by the board.

k. Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

l. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend an approval for the duration of the approval unless otherwise ordered by the board.

m. Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

n. Knowingly submitting a false report of continuing education.

o. Failure to notify the board within thirty days after occurrence of any judgment or settlement of a malpractice claim or action.

p. Failure to file a report concerning acts or omissions committed by another physician's assistant.

q. Willful or repeated gross malpractice.

r. Willful or gross negligence.

s. Obtaining any fee by fraud or misrepresentation.

t. The performance of medical functions without approved supervision except in cases requiring independent performance of evaluation and treatment procedures essential to providing an appropriate response to life threatening emergency situations.

u. Knowingly or willingly performing a medical function or task for which the assistant has not been approved or for which the assistant is not qualified by training to perform.

v. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of a physician's assistant.

136.6(4) The board may refuse to grant approval or certification to practice as a physician's assistant for any of the grounds set out in subrule 136.6(3) above.

136.6(5) The board adopts the rules found in rule 470—135.301(147, 148, 17A, 258A), Iowa Administrative Code as the disciplinary procedure for the denial, suspension or revocation of certification to practice as a physician's assistant under the provisions of Iowa Code chapter 148C.

ITEM 8. Rule 470—136.7(148C) is rescinded and the following inserted in lieu thereof.

470—136.7(258A) Peer review committee. The board may establish and register a peer review committee consisting of at least two supervising physicians and two physicians' assistants who shall be appointed by the board.

136.7(1) A complaint made to the board by any person relating to approval or concerning the professional conduct of a physician's assistant approved by the board may be assigned to a peer review committee at the discretion of the board.

136.7(2) The board may provide investigatory and related services to the peer review committee upon request.

136.7(3) A peer review committee may determine the method to be used in making its investigation or that it

is unable to investigate the report upon a complaint, and return the complaint together with an explanation to the board.

136.7(4) The peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 258A.6.

136.7(5) Members of the peer review committee shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

136.7(6) The peer review committee shall thoroughly investigate all complaints assigned except as specified in subrule 136.7(3) and make written recommendations to the board.

a. Written recommendations shall contain a statement of facts, the recommendation for disposition, and the rationale supporting the recommendation.

b. The written recommendations shall be signed by the members of the peer review committee concurring in the report.

136.7(7) The board shall consider and act upon the recommendations of the peer review committee at the next board meeting held after submission of the written recommendations provided such recommendations are received in the board office twenty days prior to the scheduled date of the next regular meeting of the board. If the board finds that reasonable basis exists for disciplinary action, it shall proceed to a hearing on the matter in accordance with the procedural process set out in subrule 135.301(9), Iowa Administrative Code.

These rules are intended to implement Iowa Code chapters 148C and 258A.

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ARC 5016

HEALTH DEPARTMENT[470]

BOARD OF PSYCHOLOGY EXAMINERS

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby adopts amendments to Chapter 140 of the Iowa Administrative Code relating to the Board of Psychology Examiners. The rules were adopted September 20, 1984.

Notice of Intended Action regarding the proposed rules was published in the Iowa Administrative Bulletin August 15, 1984, as **ARC 4892**.

The rules provide criteria for determining whether an applicant possesses a doctoral degree in psychology.

The rules are the same as published under Notice.

The rules are intended to implement 1984 Iowa Acts, Senate File 414, section 1.

The rules shall become effective November 14, 1984.

Rule 470—140.5(154B) is amended by adding the following new subrules:

Educational Qualifications From and After July 1, 1985.

140.5(10) From and after July 1, 1985, a new applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology. The doctoral degree in psychology shall mean a doctoral degree granted by an institution, accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association in other regions of the United States, from a doctoral program meeting the following criteria:

a. Programs that are accredited by the American psychological association are recognized as meeting the definition of a Professional Psychology Program. The criteria for accreditation serve as a model for professional psychology training, or all of the following criteria,"b" through"i."

b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

e. The program must be an integrated, organized sequence of study.

f. There must be an identifiable psychology faculty and a psychologist responsible for the program.

g. The program must have an identifiable body of students who are matriculated in that program for a degree.

h. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

i. The curriculum shall encompass a minimum of three academic years of graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

(3) Social bases of behavior: Social psychology, group processes, organizational and systems theory.

(4) Individual differences: Personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology will include course requirements in specialty areas.

140.5(11) The accreditation of the degree-granting institution(s) shall be evaluated by the board with respect to the time of the applicant's affiliation with such institution(s). The same shall apply to other institutional aspects stipulated in this rule.

140.5(12) A degree from a foreign university will be accepted provided that the institution meets standards equivalent to those held by approved domestic institutions.

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ARC 5017

HEALTH DEPARTMENT[470]

JOINT RULE WITH BOARD OF BARBER EXAMINERS

The State Department of Health and the Board of Barber Examiners pursuant to the authority of Iowa Code chapter 17A and sections 158.5 and 158.15 hereby adopt an amendment to the rules on sanitary conditions for barbershops and barber schools, found in Chapter 152, Iowa Administrative Code. The rule was adopted at regularly scheduled meetings on July 25, 1984 and September 7, 1984.

The rule removes formalin as an approved germicidal solution and permits use of isopropyl alcohol from seventy up to and including ninety percent as a germicidal solution.

Notice of Intended Action regarding the rule was published in the Iowa Administrative Bulletin on May 23, 1984 as **ARC 4685**. The portion of the rule relating to continuing education was filed separately [IAB 8/15/84, ARC 4894].

The rule is intended to implement Iowa Code section 158.5.

The rule shall become effective November 14, 1984.

Subrule **153.7(2)**, paragraph "a" is amended to read as follows:

a. Immersion in a solution with germicidal effect before using. The solution shall be ~~twenty percent formalin in water,~~ seventy ~~percent~~ *to and including ninety percent* isopropyl alcohol in water, ~~a combination of twenty percent formalin in water with seventy percent isopropyl alcohol in water,~~ quaternary ammonium compounds in one to five hundred solution in water, or other equivalent germicidal solutions approved by the State Department of Health; or

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ARC 5020

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code sections 505.8 and 522.3, the Iowa Department of Insurance adopts the rescission of Chapter 10 and replaces it with a new 510—Chapter 10 and adopts an amendment to Rule 3.3 (17A,502,505), Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume VII, No. 2, July 18, 1984 as **ARC 4830**.

Changes from such Notice are as follows:

10.2(522);
10.4(6);
10.6(522);
10.8(3) and (4);
10.9(1);
10.11(3) was added and the remaining paragraphs were renumbered;
10.12(2);
10.14;
10.18(5); and
10.19(522).

These rules will become effective on November 15, 1984.

The following rules are adopted.

ITEM 1. Chapter 10 is rescinded and replaced with the following:

CHAPTER 10
AGENTS' LICENSING RULES

510—10.1(522) Purpose and authority.

10.1(1) The purpose of these rules is to set out the requirements, procedures and fees relating to the qualification, licensure and appointment of insurance agents.

10.1(2) These rules are authorized by Iowa Code section 505.8 and are intended to implement Iowa Code sections 522.1 et seq.

10.1(3) These rules do not apply to:

a. A licensed attorney providing surety bonds incident to the attorney's practice.

b. An agent appointed to represent a fraternal beneficiary society as stipulated under Iowa Code section 512.33.

c. A transportation ticket selling agent of a common carrier in reference only to trip accident insurance policies or insurance on personal effects while being carried as baggage, in connection with the transportation provided by such transportation ticket.

510—10.2(522) Definitions.

"Appointed insurance agent" means a licensed insurance agent whose appointment to represent a particular company(s) has been approved by the department.

"Department" means the Iowa insurance department.

"Licensed insurance agent" means a qualified insurance agent or a nonresident agent who has received a license from the department.

"Nonresident" means a person residing permanently in a state other than Iowa.

"Person" means a natural person.

"Qualified insurance agent" means an applicant for an insurance agent's license who has completed to the satisfaction of the department the required examination(s) for the line(s) of insurance requested and has also complied with the application requirements as deemed necessary in this chapter.

"Resident" means a person who makes Iowa that person's true, fixed, and permanent home, to which whenever the person is absent there is an intention of returning.

510—10.3(522) Requirements for a resident license.

10.3(1) In order to qualify as an Iowa resident insurance agent, the applicant must satisfy the following requirements:

a. Be at least eighteen years of age.

b. Be a resident of the state of Iowa.

c. File an application with the department on the form prescribed by the department. As a condition of licensure, an applicant must sign a certification designating the commissioner as such applicant's agent for service of process regarding all insurance disciplinary matters and shall agree that service upon the commissioner is of the same legal force and validity as personal service on the applicant.

d. Submit to a written examination to determine the applicant's competence to sell any or all lines of insurance as classified in rule 10.7(522), and shall pass the examination to the satisfaction of the department.

e. Be of good character and competency.

f. File a letter of clearance, if the applicant has ever held a resident license in another state.

10.3(2) Obtaining application forms. An applicant may obtain an application form from the prospective employer insurance company. The insurance company may either write the department for an original application and make exact, readable, high quality copies therefrom or may purchase the application forms from the department at cost.

510—10.4(522) Application for resident agent's qualification.

10.4(1) Any individual desiring to become licensed as a resident agent for the first time must complete the required application.

10.4(2) Any licensed insurance agent desiring to become licensed to sell additional lines of insurance for which the agent has not previously qualified must complete the required application.

10.4(3) The portion of the application requiring certification by the company as to the character and qualifications of the applicant must be signed by a representative of the company sponsoring the application whose authority to sign has been filed with the department.

10.4(4) Applications for agent's qualification shall be accompanied by the appropriate fee. Any applications submitted with the incorrect fee will be returned.

10.4(5) Applications and the accompanying fee should be mailed or hand carried to the department fifteen working days prior to the anticipated examination date.

10.4(6) Applicants for the variable contracts qualification must first be qualified in life insurance. The agent will also be required to submit proof of passage of the NASD #6—Variable Contracts examination prior to being permitted to sit for the variable contracts examination.

10.4(7) Applicants for the commercial lines qualification must first be qualified in personal lines prior to being permitted to sit for the commercial lines examination.

10.4(8) An admission slip will be sent to the applicant's home address to confirm filing of the application. Stamped upon this admission slip will be the date until which the applicant may sit for the examination. The admission slip shall only be valid until the date stamped on the admission slip, which shall not be less than ninety days from the date of filing. In no event will the applicant be permitted to sit for the examination after that period unless the applicant has filed a new application and paid the fee.

510—10.5(522) Examinations.

10.5(1) Time and location. Examinations shall be conducted on a regular basis. Test site and scheduling information is available upon request to the department.

10.5(2) Admission slip. Prior to being admitted to the test site, the applicant must present a photo identification and the applicant's stamped admission slip to the examiner before the applicant will be permitted to sit for the examination. An applicant must turn in the admission slip at the completion of the last examination for the day.

10.5(3) Results. After the examination(s) taken by the applicant has been corrected, the department shall return to the applicant the admission slip upon which shall be noted the results of the examination(s) most recently taken. No examination results will be given over the telephone.

10.5(4) Retakes. If the applicant fails the examination and desires to retake the examination the applicant may do so at any regular testing time until the date stamped on the admission slip. The retake fee must be paid at the examination site.

10.5(5) An applicant must pass both the general exam and an exam for at least one of the specific lines provided for in rule 10.7(522) within one year of each other or the exam results will be voided and the applicant will need to reapply.

510—10.6(522) Exemptions from examination requirement. The following persons shall be exempt from the examination requirements of this chapter:

10.6(1) An applicant for renewal of an agent's license who has complied in a timely fashion with the continuing education requirement in chapter 11.

10.6(2) An applicant for an original nonresident insurance agent's license who complies with the procedures of rule 10.9(522). This exemption does not apply to nonresident agents who have been licensed in Iowa and who fail to comply with the renewal requirements of this chapter and the continuing education requirements of chapter 11.

10.6(3) An applicant for a resident insurance agent's license who has previously held an Iowa resident insurance agent's license and has actively sold insurance under a resident license of another state within the previous six months but the applicant under this paragraph shall not qualify for an exemption of continuing education in the first year.

510—10.7(522) Types and classifications of licenses. An agent satisfying the prerequisite application requirements may qualify for one or more of the licenses categorized below:

Classification	Type of License
1	Fire only
2	Casualty only
3	Auto only
4	Hail only
5	Surety only
6	Accident and health only
7	Life only
8 or M	County mutual
9	Variable contracts
9D	Variable contracts dealer
PL	Personal lines—fire, casualty, auto, and hail sold to individuals or families only
COM	Commercial lines—fire, casualty, auto and hail sold to individuals, families or businesses. (includes PL above)
CRDT	Credit accident and health and credit life

Classifications 1 and 2 are available to nonresident agents only, when they are licensed in that (those) limited area(s) by their resident state.

510—10.8(522) Becoming a licensed and an appointed agent.

10.8(1) Upon notification of successful completion of the required examinations, the qualified insurance agent must submit the appropriate application fee to the department for the license.

10.8(2) The qualified agent should notify the insurance company(s) for which the agent intends to work that the agent has passed the examinations, so the company(s) may request the agent's appointment, as required by rule 10.13(522).

10.8(3) An agent may not solicit insurance until such agent possesses a license and has been appointed with at least one company for which the agent intends to solicit insurance. Once so qualified, the agent may not receive commissions for insurance written with any other company until that agent has been appointed with such company. Nothing herein is intended to alter the requirements of Iowa Code section 522.4.

10.8(4) To keep the license active, an agent need only comply with the continuing education requirement and pay the renewal fee in a timely manner, although an agent cannot sell insurance without at least one company appointment.

510—10.9(522) Licensing nonresident agents. A nonresident of the state desiring to sell insurance within the state of Iowa shall comply with the following procedures in order to acquire an Iowa nonresident insurance agent's license.

10.9(1) The applicant for a nonresident license shall complete the nonresident Iowa application for agent's qualification, form NR-1, and shall attach an appointment requisition card, an appointment approval form and the appropriate fee required by rule 10.13(522), and an original certification by the insurance commissioner of the applicant's resident state. Such certification will be accepted only within sixty days of the certification date.

As a condition of licensure, an applicant must sign a certification designating the commissioner as such applicant's agent for service of process regarding all insurance disciplinary matters and shall agree that service upon the commissioner is of the same legal force and validity as personal service on the applicant.

10.9(2) Upon receipt of a properly completed and certified nonresident application, a certification, and the appropriate fee, the department will issue to the applicant an Iowa nonresident insurance agent's license in the lines for which the agent has qualified.

10.9(3) Any licensed nonresident agent desiring to become licensed to sell additional lines of insurance for which the agent has not previously qualified in Iowa, must submit a written request specifying the added line(s) requested, an original certification and the appropriate fee.

10.9(4) Any individual who has qualified for an Iowa nonresident insurance agent's license who moves to this state and becomes a resident of Iowa shall surrender the Iowa nonresident license, and shall comply with the requirements of this chapter in order to obtain an Iowa resident insurance agent license.

510—10.10(522) Issuance of clearance letters.

10.10(1) For an agent who is moving from Iowa to another state to receive a clearance letter, the department must receive:

a. A written request signed by the agent;

b. The agent's Iowa insurance license, or a statement that it has been lost or destroyed;

c. A photocopy of each letter to the companies the agent is appointed with notifying them of the move;

d. The appropriate fee; and

e. A self-addressed stamped envelope.

10.10(2) Upon issuance of the letter, the department will cancel all of the agent's company appointments and the license status will be changed to reflect the move. An agent may not sell insurance in Iowa once a clearance letter has been issued unless the agent has been properly licensed as a nonresident agent.

510—10.11(522) Renewals.

10.11(1) Resident agents must renew their licenses by submitting a continuing education report/license renewal form and the appropriate fee no later than February 28, 1985 and February 28 each year thereafter.

10.11(2) Nonresident agents must renew their licenses by submitting a continuing education report/license renewal form, recertification from the agent's resident state, which must include information about whether the agent was required to comply with continuing education in the resident state, and the appropriate fee no later than February 28, 1985 and February 28 each year thereafter.

10.11(3) A renewal packet will be sent to each licensed agent near the beginning of each calendar year. This information will be sent to the agent's last known address as it appears in department records. Failure to receive such information shall not relieve the agent of the responsibility of filing for renewal in a timely manner.

10.11(4) Any renewal filed after the due date stated above will be accepted subject to the provisions of subrule 11.4(6).

10.11(5) If the renewal is filed after the annual due date, but before May 30 of that year, the late-filing fee and copies of the certificates of attendance from the previous year's continuing education courses must be submitted in addition to the materials required above. The late renewal does not exempt the agent from the continuing education requirement for that year.

10.11(6) After May 30 of each year, any agent who has not renewed the license and who desires to sell insurance again must reapply with the department as if the agent had never been licensed.

10.11(7) As a condition of renewal, an applicant must sign a certification designating the commissioner as such applicant's agent for service of process regarding all insurance disciplinary matters and shall agree that service upon the commissioner is of the same legal force and validity as personal service on the applicant.

510—10.12(522) Change in name or address.

10.12(1) If an agent's name is changed, written notification must be filed with the department by the agent within thirty days of the change. If the change of name is by court order, a copy of the court order must be submitted to the department.

10.12(2) Address change.

a. If an agent's address is changed within the agent's resident state, written notification must be submitted to the department by the agent stating name, social security number, previous address, and new residence address, within thirty days of the address change.

b. If an agent's address is changed from one state to another, neither state of which is Iowa, the agent must submit, in addition to the information required by "a," above, a certification from the new resident state, which must include information about whether the agent was required to take an examination to be licensed in that state. If the agent was required to take an examination the agent will be exempt from continuing education for that calendar year.

c. If an agent moves into Iowa, the agent must comply with rule 10.4(522).

d. If an agent moves from Iowa to any other state, the agent must comply with rule 10.10(522) if the agent intends to continue selling insurance.

10.12(3) If an amended license is desired, the appropriate fee must accompany the notification.

510—10.13(522) Appointment requisition procedures.

10.13(1) Any insurance company admitted to do business in Iowa may request an appointment for a licensed insurance agent to represent that company provided the company has or intends to have a contractual relationship with the agent. It is the company's responsibility to verify that the agent is licensed for the appropriate line(s).

10.13(2) The company shall submit to the department an appointment requisition card (Green-IA-102), an appointment approval form (IA-100), and the appropriate fee. If an appointment requisition card is submitted without an appointment approval form or the fee, the appointment requisition card will be returned to the company.

510—10.14(522) Renewal of company appointments. On or about April 15 of each year, the department shall send to the insurance companies authorized to do business in Iowa an agent printout for the renewal of the agents' appointments with each company. This list shall contain only those agents appointed with the company that have submitted a properly completed continuing education report form and the required renewal fee. By the date specified in the mailing, which will be not less than forty-five days, the company shall renew those appointments, using the procedures in subrules 10.14(1) and 10.14(2) to make any additions or cancellations to the list of licensed agents. Renewals filed after the due date will be subject to a late filing fee.

10.14(1) A company desiring to add an agent or agents not appearing on the company's list shall complete appointment forms, IA-100 and IA-102, and forward such forms to the department with the appropriate fees. No agent appointments will be processed between April 1 and April 15.

10.14(2) A company desiring to cancel the appointment(s) of agent(s) which it does not wish to renew shall forward to the department a cancellation form IA-103 for each agent which it does not wish to renew and delete the appropriate fee. Companies are requested to cancel the appointments of agents that were not renewed for failure to timely renew or comply with the continuing education requirement.

510—10.15(522) Cancellation of appointments. The insurance company for which the agent was appointed shall file a properly completed appointment cancellation card, (IA-103), immediately upon termination of the agent's contract, and the agent must be notified by the company that the agent's appointment has been canceled.

510—10.16(522) Appointment lost through merger. A new appointment must be issued for the agents of a company that loses its identity in a new company.

510—10.17(522) Temporary permit. The commissioner of insurance may issue a temporary permit for a period not to exceed six months and thus waive the normal licensing requirements in the following situations:

10.17(1) To the surviving spouse or next of kin of a deceased licensed insurance agent;

10.17(2) To the spouse, next of kin, employee, or legal guardian of a licensed insurance agent disabled by sickness, injury or insanity.

510—10.18(522) Fees and costs.

10.18(1) All forms necessary for the agents' qualification, licensure, appointment, and cancellation may be purchased in quantity from the department at cost or, in the case of certain forms, an original may be requested and exact, readable, high quality copies may be made therefrom. Poor quality copies of these forms will be returned. A listing of the costs and which forms are able to be copied is available upon request from the department.

10.18(2) The fee for an examination is $10 per line of insurance. There is no fee for the general lines examination. The fee for retaking an examination is also $10.

10.18(3) The application fee for the license is $10.

10.18(4) The annual renewal fee for the license is $10.

10.18(5) The late filing fee, referred to in subrule 10.11(5), is $40 in addition to the regular renewal fee.

10.18(6) The fee for licensure of nonresident agents shall be $10 plus $10 for each substantive line for which the agent is requesting qualification.

10.18(7) If an agent needs a certification of licensure from the department, such agent shall submit a written request, a fee of $5 and a self-addressed, stamped envelope.

10.18(8) For a clearance letter for another insurance department, the fee is $5.

10.18(9) The fee to have an amended or duplicate license issued is $10.

10.18(10) The fee for a company appointment and the renewal of a company appointment is $5 per agent. There is no fee for the cancellation of an appointment.

10.18(11) The fee for filing the company appointment renewals after the stated due date shall be $10 per agent.

510—10.19(522) Penalty-selling without an appointment. An agent who sells insurance, directly or indirectly, without a valid license and an appointment from the company such agent claims to represent, shall be deemed to be in violation of Iowa Code section 522.1 and subject to the penalties provided in Iowa Code section 522.5.

Any company or company representative who aids and abets an agent in the above described violation shall be deemed to be in violation of Iowa Code section 522.5 and subject to the penalties provided therein.

These rules are intended to implement Iowa Code sections 522.1 et seq.

ITEM 2. Rule 3.3(17A,502,505) is amended as follows:

510—3.3(17A,502,505) Notice of hearing.

3.3(1) *The commissioner of insurance shall be the agent for service of process regarding all insurance agent's licensing matters for all resident and nonresident insurance agents in the state of Iowa.*

3.3(2) Notice of hearing in a contested case ~~shall~~ *may* be given ~~as provided in section 17A.12(1), The Code, except that~~ *in any one of the following ways:*

a. All notices and other formal notifications are deemed delivered when the original is served on the commissioner. Upon receipt, the commissioner shall send a duplicate original to the insurance agent's last known address as it

appears in the department's files, as evidenced by a receipt of mailing.

b. Notices may be given by hand delivering the notice papers to the insurance agent or to an officer of the respondent, if the respondent is a company.

c. ~~i~~*I*n cases involving ten or more parties notice may be given by regular mail.

This rule is intended to implement Iowa Code section 17A.12.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5021

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code sections 505.8 and 258A.3, the Iowa Department of Insurance adopts the rescission of 510—Chapter 11, and replaces it with a new 510—Chapter 11, Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VII, No. 1, July 4, 1984 as **ARC 4809**.

Changes from such notice are as follows:

11.4(6);
11.5(1);
11.5(1)"b";
11.5(3) was added and the remaining paragraphs were renumbered;
11.5(8);
11.6(1) and (2);
11.6(6);
11.7(1)"f";
11.7(2); and
11.12 was deleted.

These rules will become effective November 15, 1984.

The following rules are adopted.

510—Chapter 11 is rescinded and the following language is adopted in lieu thereof:

CHAPTER 11
CONTINUING EDUCATION FOR INSURANCE AGENTS

510—11.1(258A) Statutory authority—purpose—applicability.

11.1(1) These rules are adopted pursuant to the general rulemaking authority of the insurance commissioner in Iowa Code chapter 505, and the specific authority in Iowa Code chapter 258A to issue rules establishing continuing education requirements for resident and nonresident agents.

11.1(2) The purpose of these rules is to establish requirements by prescribing:

a. The minimum continuing education in approved subjects that an insurance agent must annually complete;

b. The procedure and standards that the commissioner will utilize in the approval of subjects or courses;

c. The procedure for establishing that the required continuing education has been completed; and

d. Enforcement criteria and guidelines.

11.1(3) These rules do not apply to:

a. A nonresident agent who resides in a state or district having a continuing education (CE) requirement for insurance agents and who meets all requirements of that state or district for practice therein; except such nonresident agent is responsible for completing the appropriate portions of the report form described in rule 11.4(258A).

A state has a continuing education requirement only if a licensed agent must complete a given number of continuing education course hours in order to renew the license in the area(s) in which the agent is licensed in Iowa. A requirement that a certain number of hours must be completed within a few years of original licensure does not qualify.

Additionally, if a nonresident agent is exempt from fulfilling the agent's resident state CE requirement in a given year, the agent must comply with the requirements of this chapter for that year.

b. An agent who is qualified and licensed only for credit accident and health and credit life (CRDT).

c. Licensed attorneys who are also agents, upon submission of proof of continuing legal education for the appropriate calendar year.

d. An agent who seves full time in the armed forces of the United States of America on active duty during a substantial part of the calendar year.

510—11.2(258A) Definitions.

11.2(1) "Agent" is a natural person who is properly qualified and licensed for the type and kind of insurance being marketed. "License" means the authorization issued to individuals by the commissioner of insurance to act as insurance agents.

11.2(2) "Annual due date" is the latest date on which the CE report form may be timely filed, which is February 28, 1985 and February 28 of each year thereafter.

11.2(3) "Annually" means the calendar year between January 1 and December 31.

11.2(4) "Approved subject" or "approved course" means any educational presentation involving insurance fundamentals, insurance law, insurance policies and coverage, insurance needs, insurance risk management, or other areas, which is offered in a class, seminar or other similar form of instruction, and which has been approved by the commissioner under this chapter as expanding skills and knowledge obtained prior to initial licensure or developing new and relevant skills and knowledge.

11.2(5) "C.E.C." means continuing education credit. One C.E.C. is sixty minutes with at least fifty minutes' instruction and up to ten minutes' break or the C.E.C. value assigned by the commissioner. If a break is not taken, it may not be deducted from the overall length of the course. However, the meal period may be shortened or eliminated. The commissioner will assign a C.E.C value to each approved course on a case-by-case basis.

11.2(6) "Basic subjects" courses are those courses which do not directly pertain solely to life, accident and health or property/casualty insurance but involve general fundamental insurance concepts.

11.2(7) "Newly licensed" means licensed by examination or initially licensed as a nonresident agent during the current calendar year. An agent may be newly licensed for one category and not another.

510—11.3(258A) Continuing education requirements for agents.

11.3(1) Every licensed agent who holds a property/casualty qualification shall annually obtain a minimum of ten C.E.C.'s in course(s) certified as property/casualty (P/C).

11.3(2) Every licensed agent who holds a life, accident/health, or variable contracts qualification shall annually complete ten C.E.C.'s in course(s) certified as life and accident and health (L/A&H).

11.3(3) Every licensed agent who holds a hail only qualification shall annually obtain either a minimum of one C.E.C. in course(s) certified as hail only or fulfill the requirement of subrule 11.3(1).

11.3(4) Courses certified as hail only may be used by property/casualty agents to fulfill the requirement specified in subrule 11.3(1).

11.3(5) Agents who earn C.E.C.'s from course(s) certified as basic subjects may apply those C.E.C.'s toward either the P/C continuing education requirement or to the L/A&H continuing education requirement. However, a C.E.C. applied to satisfy the annual requirement in one area may not also be applied to satisfy the annual requirement for another.

11.3(6) An instructor of an approved subject is entitled to the same credit as a student completing the subject but may receive such credit only once in a calendar year, regardless of the number of times the agent instructs the course.

11.3(7) If an agent completes more than the annual requirement of approved continuing education courses in a single year, the agent may accumulate and carry over to the next year up to the equivalent of the annual requirement for the type of license qualification(s) held.

510—11.4(258A) Proof of completion of continuing education requirements.

11.4(1) A newly licensed agent shall have the remainder of the calendar year in which the agent is initially licensed plus the next calendar year to comply with the C.E. requirements.

11.4(2) All agents not falling under subrule 11.4(1) must, before the annual due date, file a report with the commissioner that they have met the continuing education requirements of rule 11.3(258A) for the previous calendar year. Every agent shall maintain a record of all courses attended by keeping the certificates of attendance, as provided for in subrule 11.6(1),for three years after the end of the year of attendance.

11.4(3) An agent cannot receive credit for the same course twice in a calendar year. It is the agent's responsibility to determine whether a course is the same as one already taken by comparing the course title, instructor and topic(s).

11.4(4) If the required report form is submitted showing compliance in one category of qualification but not another, the renewal license will be issued only for those lines for which compliance has been shown.

11.4(5) The commissioner relies upon each individual agent's integrity in certifying to compliance with the continuing education requirements provided herein. Nevertheless, the commissioner reserves the right to require, if the commissioner so elects, any agent to submit the certificates of attendance for the continuing education courses attended as further evidence of compliance for any year no more than three years' previously.

11.4(6) Failure to comply.

a. If the required report showing proof of continuing education completion is not submitted by the annual due date the agent's license will not be renewed unless the agent complies with paragraph "b" or "c," below.

b. An applicant for the renewal of an agent's license, who has complied with the CE requirements but has failed to file the renewal in a timely manner may either (1) comply with the requirements of paragraph "c," below; or (2), if prior to May 30 of that year, comply with subrule 10.11(5).

c. An applicant for the renewal of an agent's license who has either not complied with the CE requirements or has failed to file the renewal by May 30 of that year must pass the examination(s) required for issuance of the new qualification and license.

11.4(7) Waiver or extension of CE requirements.

a. Any agent who has not completed the CE requirements for good cause but wishes to renew the license, must file with the department a request for waiver or extension of the CE requirements, including an explanation of the reasons, prior to the annual due date. If the department finds that good cause has been shown for granting a waiver or extension of the CE requirements, or any part thereof, the department shall waive or extend the CE requirement for that calendar year only.

b. Good cause shall be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the applicable prerenewal period because of:

(1) A long term, severe illness or incapacity, evidenced by a doctor's certification; or

(2) Extenuating circumstances.

510—11.5(258A) Approved subjects—certification by commissioner.

11.5(1) Any school, insurer, industry association or other organization intending to provide a course, program of study, or subject for continuing education credit must submit such course to the commissioner for approval.

a. Except as provided in subrule 11.5(1)"b," requests for certification shall be submitted at least fourteen days prior to the beginning of the course. However, during 1984, courses will be considered for retroactive approval if submitted within sixty days after the course is given but no later than December 31, 1984. Beginning January 1, 1985, the request form must be received by the department at least fourteen days before the course is to begin to be considered for approval. Requests received later will be denied.

b. Because of the known high quality of the programs, any recognized national program offered may be submitted within sixty days after it is given. This exception applies only to CIC Institutes and classroom study of CLU, ChFC, CFP, CPCU, LOMA, LUTC, HIAA courses and similar courses specifically excepted by the department.

11.5(2) The following information shall be furnished on the request for certification:

a. Name of provider or sponsoring organization.

b. Name and phone number of the contact person for the provider.

c. Course title.

d. Date(s) course will be offered.

e. Location(s) where course will be offered.

f. Outline of the course including a schedule of times when subjects will be presented. The topics covered in the course should be listed individually. Under each separate topic, a summary of the instruction given and the material covered should be included.

g. Names and qualifications of instructors.

h. Number of C.E.C.'s requested.

11.5(3) Any material changes in the program or course as submitted to the department on the request

form and attachments will automatically void the approval. Approval voided in this manner may be corrected by resubmitting the course as actually given within twenty working days of the course.

11.5(4) No course, except self-study courses, will be evaluated without a specific date and location noted on the request form.

11.5(5) Topics guidelines.

a. The following course topics are examples of subjects that most likely will qualify for approval:

1. Rating;
2. Tax laws (specifically related to insurance);
3. Policy contents;
4. Proper uses of products;
5. Ethics;
6. Risk management;
7. Iowa insurance code and administrative rules;
8. Technical information related to the insurance license.

b. The following course topics are examples of subjects that will not qualify:

1. Sales;
2. Motivation;
3. Prospecting;
4. Psychology;
5. Communication skills;
6. Prelicense training;
7. Supportive office skills (typing, filing, etc.);
8. Personnel management;
9. Recruiting;
10. Other subjects not related to the insurance license.

11.5(6) A provider may request that its materials furnished for certification be kept confidential on the ground that they are of a proprietary nature and intended only for its agents and employees. The commissioner will promptly review and return such materials, if a stamped, self-addressed envelope of sufficient size and with sufficient postage is included.

11.5(7) A copy of all course materials must be provided upon request by the department.

11.5(8) Within a reasonable time after receipt of the information required above, the commissioner will grant or deny approval of a course and will indicate the number of C.E.C.'s that will be recognized for the course. Each approved course will be assigned to the appropriate category(s):

a. Property/casualty;
b. Life/accident and health;
c. Basic subjects; or
d. Hail only.

11.5(9) A course or subject must have a value of at least one C.E.C. and approval will be given only for whole hours.

510—11.6(258A) Providers' responsibilities.

11.6(1) Certificate of attendance.

a. Once approval of a course for continuing education credit is granted, the provider shall provide a certificate of attendance to each person who satisfactorily completes such a course. The certificate shall be signed by either the course instructor or the provider's authorized representative. Providers shall also maintain a list of all persons who attend courses offered by them for continuing education credit for at least three years from the end of the year in which the courses are offered.

b. The certificate of attendance used must be in the form provided by the department or a substantially similar form which shall include at least the agent's name, course title, date and location of the course, the number of hours the course had been approved for or the students actual contact hours, whichever is less, the category for which those hours have been approved, and the signature of the appropriate person.

c. National providers, such as those listed in rule 11.5(1)"b," may issue certificates of attendance upon agent request only, if it is made clear in their application materials and at the time of course passage that the agent must request one and how.

11.6(2) A provider of an approved course is responsible for both the attendance of the students and their attention. During the approved program, if the provider finds that a student is reading unrelated materials, sleeping, talking excessively with their neighbor or is otherwise disruptive or inattentive, the provider may take whatever action the provider feels is appropriate, including refusing to grant the student any credit for attendance.

11.6(3) The commissioner may grant approval to specific programs of study that have appropriate merit, such as programs with broad national or regional recognition, notwithstanding the lack of a request for certification.

11.6(4) Approval of a course is valid throughout the calendar year of the approval. Providers who desire to have a course reapproved in a later calendar year must submit a letter in duplicate to the department stating their intent to give the same course again and the new date(s) and location(s). The commissioner will evaluate the original filing and inform the provider if additional information is necessary and, if not, whether the course is reapproved.

11.6(5) Upon request by the department, an approved course shall be taped, using cassette tapes, by the provider's representative and such tapes shall be promptly submitted to the department.

11.6(6) As a part of the enforcement of Iowa Code chapter 258A and in recognition that there is no fee for filing a C.E. course for approval, a provider shall reimburse all reasonable costs of an audit by this department. This requirement shall be activated upon notice by the auditing department employee to the contact person or instructor of their presence and the intent to submit expenses for reimbursement. Governmental bodies, such as community colleges and universities, shall be exempt from this requirement.

510—11.7(258A) Enforcement—providers.

11.7(1) The department may, upon finding any one or more of the following, discipline a continuing education provider as provided in subrule 11.7(2):

a. Advertising that a course is approved, prior to approval. Included within the meaning of "approved" are such notations as "_____ hours CECs," "will be worth _____ hours" or "approved for credit in Iowa";

b. Submitting a course outline with material inaccuracies, either in timing or topic content;

c. Presenting nonapproved material, as described in 11.5(5)"b" during the time of an approved course;

d. Failing to present a course for the full time specified in the request form submitted to the department;

e. Preparing and distributing certificates of attendance before the course has been approved;

f. Refusing to issue certificates of attendance to any participant who satisfactorily completes an approved course, except when subrule 11.6(2) applies; or

g. Any other action inconsistent with the letter and spirit of Iowa Code chapter 258A or these rules.

11.7(2) The department may make an independent finding of a violation and place a provider on probation or suspension. If the provider is not in agreement with such finding, the provider's representative shall have twenty working days from the date of the notification to submit a statement showing cause why such action should not be taken. In addition, the department may require any one or more of the following upon a finding of a violation of subrule 11.7(1):

a. A fine not to exceed one thousand dollars per violation;

b. Restitution of the course admission fee to all participants;

c. Provide or reimburse students for a suitable course to replace the course that was found in violation;

d. Withdraw the possibility of approval of courses sponsored by such provider for a set period of time or indefinitely; or

e. Any other disciplinary action not inconsistent with law.

510—11.8(258A) Enforcement—agent compliance. The commissioner may place on probation, suspend, revoke, or refuse to renew an agent's license or may levy a civil penalty, in accordance with Iowa Code section 258A.3(2)"e" or any combination of actions for any one or more of the following causes:

11.8(1) Failure to timely respond to department inquiries, including continuing education audit requests;

11.8(2) Incorrect certification of compliance with the continuing education requirements;

11.8(3) Failure to file a continuing education/renewal form by the annual due date, whether or not the agent can show actual compliance with the CE requirements unless the agent is complying under subrule 10.11(5);

11.8(4) Requesting an extension or waiver under false pretenses;

11.8(5) Refusing to co-operate with department employees in an investigation; or

11.8(6) Any other action that shows nonconformance with the requirements of Iowa Code chapter 258A or these rules.

510—11.9(258A) List of available approved continuing education courses and providers. The commissioner will provide, upon request, a list of all approved continuing education courses currently available to the public.

510—11.10(258A) Independent study. An agent who studies independently for a continuing education self-study course approved by the commissioner and who passes the examination, will receive credit for the C.E.C.'s assigned by the commissioner as recognition for the approved subject. Credit will apply in the calendar year the exam is given. No other credit will be given for independent study.

510—11.11(258A) Implementation schedule.

11.11(1) Courses approved as of the implementation date of this replacement chapter that are not eligible for approval under these new rules will continue to be approved until December 31, 1984 only.

11.11(2) The portions of these rules relating to course approval apply to all courses submitted to the department after the implementation date.

The remaining portions of the rules apply to all courses or portions of courses given after the implementation date.

These rules are intended to implement Iowa Code section 258A.5.

[Filed 9/21/84, effective 11/15/84]
[Published 10/10/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5008

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code sections 505.8 and 514B.23, the Iowa Department of Insurance adopts on September 18, 1984, an amendment to Chapter 40, "Health Maintenance Organizations," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin August 1, 1984, as **ARC 4863**.

This rule is identical to that published as Notice of Intended Action.

This rule will become effective on November 14, 1984.

Rule 510—40.4(514B), the first unnumbered paragraph is amended to read as follows:

510—40.4(514B) Governing body. An HMO shall have a basic written organizational document setting forth its scheme of organization and establishing a governing body appropriate to its form of organization. The governing body shall be responsible for matters of policy and operation, and shall be separate ~~and independent~~ from any other governing body.

This rule is intended to implement Iowa Code section 514B.7.

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[Published 10/10/84]

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ARC 5034

PHARMACY EXAMINERS, BOARD OF[620]

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners adopted an amendment to Chapter 6, "Minimum Standards for the Practice of Pharmacy." The amendment was adopted during the September 18, 1984 meeting of the Iowa Board of Pharmacy Examiners.

Notice of Intended Action was published in the Iowa Administrative Bulletin, July 18, 1984, as **ARC 4834**.

This amendment is identical to that published as Notice of Intended Action.

This amendment will become effective on November 14, 1984.

Chapter 6 is amended by adding the following new rule:

620—6.12(155) Legal status of prescriptions. Prescriptions issued in accordance with the provisions of Iowa Code section 155.33 shall be valid as long as a prescriber/patient relationship exists. Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or oversee the patient's use of a prescription drug, the prescription loses its validity and the pharmacist, on becoming aware of the situation, shall cancel the prescription and any remaining refills. Provided, however, that the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the prescribed drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

[Filed 9/21/84, effective 11/14/84]
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ARC 5035

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code sections 7A.3 and 17A.3, the Office for Planning and Programming hereby adopts amendments to Chapter 19, "Iowa Job Training Partnership Program," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin July 18, 1984 as **ARC 4839**.

As a result of the public hearing held August 7, 1984, OPP has deleted several sections for further study and has adopted the amendments to Chapter 19 through the regular rulemaking process. The changes from the Notice are as follows:

1. Item 1, rule 19.3, unnumbered paragraph 7, "Rehabilitation agencies" was corrected to read "the Rehabilitation Education and Services Branch of the Department of Public Instruction."
2. Item 7, subrules 19.10(1)"b" and 19.10(5)"b" were deleted—further study is required. Reserve the sections.

Subrule 19.10(10) corrected the due date for annual reports to September 15 of each program year.

3. Item 8, subrules 19.13(1)"b" and 19.13(5)"b" were deleted—further study is required. Reserve the sections.

These rules are intended to implement Executive Order 47, Iowa Code chapter 7A, and 29 USC 1501 et seq.

These rules shall become effective November 14, 1984.

The following amendments are adopted.

ITEM 1. **630—19.3 (Executive order 47, 29 USC 1501 et seq.)** is amended by eliminating the subrule numbers preceding each definition and amending the existing definitions as indicated:

"Administrative entity" — ~~means~~ The organization, corporation, agency or unit of government designated under an agreement between a private industry council and representative(s) of the parties to a 28E agreement to manage and execute a job training plan in a service delivery area of the state.

"Experience in administering job training programs" — ~~as used in 29 U.S.C. 1512(d) (in determining the proper official to appoint the private industry council) means~~ Participation as a Prime Sponsor in the Comprehensive Employment and Training program, 29 U.S.C. 801 et seq. *or participation as a member to a service delivery area's consortium agreement under the Job Training Partnership Act.*

"General purpose business organizations" — ~~as used in 29 U.S.C. 1512(a)(2) (representatives serving on the private industry council) means~~ Organizations which admit to membership any for-profit business, without any preference or priority, which operates in the service delivery area.

"Grant recipient" ~~means~~ — The organization, corporation, agency or unit of government designated under an agreement between a private industry council and representative(s) of the parties to a 28E agreement to receive Job Training Partnership Act funds on behalf of a service delivery area of the state.

"Public employment service" — ~~as used in 29 U.S.C. 1512(a)(2) (representatives serving on the private industry council) means~~ Job Service of Iowa.

"Rehabilitation agencies" — ~~as used in 29 U.S.C. 1512(a)(2) (representatives serving on the private industry council)~~ Includes the Iowa department of ~~social~~ *human* services, the ~~Division of~~ *Rehabilitation Education and Services Branch of the Department of Public Instruction (a.k.a. Vocational Rehabilitation) and local rehabilitation facilities and organizations.*

"Subrecipient" ~~means~~ — ~~a~~*A*ny person, organization or other entity which receives financial assistance under JTPA through an SDA grant recipient. Where, in a service delivery area, the grant recipient and administrative entity are separate entities, the term "subrecipient" includes the administrative entity.

ITEM 2. **630—19.3 (Executive order 47, 29 USC 1501 et seq.)** is further amended by adding the following new definitions and arranging all definitions in alphabetical order:

"Academic credit" — Credit for education, training, or work experience applicable towards a secondary school diploma, a postsecondary degree, or an accredited certificate of completion.

"Adult" — Any individual who is twenty-two years of age or older.

"Aid to families with dependent children (ADC)" — A public assistance program operated in Iowa by the department of human services to provide cash assistance to eligible persons pursuant to a state plan approved under the Social Security Act, Title IV.

"Applicant" — A person who applies for employment, training or other services offered under JTPA. An applicant found to be eligible for the program remains an applicant until the provisions for "participant" have been met.

"Assessment" — A formal or informal process utilizing interviewing, counseling or testing to determine an individual's employability, aptitudes, skills, abilities, and interests and to develop a plan to achieve the individual's employment and related goals.

"Backfill" — The stipulation included in upgrading activities that requires the employer to hire at least one new JTPA-eligible individual for each employee upgraded.

"Barriers to employment" — Limitations that affect an individual's ability to secure and maintain employment. Individuals with barriers to employment may include,

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but are not limited to, those who have limited English-language proficiency, or are displaced homemakers, school dropouts, teenage parents, handicapped, older workers, veterans, offenders, alcoholics, or addicts.

"Certificate" — A document that describes competencies which have been obtained by a participant and can serve as a form of résumé to help acquire employment or further training. Certification documents a participant's achievement according to a uniform set of competency statements. Such documents are created from information contained in the "employability profile."

"Chief elected official (CEO)" — The local elected official(s) who is selected from the participating units of government in the service delivery area (SDA) to act as their authorized representative(s). In the case of a service delivery area, this would be the chairperson(s) of the local elected officials' JTPA board. For the state, the CEO is the governor.

"Community improvement services projects (CISP)" — Projects for youth ages sixteen to twenty-one that offer full-time (up to forty hours) during the summer months and holidays, and part-time (up to twenty hours) during the school year, work experience in public and private nonprofit agencies. The jobs generated under this project must provide community improvement services.

"Competency-based learning" — Techniques for improving the learning process which focus on carefully and clearly defining the content to be learned, and the connected tasks of assessing what the learner knows, and providing learning experiences which led to the desired, defined outcome.

"Competency categories" — A general skills area within which competencies must be developed for a youth employment competencies system. There are three competency categories:

Basic education skills — The fundamental skills of reading, computation, and written and verbal communication that are needed to successfully function in the workplace.

Job specific skills — The knowledge and skills required to carry out the tasks of a specific occupation or cluster of occupations.

Pre-employment and work maturity skills — Those skills which are needed to look for, obtain and retain a job such as: Self-awareness of one's own career-related interests, abilities, strengths and weaknesses; job seeking skills, including application or résumé completion and interviewing skills; and the ability to meet basic employer expectation, including regular attendance, punctuality and following instructions.

"Competency statement" — A written description made as part of a youth employment competencies system which includes an identification of the skills, knowledge, attitudes and behavior which a youth should have in order to successfully enter and stay in the work force; an indicator, which shall be a specific observable behavior that demonstrates the possession of a competency; a benchmark which shows the extent to which the participant is expected to demonstrate the possession of a skill, knowledge, attitude or behavior; and a method of assessment.

"Cost allocation plan" — A plan to support the distribution of grant costs between more than one cost category, which shall include (1) the nature and extent of services provided and their relevance to the grant agreement; (2) the items of expense to be included; and (3) the methods to be used in distributing the costs. All costs included in a plan shall be supported by formal accounting records which will substantiate the propriety of the eventual changes.

"Cost category" — A pool, center or area established for the grouping of costs incurred under a grant.

"Demand occupations" — Occupations which have a potential for sustained demand or growth.

"Dependent" — Any person for whom, both currently and during all of the previous six months, the participant has assumed fifty percent of the support, and is:

1. A member of the immediate household; or
2. Not a member of the household, but a parent or child of the participant, or a relative of the participant who is unemployed because of a mental or physical disability; or
3. A person who may be claimed as a dependent on the participant's tax return under section 151(e) of the Internal Revenue Code of 1954.

"Direct costs" — Costs that may be directly identified with a particular cost category.

"Disabled veteran" — A veteran who is entitled to compensation under laws administered by the veterans administration, or an individual who was discharged or released from active duty because of a service-connected disability.

"Dislocated worker" — Any individual who is residing at an address within the state of Iowa at the time of application and is either:

1. Terminated or laid off, or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment compensation, and is unlikely to return to the individual's previous industry or occupation;
2. Terminated, or who has received a notice of termination of employment, as a result of any permanent closure of a plant or facility (in the case of a self-employed individual, "terminated, or who has received a notice of termination" as used in this rule means permanent business dissolution as evidenced by the individual's written declaration and proof of foreclosure, bankruptcy, or inability to secure capital necessary to continue the business operation); or
3. Long-term unemployed and has limited opportunities for employment or re-employment in the same or a similar occupation in the area in which such individual resides, including an older individual who may have substantial barriers to employment by reason of age.

An individual who has worked for one employer at least once a week during any eleven consecutive weeks since being terminated or laid off, is not a dislocated worker under items 1. and 2. above.

"Displaced homemaker" — An individual who has not worked in the labor force for at least two years immediately prior to application but has, during those years, worked in the home providing unpaid services for family members, and is experiencing difficulty in obtaining employment, and either (1) has been dependent on public assistance or on the income of another family member but is no longer supported by that income; or (2) is receiving public assistance on behalf of dependent children in the home, especially where such assistance will soon be terminated.

"Economically disadvantaged" — An individual who either (1) receives or is a member of a family which receives cash payments under a federal, state or local public assistance program; or (2) is a member of a family whose income during the previous six months on an

annualized basis at the time of application was not in excess of seventy percent of the lower living standard income level or poverty level; or (3) receives food stamps; or (4) is a foster child on whose behalf state or local government payments are made.

"Eligibility verification" — A process of authenticating and validating the eligibility of participants.

"Employability development plan (EDP)" — A formalized, modifiable schedule of goals required for participants in all Title IIA and older individuals' programs and Title III that includes: The planned outcome of the participant's enrollment and the date it is expected to occur; the participant's current status in relation to the planned outcome; and the steps that will be taken to achieve the planned outcome.

"Employability profile" — An individual progress record of ongoing competency attainment established to track and evaluate the participant's progress toward planned goals.

"Employed" — Refer to "labor force status."

"Enrollment" — The process whereby an eligible applicant becomes a participant.

"Entered unsubsidized employment" — The category for participants who were terminated from the program and entered (through the efforts of the program staff or through their own efforts) full- or part-time unsubsidized employment. For JTPA reporting purposes, this term includes entry into the armed forces, entry into employment in a registered apprenticeship program, and becoming self-employed.

"Entry level" — The lowest position in any promotional line, as defined locally by collective bargaining agreements, past practice, or applicable personnel rules.

"Family" — The maximum number of persons living in a single residence at any one time during the six-month income determination period, who are related to each other by blood, marriage, or adoption.

1. Stepchild or a stepparent shall be considered to be related by marriage.
2. Foster children are not included in family size.
3. An individual not living in the residence but who was claimed as a dependent on the family's federal income tax return for the previous year shall be presumed to be, unless otherwise demonstrated, a member of the family.
4. An individual who receives less than fifty percent of support from the family and who is not the principal earner nor the spouse of the principal earner, shall be considered a family of one.
5. A handicapped individual shall be considered a family of one.

"Family income" — All income actually received by all members of the family during the income determination period. When computing family income, income of a spouse and other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant. Family income includes:

1. Gross wages and salaries actually received, including pay or allowances made to active members of the U.S. armed forces.
2. Net self-employment income.
3. Money received from sources such as net rents, OASI (old-age and survivors' insurance—Social Security Act, Title II, section 402) pensions, alimony, governmental retirement payments, armed forces retirement payments (other than compensation for disability or death, per Title 30, U.S.C., Chapter 11), income from insurance policy annuities, and other sources of periodic income.
4. JTPA and CETA on-the-job training wages.

Family income excludes:

1. Noncash income, such as food stamps or compensation received in the form of food or housing.
2. Imputed value of owner-occupied property.
3. Public assistance payments.
4. Cash payments received pursuant to a state plan approved under Title I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act or payments received under the Black Lung Benefits Reform Act of 1977 (Public Law 95-239).
5. Federal, state, or local unemployment benefits.
6. Payments, other than OJT wages, made to participants in employment and training programs.
7. Compensation received under the Older Americans Act, Title V, and IYC or from participation in national guard or military, naval, or air force reserve activities.
8. Capital gains and losses.
9. One-time and limited fixed (but not lifetime) unearned income, such as, but not limited to: Payments received under income maintenance programs and supplemental private (subpay) unemployment benefits plans; scholarship and fellowship grants; accident, health, and casualty insurance proceeds; disability and death payments, life insurance annuities, and death benefits; awards and gifts; inheritances, including annuities; worker's compensation awards; terminal leave pay; soil bank payments; and agriculture crop stabilization payments.
10. Pay or allowances previously received by any veteran while serving on active duty in the U.S. armed forces (U.S.).
11. Educational assistance and compensation payments to veterans and other eligible persons under Title 38, United States Code, Chapter 11, Dependence and Indemnity Compensation for Service-Connected Death and Disability; Chapter 31, Vocational Rehabilitation; Chapter 34, Veterans' Education Assistance; Chapter 35, War Orphans' and Widows' Educational Assistance; and Chapter 36, Administration of Educational Benefits.
12. Payments received under the Trade Act of 1974.
13. Payments received on behalf of foster children.
14. Child support payments.

"Farm residence" — A farm is identified on the basis of sales alone and is defined as any place which produced agricultural products with gross annual sales of $1,000 or more.

"Federal minimum wage rate" — The applicable minimum hourly wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

"Follow-up" — A procedure that involves the collection of employment-related information about a former participant, which shall be accomplished by contacting the former participant thirteen weeks after termination.

"Governor's co-ordination and special services plan" — A plan prepared by the governor and submitted to the secretary of labor that contains explanations and criteria for co-ordinating JTPA programs with related human service resources in Iowa. The plan will cover two program years.

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"Handicapped individual" — Any person who has a physical or mental disability, as defined by these rules, which constitutes a substantial barrier to employment and can benefit from the JTPA program as determined by the local administrative entity.

"Indirect costs" — Costs incurred for a common or joint purpose benefiting more than one cost category and not readily assignable to the cost categories specifically benefited.

"Individual youth competency plan" — A formalized schedule of goals which contains the following four elements:

1. A statement of the individual's needs which includes initial participant assessment of competencies possessed and deficiencies within all three of the competency categories.
2. A statement of one or more goals for the individual including what competencies are to be learned by the participant and identification of a specific occupational goal.
3. A description of the assessment method(s) that will be used to determine whether the goal(s) has been met.
4. A statement of activities and services which will be provided, including a description of the learning experiences which will lead to the attainment of competency goals and attainment of a specific occupation.

"Institutionalized skill training (IST)" — Vocational skill training normally conducted in an institutional setting, which is designed to provide individuals with technical skills and information required to perform a specific job or group of jobs.

"Intake" — Intake includes screening for eligibility; the initial determination as to whether the program can benefit the individual; the determination of the employment and training activities and services which would be appropriate for the applicant; the determination of the availability of an appropriate employment and training activity; a decision on selection; and dissemination of information on the program.

"Job search (JS)" — Training that provides participants with the necessary skills to look for and keep employment.

"Job training plan" — A written program of action, approved by the governor, which delineates the method of operation and proposed budget for JTPA Title IIA and IIB programs in a service delivery area.

"Labor market area" — An economically integrated geographic area within which individuals can reside and find employment within a reasonable distance, or can readily change employment without changing their place of residence.

"Limited English language proficiency" — Any individual whose native language is not English and who is unable to communicate in English, which results in a job handicap.

"Local elected official/private industry council agreement" — An agreement between the local elected officials and the private industry council for determining the policies and procedures contained in the local job training plans.

"Local elected officials (LEO)" — County supervisors, except with respect to contiguous municipal corporations with a population of 200,000 or more that serve a substantial part of a labor market, in which case the mayor of that municipality(s) is also a "local elected official." LEO's must approve the local service delivery area's local training plans and modifications before they are submitted to the governor.

"Long-term unemployed" — Any individual who is unemployed at time of eligibility determination and has been unemployed for fifteen or more of the twenty-six weeks immediately prior to such determination and has limited opportunities for employment or re-employment in the same or a similar occupation in the area in which such individual resides, including any older individual who may have substantial barrier to employment by reason of age.

"Lower living standard income level (LLSIL)" — The income level (adjusted for selected standard metropolitan statistical areas and regional metropolitan and nonmetropolitan differences and family size) determined by the secretary of labor, based upon the most recent lower living family (the other being "poverty level") sets of income guidelines used in the determination of eligibility for the JTPA program.

"Mental disability" — A condition designated by vocation rehabilitation as constituting a substantial barrier to employment or a condition of being:

1. Mentally retarded (subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior);
2. Learning disabled (an impairment of one or more of the basic psychological processes involved in understanding or in using spoken or written language which may be manifested in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations);
3. Emotionally maladjusted (a mental disorder caused by or associated with impairment of brain tissue function and disorders of psychogenic origin, which are disorders without clearly defined physical cause or structural change in the brain which interferes with the individual's capacity to satisfactorily and consistently meet the ordinary personal, social, or vocational demands of life).

"Monitoring" — The review of financial and programmatic records and activities to ensure compliance to the local job training plan and state and federal law and regulations.

"Needs-based payments (NBP)" — Those payments made directly to participants to enable them to take part in JTPA training activities. These payments are to provide for general subsistence needs and additional expenses incurred from participation in JTPA training.

"Offender" — Any adult or juvenile, who is or has been subject to any stage of the criminal justice process, for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

"Older individual" — A person who is fifty-five years of age or older.

"On-the-job-training (OJT)" — Training in the private or public sector given to a participant, who is hired by the employer when the training begins, and which occurs while the participant is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

"Outreach" — An active effort on the part of program staff to encourage persons in the designated service delivery area to avail themselves of program services, such as counseling, employment, employment services, training, and other special program services, as appropriate.

"Oversight" — The review, monitoring, and evaluation of the JTPA program within each service delivery area. Oversight is the responsibility of the local elected officials, the private industry council, and the state.

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"Participant" — For all other programs, an individual who is declared eligible upon intake, and receives employment, training or other services (except post-termination services) funded by such programs following intake, except that an individual who receives only outreach or intake and assessment services is not a participant. In addition, for programs under Title IIB, for participants under Title IIB, an individual who is enrolled in the participant pool.

"Participant property" — Tools, equipment, or related items necessary for a participant's personal use in training or employment subsidized by JTPA funds.

"Participant services (PS)" — Benefits in the form of payments made to participants or service providers for specific services which enable participants to take part in JTPA training activities. Participant services fall into three categories: Support services, training services and needs-based payments.

"Performance goals" — A level of performance which program operators should strive to attain. Performance goals focus efforts upon intended outcomes, but may not be based upon previous actual performance, may be negotiable, and have no bearing upon the award of Title IIA incentive grants.

"Performance measure" — A federally defined category in which program performance is measured. There are four performance measures for adults (entered employment rate, cost per entered employment average wage at placement, and welfare entered employment rate), and three for youth (entered employment rate, positive termination rate, and cost per positive termination). These performance measures are used in awarding Title IIA incentive grants, providing technical assistance, and imposing reorganization plans.

"Performance standards" — The quantifiable level of performance that program operators are expected to attain. Final performance standards are established for Title IIA after the end of a program period based upon actual conditions during the program year are used to determine incentive awards, need for technical assistance, and whether imposition of reorganization sanctions are necessary.

"Physical disability" — A condition designated by vocation rehabilitation as constituting a substantial barrier to employment or a condition of being:

1. Crippled or health impaired;
2. Visually handicapped (Visual acuity of 20/70 or less in the better eye after the best correction);
3. Hearing handicapped (Any loss of hearing sufficient to interfere with communication);
4. Speech handicap. (A deviation in speech or voice to the degree that it draws attention to the manner of speech, interferes with the ability to comprehend or formulate speech, or causes the individual to become maladjusted in that person's environment.)

"Poverty level" — The annual income level at, or below, which families are considered to live in poverty, as determined by the office of management and budget (OMB).

"Practicum" — A period of exposure or experience at an actual work site which is required as an integral part of an institutional skill training curriculum.

"Pre-employment training (PET)" — A broadly inclusive component which involves a variety of activities that are prerequisite to occupational skill training or job placement. These activities may include job seeking and job-keeping skills, work habit training, career decision making, career assessment, and job placement.

"Primary activity" — An activity in which a participant is enrolled for more than fifty percent of the scheduled time. Other activities (less than fifty percent) may be scheduled simultaneously or sequentially.

"Private industry council (PIC)" — The group of persons in a service delivery area appointed to oversee (review, monitor, and evaluate) the programs conducted pursuant to that service delivery area's local training plans. The PIC must also approve the local service delivery area's local training plans and modifications before they are submitted to the governor.

"Private sector" — For purposes of the private industry councils, persons who are owners, chief executives or chief operating officers of private-for-profit employers and major nongovernmental employers, such as health and educational institutions or other executives of such employers who have substantial management or policy responsibility.

"Program year (PY)" — The period of time beginning on July 1 and extending through June 30 of the following year.

"Property" — Tangible personal property having a useful life of more than one year and an acquisition cost of one hundred dollars or more per unit.

"Public assistance" — Federal, state or local government cash payments for which eligibility is determined by a need or income test. Aid to dependent children (ADC) and supplemental security income (SSI) payments are examples of public assistance. Payments made to a third party (such as landlords, etc.) on behalf of an applicant or participant are not considered public assistance.

"Random sampling" — For the purpose of verification, the process used in verification to obtain a representative portion of the active enrollments in a particular quarter. This process means that every individual in the SDA's population to be sampled has an equal chance of being chosen and the selection of one individual is in no way tied to the selection of another.

"Recently separated veteran" — A veteran whose last date of discharge or release from the armed forces occurred within twelve months of the date of application.

"Relocation assistance" — The activities necessary to arrange for a family to move to a new abode for the purpose of accepting long-duration employment. Activities may include, but are not limited to: The cost of the actual transfer of goods and property, including mileage for the family's travel; emergency assistance; rent subsidies; and other supportive services.

"Remedial and basic skill training (RBST)" — An activity designed to enhance the employability of individuals by upgrading basic academic skills.

"Residence" — That place which the person declares is the person's home with the intent to remain there permanently, or for a definite or indefinite or undetermined length of time.

"Retraining" — A program designed to assist individuals, who have received a layoff notice or have been laid off and who have little opportunity to be re-employed in the same or equivalent occupation within the labor market area, by providing them with new skills in occupations which provide a reasonable expectation of continued employment.

"Service delivery area (SDA)" — Those regions into which the state is divided and through which job training

services are delivered. Each SDA must have a PIC, a 28E agreement, a LEO/PIC agreement, a job training plan, a grant recipient, an administrative entity, and service providers.

"Service provider" — Any person, organization, or other entity which receives a contract (financial or non-financial) under JTPA through a SDA grant recipient or JTPA grantees or contractors to carry out substantive work (e.g., employment, training, support services, purchases of supplies or equipment).

"Share factor" — A unit of measurement used in Iowa JTPA Title IIA programs to indicate a proportionate share of incentive grant funds to be awarded to an SDA that exceeds its performance standards.

"Share unit" — In Iowa JTPA Title IIA programs, a single unit of measurement that expresses the degree to which an SDA exceeded its performance standards in multiple performance measures.

"Significant segments" — The groups of the population identified in terms of the following demographic characteristics: Age, sex, race, and national origin.

"Similarly employed" — The status of a person who is working for the same employer as the participant, is doing the same type of work, and is similarly classified with respect to employment status (e.g., full-time, permanent, or temporary).

"State goals and objectives" — An annual statement prepared by the governor, establishing goals and objectives for job training and placement programs. The annual statement is also designed to assist the local service delivery areas in the preparation of their local training plans.

"State job training co-ordination council (SJTCC)" — A council established by the Act to provide advice to the governor on training, educational, and employment needs of the eligible residents of the state and evaluate the availability of such services. The council is also mandated to encourage co-ordination and establish linkages between the state, local elected officials, and the private sector.

"Structural unemployment" — Unemployment caused by a lack of training, skills, work history or vocational information, etc., coupled with a lack of the means to remove those barriers to employment.

"Subsidized employment" — Employment created in the public sector as well as employment in private-for-profit organizations which is financed by the agency's program funds. Subsidized employment includes work experience.

"Summer program year (SPY)" — The summer program year begins on October 1 and extends through September 30 of the following year.

"Supplemental security income (SSI)" — A type of public assistance authorized pursuant to a state plan approved under the Social Security Act, Title XVI. It is a federal income maintenance program for the aged, blind and disabled and is based on need.

"Supportive services" - Those services which are necessary to enable a participant to take part in a training activity, but are not actually used as a part of the training activity. Supportive services may include: Child care, health care, transportation, relocation, nonjob related counseling; clothing; residential and meals support; and miscellaneous services including bonding and license fees.

"Targeted jobs tax credit (TJTC)" - A program which gives employers tax credits for hiring individuals who possess characteristics which have been determined to represent barriers to employment. An example is ex-offenders (felons) who are economically disadvantaged.

"Teenage parent" - Any individual, under twenty years of age, who has responsibility for support of one or more dependent children.

"Termination" - The separation of a participant from a given title of the Act.

"Termination/layoff notice recipient" - Any individual who has (a) received a notice of termination or layoff from employment and is unlikely to return to the individual's previous industry or occupation, or (b) received a notice of termination of employment, as a result of a permanent closure of a plant or facility.

"Training services" - Those services which are necessary to enable a participant to take part in a training activity and are actually used as a part of the training activity. Training services include job-related counseling and occupationally required property.

"Tryout employment (TE)" - A short-term work assignment which allows an employer to evaluate a youth's performance on the job, in the expectation that the employer will hire the youth. Tryout employment is limited to youth, ages sixteen through twenty-one.

"Tryout employment compensation" - Compensation in lieu of wages for individuals enrolled in tryout employment.

"Twenty-eight E agreement (28E)" - A contract formed in accordance with Iowa Code chapter 28E. This chapter allows units of local government to join together with other units of government or public or private agencies for the purpose of jointly exercising a power held individually by the units of government to the agreement.

"UC claimant" - Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more state or federal unemployment compensation programs and who has not exhausted benefit rights or whose benefit year has not ended.

"UC exhaustee" - Any individual who has exhausted his unemployment compensation benefits (not including extended, additional state, or federal supplemental benefits) for which the individual has been determined monetarily eligible.

"Unit of local government" - Under the Iowa JTPA program, this means a county, unless within that county, one municipal corporation or a consortium of contiguous municipal corporations acting jointly pursuant to a 28E agreement has an aggregate population of 200,000 or more and services a substantial part of a labor market area, in which case "unit of local government" means that municipality or consortium.

"Universe size" - For purposes of verification, the total number of new participants enrolled and still active in all JTPA titles during the current quarters.

"Unsubsidized employment" - Employment not financed from funds provided under the Job Training Partnership Act.

"Upgrading" - A program designed to assist persons who are currently working by providing them with positions of greater skill, responsibility, remuneration, or career advancement in the company by which they are presently employed.

"Veteran" - An individual who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. As used herein, the term "active" means full-time duty in the armed forces, other than duty for training in the reserves or national guard. Any period of duty

for training in the reserves or national guard, including authorized travel, during which an individual was disabled from a disease or injury or aggravated in the line of duty; is considered active duty.

"Vietnam-era veteran" - A veteran any part of whose active military, naval, or air service was during the Vietnam era (August 5, 1964 through May 7, 1975, per Presidential Proclamation 4373).

"Vocational exploration (VE)" - An activity which is conducted at an actual work site or work sites for the purpose of exposing the participant to one or more jobs through observation of such jobs, instruction, and, if appropriate, limited practical experience.

"Welfare recipient" - An individual who receives or whose family receives cash payments under AFDC (SSA Title IV), general assistance (state or local government), or the Refugee Assistance Act of 1980 (PL 96-212). For proposed performance standards, this term excludes recipients of SSA (SSA Title XVI).

"Work experience (WE)" - A short-term or part-time assignment used to enhance participant's employability through the development of good work habits and basic work skills.

"Youth" - An individual who is age fourteen through twenty-one.

"Youth employability enhancement termination" - An outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for long-term increase in earnings and employment.

This rule is intended to implement Executive Order 47 and 29 U.S.C. 1501 et seq.

ITEM 3. Rule 630—19.7 (7A, 29 USC 1501 et seq.) is amended by adding the following new subrules:

19.7(4) Officers. The person or persons who appointed persons to the private industry council (PIC) shall appoint its first chairperson. Thereafter, the position of the chairperson shall be filled or replaced in accordance with the bylaws established by the private industry council. All other offices of the private industry council shall be filled as agreed by the private industry council.

19.7(5) PIC composition modification.

a. When a position on a PIC becomes vacant, the individual so identified in the latest "request for private industry council certification" shall give written notification to the office for planning and programming within seven days.

b. Within forty-five days of the position becoming vacant, the vacancy shall be refilled in the same manner of the original appointment and a "request for private industry council certification" shall be submitted to the director, office for planning and programming. The request need only contain the necessary information relative to the new appointee(s).

c. Nominations for positions on a PIC shall automatically expire ninety days after receipt by the appointing official(s).

d. No change in the size, membership, chair or composition of a PIC shall be valid and effective until approved in writing by the office for planning and programming. Requests for approval of the PIC as modified shall be submitted to the director, office for planning and programming and shall contain all information necessary to make an informed determination of the proposed modification's conformance with JTPA and regulations promulgated under JTPA. The request shall be submitted by the person so identified in the latest "request for private industry council certification."

19.7(6) PIC decertification. If at any time the office for planning and programming determines that a PIC does not conform with JTPA or state or federal regulations promulgated under JTPA, it shall give that PIC a written "notice of nonconformance" which shall state the deficiency and shall allow a period of time in which to correct the deficiency. Failure to satisfy the "notice of nonconformance" within the time period allowed is grounds for the governor to decertify the PIC.

This rule is intended to implement Iowa Code section 7A.3, Executive Order 47 (1982) and the Job Training Partnership Act, Public Law 97—300(29 U.S.C. 1501 et seq.).

ITEM 4. Amend subrule **19.8(1)** as follows:

a. Delineate procedures for development of the *local* job training plans, including who develops what part of the plans.

b. Identify the *Title II* service delivery area grant recipient and administrative entity, which may be separate entities.

c. Describe the procurement procedure to be used to determine the Title III contractor.

d. Delineate each party's role in providing policy guidance for and oversight of the job training program in the service delivery area.

e. Describe the method by which each party will keep the other party informed of matters relating to the job training partnership activities.

f. Indicate the party's procedures and responsibilities for participating in the development of the local job service plan.

g. Identify the amount, if any, of administrative funds that will be set aside for the private industry council's and the local elected official's use to support their job training partnership program functions.

ITEM 5. Rescind subrule 19.8(2) and insert in lieu thereof:

19.8(2) Modification. If the private industry council consortium representative agreement is amended in whole or in part, the person(s) designated by the consortium agreement to represent the consortium shall submit a copy of the amended agreement within thirty days of its execution to the director, division for human resource co-ordination.

ITEM 6. Rescind rule 630—19.9(7A, 29USC 1514) and insert the following in lieu thereof:

630—19.9(7A, 29USC 1514) Job training plan. Pursuant to the agreement made in accordance with rule 19.8(7A, PL 97-30, USC 1501 et seq.) there shall be developed for each service delivery area a job training plan which shall meet the requirements of 29 U.S.C. 1514 and these rules, and shall be signed by the chairperson of the PIC and the chief elected official(s).

19.9(1) Where submitted. The job training plan and all modifications thereto shall be submitted to the Director, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

19.9(2) Submittal date. The job training plan shall be submitted no later than eighty days prior to July 1 of the program year for which it was developed.

19.9(3) Failure to submit or gain approval. A submitted plan which has been disapproved by the governor

shall be revised and resubmitted for approval within twenty days from the date of disapproval.

19.9(4) Modifications. Modifications to a job training plan may be made where such modifications are:

a. Agreed to and signed by the PIC, the local elected official(s) and the contractor;

b. Published no later than eighty days before it is effective; and

c. Not disapproved by OPP prior to implementation.

19.9(5) Submittal package. The job training plan submittal package shall contain one original and four copies of the job training plan. Proof of publication of the availability for review of the proposed and final job training plan, as required by 29 U.S.C. 1515, shall accompany each job training plan submitted.

19.9(6) Local documentation. Each party to the job training plan shall ensure adherence to the job training plan public review and comment process as mandated by 29 U.S.C. 1515 and shall document that adherence and retain copies of all written comments received as a result thereof.

This rule is intended to implement Executive Order 47 and 29 U.S.C. 1501 et seq.

ITEM 7. Rescind rule 630—19.10(7A, 29USC 1514) and insert the following:

630—19.10(7A, 29USC 1514) Job training plan elements. To be approved, each Title II job training plan shall comply with 29 U.S.C. 1514 and contain the following elements.

19.10(1) Grant recipient and administrative entity designation. The plan shall identify the grant recipient of funds from the state and administrative entity who will administer the program. No plan shall be submitted or approved by the governor unless the grant recipient therein designated is a legal entity which:

a. Has the power to levy taxes in a political subdivision of the state and to spend funds to meet potential liabilities arising under JTPA in that service delivery area, or

b. Reserved.

c. Has submitted its most recent audit report and a financial statement which includes a current balance sheet showing assets exceeding liabilities by an amount equal to twenty-five percent of that service delivery area's annual grant award, or

d. Agrees to purchase, with OPP approval, from non-JTPA funds audit exception insurance covering a minimum of twenty-five percent of the service delivery area's annual grant award.

19.10(2) Description of programs and services. Each plan shall contain a description of programs and services in detail sufficient to provide a comprehensive statement of Title II job training partnership activities in the service delivery area. The description shall include:

a. Service delivery system. The plan shall provide a description of the delivery structure, the overall approach toward administering the job training programs employed in the service delivery area.

b. Activities and services description by program. Each plan shall provide information in sufficient detail to determine compliance with applicable laws and regulations on each program and each special project operated under Title II in the service delivery area.

(1) If a plan provides for on-the-job training (OJT), the plan must describe a standardized system for determining the length of the OJT agreement which takes into account the skill level of the job and the participant and any exceptional barriers to employment of the participant.

(2) If a plan provides for needs-based payments, the plan must indicate the procedure by which eligibility and the amount payment will be equitably determined, documented and maintained in the participant file. The procedure shall take into account the individual participant's circumstances, which should include the participant's or the participant's family's cost of housing, food, health care, child care, transportation and clothing, as well as income available to meet subsistence needs, including supportive services paid under the job training partnership Act or other state or federal programs. Although the needs-based payment description does not need to include specific amounts or limitations on needs-based payments, the circumstances or system by which such amounts or limitations may be established or changed must be described and a system for reducing payments due to nonattendance must be detailed.

(3) If a plan provides for support and training services, the plan must describe a procedure for determining who will receive these services and how much they will receive. If needs-based payments are also available, the method for determination of support and training services must be co-ordinated with the needs-based payments formula.

c. Participant service levels. Each plan shall make efforts to provide equitable services among substantial segments of the eligible population and describe how this level of service is determined, monitored, and maintained. Where a program intends to target groups of individuals having specific barriers to employment, a description of these efforts and goals should be included in the plan. Additionally, the following data must be provided:

(1) The number of participants in each program;

(2) The estimated duration of participant involvement in each program;

(3) The estimated cost per participant in each program;

(4) The number of WIN registrants for counties that do have a WIN program and the number of those who would be required to register in counties not having a WIN program in proportion to the number of economically disadvantaged persons sixteen years of age or older in the SDA;

(5) The number of school dropouts to be served in proportion to the number of economically disadvantaged persons sixteen years of age or older in the SDA.

d. Administrative services. Each plan shall delineate its complaint procedure, which shall be consistent with rule 630—19.21(7A, 29 USC 1501 et seq.), and shall delineate in compliance with Title VI of the Civil Rights Act of 1964, the Iowa Civil Rights Act of 1965, as amended, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1975, Title IX of the Education Amendments of 1972, and Executive Order 15 (Iowa 1983).

19.10(3) Participant eligibility, selection and verification description. Each job training plan shall describe the method by which each program applicant's eligibility will be determined and each participant's eligibility reviewed and verified.

a. Eligibility of nonresidents. Each plan shall describe the extent to which nonservice delivery area residents will be served.

b. Eligibility of those not economically disadvantaged. Where a plan proposes to serve individuals who are not economically disadvantaged as allowable under 29 U.S.C. 1603(a), the plan shall either:

(1) Identify those barriers to employment which will justify enrollment; or

(2) Describe the procedure by which such barriers to employment will be identified by either the service delivery area, private industry council or local elected officials prior to enrollment.

c. Eligibility determination. Each plan shall describe the procedures for determining eligibility, including outreach efforts, applicant flow, documentation requirements, the position of those responsible for eligibility determinations and the steps in the process.

d. Selection. Each plan must describe a process, consistent with the federal law's mandate of servicing those who are most-in-need of and can benefit from employment and training opportunities, for selecting participants from those eligible applicants identified. Factors used in determining "most-in-need" and "benefit" shall be real, justifiable circumstances, applied uniformly for all Title II enrollments within the service delivery area and identified in the plan description.

e. Eligibility review. Each plan shall describe a procedure for review of each eligibility determination by someone other than the individual(s) responsible for the initial eligibility determination. The description shall include the position of those responsible for the review and the time period in which it will be completed.

f. Eligibility verification. Each plan must describe a procedure for quarterly verification of the eligibility of a random sample of at least ten percent of all newly enrolled participants. The description shall identify the position of those responsible for the review, the time period in which it will be completed, and the method of documenting compliance with this verification requirement.

19.10(4) Performance goals. Reserved.

19.10(5) Service provider selection. Each plan must describe the process by which service providers will be selected. The process shall:

a. Take into account the factors listed in 29 U.S.C. 1517;

b. Reserved.

c. Describe procedures which follow OMB Circular A-102, attachment O, when selecting service providers through the request for proposal, sole source or other methods allowable thereunder;

d. Describe efforts that will be made to avoid conflict of interest or the appearance of conflict of interest in the awarding of service provider contracts.

19.10(6) Budgets. Each plan shall contain a budget breakout for two program years, two summer program years, any proposed expenditures for the succeeding two program years, and summer program years, and estimated carry-over from prior program years and summer program years. In addition all job training plans shall:

a. Contain budgets that reflect the limits on allowable costs as set by federal law and local policy;

b. Where the private industry council has initiated an action to exceed federal limitations for Title IIA participant support costs, state the amount by which the limitation will be exceeded and provide documentation that the excess costs are due to one or more of the following conditions:

(1) An unemployment rate (in the service delivery area or that portion within which services result in excess costs are to be provided) which exceeds the national average unemployment rate by at least three percentage points, and the ratio of current private employment to population in such area or portion is less than the national average of such ratio.

(2) The job training plan for such area proposes to serve at least sixty-five percent of all participants from groups requiring exceptional supportive service costs, such as handicapped individuals, offenders, and single heads of households with dependent children.

(3) The cost of providing necessary child care will exceed one-half of the participant support budget.

(4) The costs of providing necessary transportation will exceed one-third of the participant support budget.

(5) At least twenty-five percent of the participants to be enrolled in programs in the service delivery area are in training programs of nine months duration or more.

While the job training plan may request authorization to exceed the participant support cost limitation for both program years, the governor will only approve or disapprove the request for one program year at a time. The request for the second program year will be approved or disapproved based upon updated terminated participant information, changes in local or national conditions and final allocations for the second program year.

c. Describe what actions will be taken if it appears that expenditures will exceed the participant support limitation outlined in the budget; and

d. Identify the amount of administrative funds to be set aside for use by the private industry council in carrying out its functions under the Act.

19.10(7) Co-ordination. Each job training plan shall identify methods which will be used to ensure compliance with the co-ordination criteria contained in the governor's services and special co-ordination plan.

19.10(8) Inter-SDA co-operation. Each job training plan shall describe the action that will be taken to develop inter-SDA co-operative agreements regarding participant referrals, job development, and skill training. Methods for co-ordinating participant referrals should correspond to the SDA's policy on serving non-SDA residents.

19.10(9) Financial management. Each job training plan shall describe the service delivery area grant recipient's and administrative entity's procedures conforming to the financial management standards and procedures section of these rules. The plan must detail the flow of funds from the state to the grant recipient and administrative entity to service providers and participants, including personnel positions responsible for the receipt of funds, the authorization of payments, claims review and the recording of transactions. The financial management section of the plan shall also:

a. Describe accounting procedures, including a description of registers, ledgers, time and attendance reports, source documentation requirements, inventory controls and check controls, which shall contribute to the overall fiscal integrity of the job training program in the service delivery area through accurate, complete, and current accounting records.

b. Describe how and when audits, both financial and compliance, will be conducted and resolved in accordance with the financial management standards and procedures section of these rules.

c. Describe procedures for collection of overpayments, misspent funds and other debts which ensure prompt, appropriate, and aggressive actions will be taken to recover funds due.

19.10(10) Annual report. Each plan shall indicate what entity and personnel positions will be responsible for prepar-

ing and submitting by September 15 of each program year an annual report to the governor which shall include a description of activities conducted during the program year, the participant's characteristics, and the service delivery area's performance in relation to established standards.

ITEM 8. Amend 630—Chapter 19 (7A, 29 USC 1501 et seq.) by adding the following new rules:

630—19.11(7B, 29 USC 1651 et seq.) Title III program. Funds are allocated under Title III for the statewide operation of programs providing activities and services to dislocated workers. Programs will be operated in each service delivery area through a dislocated worker center which will be selected by the PIC and local elected officials through a request for proposal (RFP) process that meets state procurement standards or by approving the continuation of the existing dislocated worker center through June 30, 1985.

630—19.12 (7B, 29 USC 1651 et seq.) Title III plan. Pursuant to the agreement made in accordance with rule 19.8 (7A, PL 97—300, 29 USC 1501 et seq.)there shall be developed by the PIC and local elected officials a Title III plan which shall meet the requirements of 29 U.S.C. 1651 et seq. and these rules and shall cover one program year. The plan must be signed by the chairperson of the PIC and the chief elected official(s).

19.12(1) Where submitted. The Title III plan and all modifications thereto shall be submitted to the Director, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

19.12(2) Submittal date. The Title III plan shall be submitted no later than eighty days prior to July 1 of the program year for which it was developed.

19.12(3) Failure to submit or gain approval. A submitted plan which has been disapproved by the governor shall be revised and resubmitted for approval within twenty days from the date of disapproval. Failure to submit a plan within the time line established under subrule 19.12(2)or failure to gain approval of a plan by the first day of the program year for which it was developed shall empower the governor to directly contract for Title III services, consistent with 29 U.S.C. 1652-1657.

19.12(4) Modifications. Modifications to a Title III plan may be made where such modifications are:

a. Agreed to by the PIC, the local elected official(s), the contractor and signed by those parties;

b. Submitted to OPP at least fifteen days prior to implementation; and

c. Not disapproved by OPP prior to implementation.

This rule is intended to implement Executive Order 47, Iowa Code chapter 7A, and 29 U.S.C. 1651 et seq.

630—19.13 (7B, 29 USC 1651 et seq.) Title III plan elements. To be approved, each Title III plan shall comply with 29 U.S.C. 1651 et seq., Iowa Code chapter 7A, and IAC chapter 19, and contain the following elements:

19.13(1) Contractor designation. Each plan shall identify the dislocated worker center contractor that will receive funds from the state to operate the Title III program. If a RFP procedure was used to select the dislocated worker center contractor, documentation of the procedure must be submitted with the plan. No plan shall be submitted or approved by the governor unless the dislocated worker center contractor designated therein is a legal entity which:

a. Has the power to levy taxes in a political subdivision of the state and to spend funds to meet potential liabilities arising under Title III in that service delivery area, or

b. Reserved.

c. Has submitted its most recent audit report and a financial statement which includes a current balance sheet showing assets exceeding liabilities by an amount equal to twenty-five percent of that service delivery area's annual Title III grant award, or

d. Agrees to purchase, with OPP approval, from non-JTPA funds audit exception insurance covering a minimum of twenty-five percent of the service delivery area's annual Title III grant award.

19.13(2) Description of programs and services. Each plan shall contain a description of programs and services in detail sufficient to provide a comprehensive statement of Title III activities in the service delivery area. The description shall include:

a. Service delivery system. The plan shall provide a description of the delivery structure, the overall approach toward administering Title III services, to be employed in the service delivery area.

b. Activities and services description by program. Each plan shall provide information in sufficient detail to determine compliance with applicable laws and regulations on each program and each special project operated under Title III in the service delivery area.

(1) If a plan provides for on-the-job training (OJT), the plan must describe a standardized system for determining the length of the OJT agreement which takes into account the skill level of the job and the participant and any exceptional barriers to employment of the participant.

(2) If a plan provides for needs-based payments, the plan must indicate the procedure by which eligibility and the amount payment will be equitably determined, documented and maintained in the participant file. The procedure shall take into account the individual participant's circumstances, which should include the participant's or the participant's family's cost of housing, food, health care, child care, transportation and clothing, as well as income available to meet subsistence needs, including supportive services paid under the job training partnership Act or other state or federal programs. Although the needs-based payment description does not need to include specific amounts or limitations on needs-based payments, the circumstances or system by which such amounts or limitations may be established or changed must be described and a system for reducing payments due to nonattendance must be detailed.

(3) If a plan provides for support and training services, the plan must describe a procedure for determining who will receive these services and how much they will receive. If needs-based payments are also available, the method for determination of support and training services must be coordinated with the needs-based payments formula.

c. Participant service levels. Each plan shall make efforts to provide equitable services among substantial segments of the eligible population and describe how this level of service is determined, monitored, and maintained. Where a program intends to target groups of individuals having specific barriers to employment, a description of these efforts and goals should be included in the plan. Additionally, the following data must be provided:

(1) The number of participants in each program;

(2) The estimated duration of participant involvement in each program;

(3) The estimated cost per participant in each program.

d. Administrative services. Each plan shall delineate its complaint procedure, which shall be consistent with rule 630—19.21(7A, 17A, 29 USC 1501 et seq.), and shall delineate in compliance with Title VI of the Civil Rights Act of 1964, the Iowa Civil Rights Act of 1965, as amended, the Age

Discrimination Act of 1964, the Iowa Civil Rights Act of 1965, as amended, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1975, Title IX of the Education Amendments of 1972, and Executive Order 15 (Iowa 1983).

19.13(3) Participant eligibility, selection and verification description. Each Title III plan shall describe the method by which each program applicant's eligibility will be determined and each participant's eligibility reviewed and verified.

a. Eligibility determination. Each plan shall describe the procedures for determining eligibility, including outreach efforts, applicant flow, documentation requirements, the position of those responsible for eligibility determinations and the steps in the process.

b. Selection. Each plan must describe a process, for identifying and selecting as participants those eligible applicants who are most-in-need of and can benefit from employment and training opportunities. Factors used in determining "most-in-need" and "benefit" shall be real, justifiable circumstances, applied uniformly for all Title III enrollments within the service delivery area and identified in the plan description.

c. Eligibility review. Each plan shall describe a procedure for review of each eligibility determination by someone other than the individual(s) responsible for the initial eligibility determination. The description shall include the position of those responsible for the review and the time period in which it will be completed.

d. Eligibility verification. Each plan must describe a procedure for quarterly verification of the eligibility of a random sample of at least ten percent of all newly enrolled participants. The description shall identify the position of those responsible for the review, the time period in which it will be completed, and the method of documenting compliance with this verification requirement.

19.13(4) Performance goals. Reserved.

19.13(5) Service provider selection. Each plan must describe the process by which service providers will be selected. The process shall:

a. Take into account the factors listed in 29 U.S.C. 1517;

b. Reserved.

c. Describe procedures which follow OMB Circular A-102, Attachment O, when selecting service providers through the request for proposal, sole source or other methods allowable thereunder;

d. Describe efforts that will be made to avoid conflict of interest or the appearance of conflict of interest in the awarding of service provider contracts.

19.13(6) Budgets. Each plan shall include a budget for one year and reflect the limits on allowable costs as required by the Act and local policies.

19.13(7) Co-ordination. Each plan shall describe the methods adopted to co-ordinate applicant and participant referral, types of activities and services provided, job development and placement, and other matters of mutual concern or interest with other JTPA programs in the SDA.

19.13(8) Financial management. Each Title III plan shall describe the dislocated worker contractor's procedures conforming to the financial management standards and procedures section of these rules. The plan must detail the flow of funds from the state through the dislocated worker center to service providers and participants, including personnel positions responsible for the receipt of funds, the authorization of payments, claims review and the recording of transactions. The financial management section of the plan shall also:

a. Describe accounting procedures, including a description of registers, ledgers, time and attendance reports, source documentation requirements, inventory controls and check controls, which shall contribute to the overall fiscal integrity of the dislocated worker program in the service delivery area through accurate, complete, and current accounting records.

b. Describe how and when audits, both financial and compliance, will be conducted and resolved in accordance with the financial management standards and procedures section of these rules.

c. Describe procedures for collection of overpayments, misspent funds and other debts which ensure prompt, appropriate, and aggressive actions will be taken to recover funds due.

These amendments are intended to implement Executive Order 47, Iowa Code chapter 7A, and 29 U.S.C. 1501 et seq.

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ARC 5036

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code section 7A.3, the Office for Planning and Programming (OPP) rescinds Chapter 23 "Community Development Block Grant Nonentitlement Program" and adopts in lieu thereof the following new chapter.

The new chapter is intended to bring the Iowa Administrative Code into compliance with the recently enacted Federal Housing and Recovery Act of 1983 (PL 98-181) and related federal regulations; make changes recommended by the Iowa Community Development Council, a citizen advisory group; make the program more responsive to the need for increased economic development activity in Iowa; and make several technical changes to accommodate new practices in grant management.

Notice of Intended Action was published in the Iowa Administrative Bulletin of August 15, 1984 as **ARC 4909**. A public hearing was held in Des Moines on September 4, 1984, to solicit comments and suggestions on the proposed rules contained in the Notice of Intended Action. Proposed rule changes were presented by OPP staff to the Iowa Community Development Council (ICDC) on September 4, 1984. The ICDC consists of representatives of cities, counties and councils of governments. ICDC recommendations, suggestions from the public hearing and other sources have been considered in this rulemaking.

In the Notice of Intended Action OPP proposed that fifteen percent of the Community Development Block Grant funds be set aside to provide financial assistance to private businesses for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost. Many of the comments received on the 1985 rules regarded this set-aside of funds. A majority were in favor of the proposed economic development set-aside, but many of these favored the use of direct loans because of the eventual recycling of funds by the local government. Several mentioned an option of limiting loan funds to one-third of the total project cost. A significant

minority of comments on this issue opposed the economic development set-aside, citing as a reason the consequent restriction of funds available for all other projects eligible in the program, such as public works and housing.

After consideration of hearing comments, OPP has decided to retain the economic development set-aside as proposed, with the loan subsidy method. The decision to retain the set aside is based on overall support received both within and outside the hearing process for such an economic development tool. The loan subsidy program was felt to offer the most effective method of creating and retaining jobs. Because of the capacity of this method to leverage private loan funds at reduced interest rates, a significant increase in CDBG funding for economic development should occur with a minimal reduction in funds for other projects eligible under the CDBG program.

A number of other comments favored adding eligibility under the economic development set-aside for public infrastructure projects in support of economic development. Since this type of project is eligible under the regular competitive program, and the application and award period for the regular program will roughly coincide with the first round of the economic development set-aside competition, OPP has elected not to change the proposed rule at this time. However, OPP may reconsider this decision for subsequent rounds in the competition.

Also, several commenters both within and outside the formal hearing process questioned the need to limit the use of economic development funds to financing of fixed assets. Their argument was that involvement of a private lender in the program will serve to minimize the risk in making loans for items like inventory or working capital. Based on this, OPP has dropped the limitation to fixed assets.

A member of the Administrative Rules Review Committee had noted the need to establish the reference source of the prime interest rate figure to be used in the economic development set-aside program. OPP added reference to the prime rate as published in the Wall Street Journal on the due date for applications.

The Notice of Intended Action also proposed the restriction of multiyear funding to certain types of infrastructure projects. Comments on this issue were overwhelmingly opposed to this restriction, citing the need for multiyear commitments for comprehensive neighborhood or areawide projects. After consideration of these comments, OPP has decided to alter the proposed rule to allow funding commitments of up to two years for applicants in the large community category, with no restrictions among eligible projects, but retaining the previous year's funding limits. OPP feels that this change will enable larger communities to conduct complex multipurpose neighborhood projects as well as make needed infrastructure improvements.

The Notice of Intended Action provided three options for assignment of points under the community-wide rating factors in the general competition. The overwhelming majority of comments favored option 2, which provided for 100 points assigned according to percent of the community below the census poverty level, and 100 points assigned according to the city or county tax rate. After review of the comments, OPP has selected option 2.

No significant negative comments were received concerning any of the other proposed rule changes.

The Office for Planning and Programming adopted this rule on September 21, 1984. The rule will become effective on November 14, 1984.

The following rules are adopted:

CHAPTER 23
COMMUNITY DEVELOPMENT BLOCK GRANT NONENTITLEMENT PROGRAM

630—23.1 (7A, PL 93-383) Definitions. When used in this chapter, unless the context otherwise requires:

"Act" means Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383, PL 97-35, and PL 98-181).

"Application" means a request for program funds including the required forms and attachments.

"Application on behalf of" means any application submitted by one eligible applicant requesting funds for one or more other eligible applicants.

"Community" means any eligible applicant.

"Community Development Block Grant Nonentitlement Program" means the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for cities and counties except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

"Competitive program" means the CDBG nonentitlement program, excluding the economic development set-aside as described in 23.7(7A, PL 93-383), and the imminent threat contingency program, described in 23.11(2).

"Economic development" means the alleviation of physical and economic distress through the stimulation of private investment and community revitalization for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost.

"Economic development set-aside" means a separate allocation to cities and counties to provide direct financial assistance to private enterprise for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost. Fifteen percent of the total nonentitlement program funds shall be reserved for this purpose.

"Eligible applicant" means any county or incorporated city within the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

"Equity" means funds or other interest contributed to the project by the owners of the business, other than loans, credit, liens, mortgages or other liabilities.

"Grant" means funds received through the community development block grant nonentitlement program.

"Historic sites" means any site listed on the national register of historic sites or any other site deemed to have historical significance by the Iowa division of historic preservation.

"HUD" means the U.S. Department of Housing and Urban Development.

"Imminent threat contingency fund" means a separate allocation to fund projects which will alleviate an imminent threat to public health, safety and welfare which requires immediate action. Up to five percent of the total nonentitlement program funds may be reserved for this purpose. Rules governing these funds are specified in subrule 23.11(2).

"Joint application" means an application submitted by more than one eligible applicant to complete a single project for the benefit of all those applying.

"Local development corporation" means any entity meeting one of the following:

1. Organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.);
2. Eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);
3. Incorporated under state or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in "1." or "2." above; or
4. Eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

"Local effort" means cash provided by public or private sources within the community which is used to directly support the costs of program activities as described in an application.

"Low- and moderate-income families" means those families earning no more than eighty percent of the median three-person family income of the county as determined by the latest U.S. Department of Housing and Urban Development, section 8 income guidelines. This includes individuals living alone.

"Low- and moderate-income persons" means members of low- and moderate-income families as defined in this rule.

"Multipurpose application" means an application having two or more major activities.

"Multiyear funding" means a project receiving a funding commitment from two program years' allocations.

"Neighborhood-based nonprofit organizations" means an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out.

"Nonentitlement area" means an area which is not a metropolitan city.

"OMB Circular A-87" means the U.S. Office of Management and Budget report entitled "Cost Principles Applicable to Grants and Contracts With State and Local Governments."

"OMB Circular A-102" means the U.S. Office of Management and Budget report entitled "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments."

"OPP" means the Iowa office for planning and programming.

"Program income" means program income as defined by Attachment E of OMB Circular No. A-102.

"Project" means an activity or activities funded with community development block grant nonentitlement funds.

"Recipient" means any eligible applicant receiving funds under this program.

"Section 301(d) small business investment company" means an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

"Single purpose application" means an application having only one primary or major activity and any number of other activities incidental to the primary activity.

"Single-year funding" means a project receiving a funding commitment from only one program year's allocation.

630—23.2 (7A, PL 93-383) Goals and objectives. The Act apportions funds to states, on a formula basis, to be used by local governments for the purposes listed in this rule.

As outlined in section 101(c) of the Act, the primary goal of this program is "the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

In addition to national program goals and objectives the state of Iowa will address the following objectives through its administration of the program:

23.2(1) Involve local officials in program decisions, including program design, administrative policies, and review;

23.2(2) Simplify the application procedures and administration of the program;

23.2(3) Design the program to be flexible enough to address community priorities. As required by federal statute, however, the projected use of funds must give maximum feasible priority to activities which benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight; or must meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet the needs; and

23.2(4) Ensure neutrality and fairness in the treatment of all applications submitted under this program.

630—23.3 (7A, PL 93-383) Eligibility. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

630—23.4 (7A, PL 93-383) Eligible and ineligible activities. This rule provides a list of eligible and ineligible activities under the CDBG program.

23.4(1) General policy relating to activities outside an applicant's boundaries. Applicants may conduct activities which are otherwise eligible for block grant assistance which are located outside of their boundaries and which are not inconsistent with state or local law, only if the applicant can demonstrate that community objectives could not be achieved if the activities were located within the community's boundaries.

23.4(2) General policies relating to special assessments — special assessments under the block grant program. The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes. The following policies relate to the use of special assessment under the block grant program:

a. There can be no special assessment to recover that portion of a capital expenditure funded with CDBG funds. Recipients may, however, levy assessments to recover the portion of a capital expenditure funded from other sources. Funds collected through such special assessments are not program income.

b. Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low- and moderate-income persons when such assessments are used to recover that portion of the capital cost of public improvements financed from sources other than community development block grants, provided that: The assessment represents that property's share of the capital cost of the eligible facility or improvement; and, the installation of the public facilities and improvements was carried out in compliance with requirements applicable to activities assisted under the CDBG program.

23.4(3) Eligible activities. As authorized by Title I, section 105 of the Housing and Community Development Act of 1974, as amended, and as further defined in 24 Code of Federal Regulations Part 570, activities assisted by this program may include only the following:

a. Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements and other interests therein) for any public purpose, subject to the limitations of 23.4(4);

b. Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in 23.4(4). Public facilities and improvements eligible for assistance are subject to the policies in 23.4(1).

c. Code enforcement in deteriorated or deteriorating areas in which enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

d. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites;

e. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

f. Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

g. Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

h. Provisions of public services, including but not limited to those concerned with:

Employment,
Crime prevention,
Child care,
Health,
Drug abuse,
Education,
Energy conservation,
Welfare or recreation needs.

A public service must be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or on behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under Title I, and which are to be used for such services, except that not more than fifteen per centum of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph;

i. Payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title;

j. Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

k. Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

l. Planning activities which consist of all costs of data gathering, studies, analysis and preparation of plans and implementing actions and policy, planning, management capacity-building activities as specified in 24 CFR 570.205;

m. Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities. Funds used for these purposes shall not exceed ten percent of the total contract amount;

n. Activities as specified in 24 CFR 570 may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable;

o. Grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of 23.2(7A, PL 93-383). This may include any activity not specifically listed as ineligible under 23.4(4), except that construction of new housing is eligible under this provision;

p. Financing the rehabilitation of privately owned buildings and improvements, low income public housing and other publicly owned residential buildings and improvements, and publicly owned nonresidential buildings and improvements otherwise eligible for assistance;

q. Rehabilitation, preservation and restoration of historic properties, whether publicly or privately owned. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings for the general conduct of government;

r. Acquisition, construction, reconstruction, rehabilitation or installation of distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines;

s. Renovation of closed school buildings for use as an eligible public facility, for a commercial or industrial facility, or for housing;

t. Special economic development activities if such activities are necessary and appropriate to carry out an economic development project. Special economic development activities include:

(1) The acquisition, construction, reconstruction, or installation of commercial or industrial buildings,

structures and other real property equipment and improvements, including railroad spurs or similar extension;

(2) The provision of assistance to private for-profit businesses. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in 23.7(7A, PL 93-383) or the imminent threat provisions as provided in 23.11(2);

u. Construction of housing assisted under section 17 of the United States Housing Act of 1937; and

v. Reasonable administrative costs for overall program development, management, co-ordination, monitoring, and evaluation, and similar costs associated with management of the rental rehabilitation and housing development programs authorized under section 17 of the United States Housing Act of 1937.

23.4(4) Ineligible activities. The general rule is that any activity that is not authorized under the provisions of 23.4(3) is ineligible to be carried out with CDBG funds. The following list merely serves as a general guide and does not constitute a list of all ineligible activities.

a. Purchase of equipment. The purchase of equipment with block grant funds is generally ineligible.

(1) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to attachment B of OMB Circular A-87 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance, such as a bulldozer used at a sanitary landfill.

(2) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, or furnishings or other personal property not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its community development program.

b. Operating and maintenance expenses. The general rule is that any expense associated with operating, maintaining, or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance. Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance.

c. General government expenses. Except as otherwise specifically authorized in these rules or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

d. Political activities. No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

e. New housing construction. Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance new construction except as provided for in 23.4(3)"o." For the purpose of this paragraph, activities in support of the development of low- and moderate-income housing, including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs, are not considered as programs to subsidize or finance new residential construction.

f. Income payments. The general rule is that assistance shall not be used for income payments for housing or any other purpose.

630—23.5 (7A, PL 93-383) Application requirements for the competitive program.

23.5(1) Restrictions on applicants:

a. No more than one application per community will be considered per year under the competitive program.

b. Joint applications from two or more communities will be accepted only in those instances where the most efficient solution to a problem requires mutual action.

c. Cities of 2,500 population or over and counties of 6,800 population or over may apply for multiyear funding. Multiyear funding will be limited to funding commitments from two program years' allocations.

d. All eligible applicants may apply for single year, single purpose or multipurpose funding. Single year funding does not necessarily require project completion within a twelve-month period.

e. Communities may not apply on behalf of eligible applicants other than themselves. Applicants will be allowed, however, to utilize staff from counties, areawide planning organizations, or other jurisdictions to administer the program.

23.5(2) Application procedure. Each year, prior to solicitation of general competitive applications, the office for planning and programming will, to the extent funds are available for this purpose, conduct a training program for all eligible applicants. All eligible applicants will be notified of the time, date, place and agenda by mail. Application instructions and all necessary forms will be available upon written request to the Office for Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling (515) 281-3982. The training program will include a discussion of the program's purpose, eligible and ineligible program activities and instructions regarding the preparation and submission of an application.

The deadline for submission of general competitive applications (original and one copy) shall be two months following the last date of the training program. No applications will be accepted after the deadline for submission. Only data submitted by the established deadline will be considered in the selection process,

unless additional data is specifically requested by OPP in writing.

Review and ranking of general competitive applications will be performed by OPP personnel after consultation, where appropriate, with other state agencies with program responsibility in CDBG-related areas. All applications meeting threshold requirements will be reviewed and ranked within ninety days of the final submission deadline. The anonymity of the communities will be maintained to the greatest extent possible during the review and ranking of applications. Those applications with the highest rankings within each population category will be funded, to the extent that competitive program funding is available. All successful applicants will be notified and invited to a conference with OPP personnel to outline procedures to be followed as grant recipients.

23.5(3) Contents of application. Each general competitive application must address each of the threshold criterion, and demonstrate that each criterion has been satisfied. In addition, each application must contain each of the following items:

a. Description of community need (and how need was determined);

b. Project description (includes amount of funding requested, use of funds, project's impact on community need, and project schedule);

c. Percent of project addressed towards low- and moderate-income persons, including method of determination;

d. Description of local effort, including the amount;

e. Certifications. All applications will be required to certify that, if they receive funds under this program, they will comply with the following requirements, if applicable:

(1) The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284);

(2) Title I of the Housing and Community Development Act of 1974, as amended;

(3) Age Discrimination Act of 1975;

(4) Section 504 of the Rehabilitation Act of 1973;

(5) Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended;

(6) Preservation of Historical and Archaeological Data Act of 1974 (PL 93-291);

(7) National Historic Preservation Act of 1966, Section 106 (PL 89-665);

(8) National Environmental Policy Act of 1969;

(9) Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1979, Title II and Title III; and

(10) Other relevant regulations as noted in the Iowa CDBG Management Guide.

630—23.6 (7A, PL 93-383) Selection criteria for the competitive program.

23.6(1) Threshold criteria. All applicants must satisfy these criteria before their application will be considered complete and eligible for ranking.

a. Evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel.

b. Acceptable past performance in the administration of community development block grant funds including the timely commitment of program funds, where applicable.

c. Feasibility of completing identified project with funds requested. If an applicant intends to use other funding sources, they must be identified and the level of commitment and time frames involved must be explained.

d. Project must address at least one of the following three objectives:

(1) Primarily benefit low- and moderate-income persons. Over fifty percent of those benefiting from a project must be considered low- and moderate-income persons.

(2) Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

(3) Meet other urgent community development needs involving a threat to health, safety, or welfare of the community. The seriousness of the condition is documented by an independent authority (i.e. department of water, air and waste management, state fire marshal, health department, department of transportation or other appropriate nonlocal entity) or by generally accepted standards, and the activity is directly related to alleviating or eliminating the identified threat.

e. Project funds may only be used for an eligible activity or activities;

f. Project funds may not be incurred prior to written authorization to incur costs;

g. At least one public hearing must be conducted to solicit comments on the community's proposed CDBG program, prior to submission of the community's CDBG application. Notice of the public hearing must be published at least once, not less than four nor more than twenty days before the hearing. The notice must be published in a newspaper of general circulation, published at least once weekly, in the community. Cities with a population of 200 or less may meet the publication requirement by posting the notice in three public places in the city.

h. Evidence that the community has engaged in a process to identify its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet such needs.

23.6(2) Rating factors. There are two categories of rating factors, community-wide and project-specific. The highest point total possible is 950.

a. Community-wide. (data supplied by OPP in advance of the competition.)

(1) Percent of community below the poverty level as defined by the 1980 census, 100 points possible.

(2) City or county mill rate, 100 points possible.

b. Project - specific. (data obtained from applications.)

(1) Magnitude of need identified by community, 200 points possible;

(2) Project impact - extent to which project addresses community need, 200 points possible;

(3) Percent of project funds benefiting low- and moderate-income families, 200 points possible; and,

(4) Local effort, 100 points possible.

c. Cities of under 2,500 population and counties with an unincorporated population of under 6,800 that did not receive a CDBG grant in the preceding two years' programs will receive 50 bonus points. Cities of under

2,500 population and counties with an unincorporated population of under 6,800 that did not receive a CDBG grant in the preceding year's program but did receive a CDBG grant two years preceding the current year will receive 25 bonus points.

d. Ties in applications. Ties will be decided in favor of the community whose project benefits the largest number of low- and moderate-income families.

e. Rating of multiyear and multipurpose applications. All applications will be rated on the factors noted in paragraphs "a" and "b" of this subrule. Multiyear applications will be rated on the basis of the total number of years applied for, and multipurpose applications will be rated on the basis of weighted total of need and impact scores for all the projects applied for.

f. All projects in multipurpose applications will be included in the point score determination and final ranking of CDBG applications. However, individual projects within a multipurpose application must receive a combined score of at least 100 points out of a possible 400 points for the "magnitude of need" and "project impact" rating factors, in order to receive CDBG funding. Projects not meeting this criterion shall be eliminated from any application after final ranking, but prior to funding of the application.

23.6(3) Verification of data. Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of OPP, this may include site visits. In cases where inaccuracies, omissions, or errors are found, OPP will have the discretion of rejecting the application or rerating it based on correct information. In cases where an applicant loses funding through this process, its grant amount may be awarded to the highest ranking nonfunded applicant(s). In an instance where the highest ranking nonfunded applicant requests more funds than what is available, OPP will have complete discretion concerning the disposition of the excess funds, including renegotiating the amount requested or carrying those funds over to the next program year.

630—23.7 (7A, PL 93-383) Application requirements for the economic development set-aside program.

23.7(1) Restrictions on applicants.

a. CDBG funds will be limited to interest rate subsidies, principal reduction subsidies, or similar subsidies to conventional loans.

b. No more than one application per community will be considered per quarter under the economic development set-aside program. However, each application may contain requests for assistance to more than one private enterprise.

c. Multiyear funding will not be allowed under the economic development set-aside program.

d. Communities may not apply on behalf of eligible applicants other than itself.

23.7(2) Application procedure. Applications for the economic development set-aside program will be accepted by the office for planning and programming at any time. Awards will be made on a quarterly basis. Applications must be received at OPP at least forty-five days prior to the quarterly award date in order to be considered in that round of funding. Any applications received after that date will be held over for consideration in the next quarter. An original and one copy of the application shall be submitted. Only data submitted by the established deadline for that quarter will be considered in the selection process, unless additional data is specifically requested by OPP.

Review and ranking of the applications will be performed by OPP personnel. Those applications with the highest rankings meeting the minimum threshold criteria will be funded, to the extent that funding for that quarter is available. Applications not funded in one quarter may be resubmitted at any time, for consideration in a subsequent funding cycle.

Application instructions and necessary forms will be available upon written request to the Office for Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling 515/281-3982.

23.7(3) Contents of application. Each application must address each of the threshold criteria, and demonstrate that each criterion has been satisfied.

a. Project description (includes amount of funding requested, use of funds and project schedule);

b. Percent of project addressed towards low- and moderate-income persons, including method of determination;

c. Project budget (including other public funds, private loans and owner's equity); and

d. Certifications. Applicants under the economic development set-aside program will be required to certify that, if they receive funds under this program, they will comply with the same certifications required by applicants for the competitive program.

630—23.8 (7A, PL 93-383) Selection criteria for economic development set-aside program.

23.8(1) Threshold criteria. All applicants for economic development set-aside funds must satisfy the following minimum requirements to be eligible for funding:

a. At least fifty-one percent of the permanent jobs created or retained by the proposed project will be available to low- and moderate-income persons;

b. A minimum ratio of one permanent job created or retained for every $15,000 of CDBG funds awarded must be maintained;

c. The effective interest rate on the total loan package may not be less than fifty percent of the prime interest rate, as published in the Wall Street Journal on the date of the application deadline;

d. Terms of loans must be consistent with terms generally accepted by conventional financial institutions;

e. At least ten percent of the total project amount must be in the form of private equity;

f. There must be evidence that the CDBG funds requested are necessary to make the proposed project feasible;

g. A minimum of five jobs must be created or retained as a result of the proposed activity;

h. Jobs created as a result of other jobs being displaced elsewhere in the state will not be considered new jobs created for the purpose of evaluating the application;

i. No significant negative land use or environmental impacts will occur as a result of the project;

j. Evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel;

k. Acceptable past performance in the administration of community development block grant funds, where applicable;

l. Project funds may not be incurred without written authorization to incur costs;

m. At least one public hearing must be conducted to solicit comments on the community's proposed CDBG program, prior to submission of the community's CDBG application. Notice of the public hearing must be published at least once, not less than four nor more than twenty days before the hearing. The notice must be published in a newspaper of general circulation published at least once weekly in the community. Cities with a population of 200 or less may meet the publication requirement by posting the notice in three public places in the city.

23.8(2) Rating factors.

a. The following rating system will be used to rank applications under the economic development set-aside program. The highest point total possible is 500.

(1) Number of jobs per CDBG funds requested, 100 points possible;

(2) Percent of equity (e.g. cash or property assets) to total project cost, 100 points possible;

(3) Percent of funds other than CDBG funds in the project (e.g. private or public loans) 100 points possible; and,

(4) Need and impact of the project. Considerations are to include local employment conditions, resultant new economic activity, planned hiring under programs of the Job Training Partnership Act, use or availability of other public incentives, project schedule, and property tax enhancement and other effects on the local tax base, 200 points.

b. Ties in applications. Ties will be decided in favor of the project showing the highest number of jobs created or retained.

c. Each project in an application will be rated and ranked separately. Those projects ranked high enough will be funded regardless of the ranking of the remainder of the application.

23.8(3) Verification of data. Applications which rate high enough to be funded will be reviewed to verify figures or statements in accordance with guidelines established for the competitive program as specified in 23.6(3).

23.8(4) Negotiation of funds awarded. The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. OPP reserves the right to negotiate the effective interest rate, term, and other conditions of the loan prior to grant award.

630—23.9 (7A, PL93-383) Funding allocation.

23.9(1) Funds for state administration. Up to two percent of total state program funds may be used for state administration.

23.9(2) Funds reserved for imminent threat program. Up to five percent of total program funds may be reserved in any year for the imminent threat contingency fund. If this fund is not fully utilized in any year, the excess amount will be reallocated to the general nonentitlement program for the following program year. For the purpose of this subrule, each program year shall begin on the date the grant award to the state is received from HUD. (Rules for this fund are in subrule 23.9(3).)

23.9(3) Funds reserved for economic development set-aside. Fifteen percent of the total program funds will be reserved each year for the economic development set-aside program. Up to one-third of the funds set aside may be awarded during the first quarter of funding. Up to a total of two-thirds of the funds may be awarded in the first two quarters of funding, and the total amount may be awarded in the first three quarters of funding. If this fund is not fully utilized in any year, the excess amount will be reallocated to the general nonentitlement program for the following program year.

23.9(4) Distribution of competitive funds. The funds remaining after deducting those used for state administration, the imminent threat contingency fund and the economic development set-aside will be allocated in the following manner:

Cities	Counties	Percent of Funds
0 - 2,499 population	0 - 6,799 population (54 smallest)	35%
2,500 - 49,999 population	6,800+ population (45 largest)	65%

The division of counties is based on unincorporated population only. The counties have been divided between the two population categories in order to maintain an equal per capita distribution of funds.

Competitive grants in each category will be reduced by the amount of OPP multiyear commitments within each category.

23.9(5) Use of recaptured funds. Funds recaptured, for any reason, by OPP shall be reallocated to the general nonentitlement program for the following program year.

23.9(6) Grant ceilings. Maximum grant amounts are as follows:

a. Competitive program only.

All Single Year Applicants	Grant Ceiling
0 - 999 population	$200,000
1,000 - 2,499 population	$300,000
2,500 - 14,999 population	$450,000
15,000 - 49,999 population	$600,000
Multiyear Applicants	**Grant Ceiling**
2,500 - 14,999 population	$350,000 per year
15,000 - 49,999 population	$500,000 per year

However, no grantee may receive more than $1,000 per capita, based on the total population within the grantee's jurisdiction. In determining grant ceilings, county populations will be calculated on the basis of unincorporated areas only. Joint applications may be funded up to one and one-half times the maximum amount allowable for either of the joint applicants. The ceilings noted above will also apply to each individual year of a multiyear commitment from OPP.

b. Economic development set-aside. The maximum grant for individual applications from any city or county is $500,000.

c. Imminent threat contingency fund. There is no grant ceiling for communities receiving imminent threat funds.

630—23.10 (7A, PL 93-383) Administration.

23.10(1) Contracts. Upon selection of a project(s) for funding, the office for planning and programming will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the applicant to accept funds for eligible activities, the contract shall be between the office for planning and programming and the community. The designation by the community of another public agency to undertake activities assisted under this program shall not relieve the recipient of its responsibilities in assuring the administration of the program in accordance with all

federal and state requirements, including these rules. These rules, and applicable federal and state laws and regulations become a part of the contract.

23.10(2) Financial management standards.

a. All recipients shall comply with applicable provisions of OMB Circular No. A-102, "Uniform Administrative Requirements For Grant-in-Aid To State and Local Governments." Any clarifications or modifications of this standard by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient. Where requirements differ between the circular and state or local law, the more restrictive requirement shall prevail. Contracts may also be conditioned to provide other requirements.

b. Allowable costs shall be determined in accordance with OMB Circular No. A-87, "Cost Principles Applicable To Grants And Contracts With State And Local Governments." Any clarifications or modifications of this standard by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient with the contract.

c. All contracts made under these rules are subject to audit. Recipients shall be responsible for the payment of costs for audits. Audits may be performed by the state auditor's office or by an independent public accountant and, subject to state law, shall be prepared in accordance with the Iowa CDBG Management Guide. Audits shall be conducted not less frequently than once every two years. Audits for single-year funding, and for the final year of a multiyear funding shall commence within sixty days of completion of the funded activities. Audit completion, meaning the issuance of the audit, shall occur within one hundred fifty days of completion of the funded activities. Variations of these time requirements shall only be allowed upon written approval of OPP.

d. Program income.

(1) Units of general local government shall be required to return to the federal government interest (except for interest described in 23.10(2)"d"(3)) earned on grant funds advanced in accordance with the "Iowa CDBG Management Guide."

(2) Proceeds from the sale of personal property shall be handled in accordance with attachment N of OMB Circular No. A-102, "Property Management Standards."

(3) All other program income earned during the grant period may be retained by the recipient and added to funds committed to the program, provided that they are expended for the same type of activity from which the income was derived.

(4) Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as a part of the grant program transactions.

(5) Program income received subsequent to grant closeout.

1. Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement, program income received subsequent to the end of the grant period may be treated by the recipient as follows: Subject to the requirements of this subrule, "d" (2), (3), this income may be treated as miscellaneous revenue, the use of which is not governed by the provisions of the grant: Provided, that if the recipient has another continuing grant under the same multiyear commitment under these rules, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

2. Disposition of tangible personal property. The recipient shall account for any tangible personal property acquired with grant funds in accordance with attachment N of OMB Circular No. A-102, "Property Management Standards."

3. Disposition of real property. Proceeds derived after the closeout from the disposition of real property acquired with grant funds under this program shall be subject to the program income requirements of 23.10(2)"d"(5)"1" above, provided that where such income may be treated as miscellaneous revenue pursuant to 23.10(2)"d"(5)"1," above, it shall be used by the recipient for community development activities eligible pursuant to 23.4(2) to further the general purposes and objectives of the Act. The use of income subject to this provision is not governed by any other requirements of these rules.

23.10(3) Reimbursements. Grant recipients shall submit billings for reimbursement in the manner and on forms prescribed by OPP.

23.10(4) Recordkeeping and retention. Financial records, supporting documents, statistical records, the environmental review records required by 24 Code of Federal Regulations 58.30, and all other records pertinent to the grant program shall be retained by the recipient in accordance with the provisions of the Iowa CDBG Management Guide, including the following:

a. Records for any displaced person shall be retained for three years after that person has received final payment;

b. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.10(4)"a," whichever is later;

c. Representatives of the secretary of the department of housing and urban development, the inspector general, the general accounting office, the state auditor's office and the office for planning and programming shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

23.10(5) Performance reports and reviews. Grantees shall submit grantee performance reports to OPP as prescribed in the Iowa CDBG Management Guide. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made under 23.5(3)"e."

OPP may perform any reviews or field inspections it deems necessary to assure program compliance, including reviews of grantee performance reports. When problems of compliance are noted, OPP may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.11(4).

23.10(6) Grant closeouts. Upon completion of project activities, recipients will initiate grant closeout in accordance with procedures specified in the Iowa CDBG Management Guide.

23.10(7) Compliance with federal and state laws and regulations. All grant recipients shall comply with all applicable provisions of the Act and its implementing regulations, including these rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

630—23.11 (7A, PL 93-383) Miscellaneous.

23.11(1) Multiyear grants. Some communities receive funding commitments from OPP, from more than one program year's allocation. These commitments will be fully funded for each year of the communities' programs provided performance has been found acceptable in the year previously funded, and provided that the state receives an adequate commitment of funds from HUD for those years. OPP shall assess grantee performance.

23.11(2) Imminent threat contingency fund. Up to five percent of the total nonentitlement program funds allocated to the state may be reserved for communities which are experiencing an imminent threat to public health, safety or welfare which necessitates corrective action sooner than could be accomplished through the regular application process under the nonentitlement program.

Communities in need of these funds must submit a written request to the Director of the Division of Local Government Affairs, Office for Planning and Programming, 523 E. 12th Street, Des Moines, Iowa 50319. The request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through the normal CDBG funding procedure.

Upon receipt of a request for imminent threat funding, OPP will make a determination as to whether the community and the project are eligible for funding. This determination will be made by OPP, after consultation with the department of health, office of disaster services, or other appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

a. The proposed project must be an eligible project under 23.4(3);

b. An immediate threat must exist to health, safety or community welfare;

c. The threat must be the result of unforeseeable and unavoidable circumstances or events;

d. The threat must require immediate action;

e. No known alternative project or action would be more feasible than the proposed project;

f. Sufficient other local, state, or federal funds (including the competitive CDBG program) either are not available, or cannot be obtained within the time frame required. OPP staff will check into this with the office of disaster services, and other public agencies, as appropriate.

If OPP determines that the community and the proposed activity are eligible for funding, it shall notify the governor of its determination. Upon the personal authorization of the governor to do so, OPP will make funds available to an applicant which meets the eligibility criteria.

Any community receiving funds under the imminent threat program must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, with the exception of those rules waived by the governor pursuant to 23.11(6).

23.11(3) Amendments to applications. In any case where program amendments would delete all or any portion of an existing activity the amended application must rate at least as high on the selection criteria point system as the original application rated, and the community must be capable of completing the proposed activities in a reasonable period of time. When a proposed amendment would result in a change in the use of funds from one activity to another, the community is required to provide citizens with reasonable notice of, and opportunity to comment on the proposed change. Amendments involving the replacement of one activity with another will not be allowed for projects funded under the economic development set-aside program.

23.11(4) Remedies for noncompliance. At any time before project closeout, OPP may, for cause, find that a community is not in compliance with its requirements under this program. At OPP's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to OPP. Reasons for a finding of noncompliance include, but are not limited to: The recipient using program funds for activities not described in its application, the recipient's failure to complete approved activities in a timely manner, the recipient's failure to comply with any applicable state or federal rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved program in a timely manner.

23.11(5) Contractors and subrecipients limited. Project funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by the Department of Housing and Urban Development under the provisions of 24 Code of Federal Regulations, Part 24.

23.11(6) Waivers. When the governor of the state of Iowa has determined that sufficient cause for such action exists, he may waive any requirement under these rules not required by law. A waiver may be applied to one or more eligible applicants under this program. Sufficient cause for such a waiver may include, but not be limited to, instances where a community has requested imminent threat contingency funds under 23.11(3), where undue hardship will result from applying the requirement. Waivers under 23.11(6) will become effective only upon the personal authorization of the governor.

23.11(7) Forms. Participants in the block grant program must complete the following forms, as applicable:

a. Grant application procedures.

(1) Standard application package for competitive program.

(2) Reserved.

b. Program administration procedures.

(1) Grant contract.

(2) Status of federal funds and request for payment. (Form 1)

These rules are intended to implement Iowa Code section 7A.3 and Title I of the Housing and Community Development Act of 1974, as amended.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/10/84.

ARC 5038

VETERINARY MEDICINE, BOARD OF[842]

Pursuant to Iowa Code section 169.5(8)"j," the Board of Veterinary Medicine hereby adopts rules created as Chapter 9, "Standards of Practice," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Number 4, August 15, 1984, as **ARC 4881**. A public hearing was held on September 6, 1984. These rules are identical to those published under notice except for a typographical correction in subrule 9.1(3)"c."

These rules are intended to implement Iowa Code chapter 169, as amended by 1983 Iowa Acts, chapter 115.

These rules will become effective November 14, 1984.

CHAPTER 9
STANDARDS OF PRACTICE

842—9.1(169) Prescription drugs and restricted immunization products. A drug or immunization product intended for veterinary use which, because of toxicity, method of use or potential harmful effect, is not safe for animal use except under the supervision of a licensed veterinarian; or where federal law restricts this drug or immunizing product to use by or under the order of a licensed veterinarian, shall only be sold or distributed to, or on the order of, a licensed veterinarian, to be used in the course of the veterinarian's professional practice.

9.1(1) The order for all such drugs or immunizing products shall be accompanied by the veterinarian's original prescription which should show the quantity of the product, the number of times the prescription can be refilled, the veterinarian's name, address and telephone.

9.1(2) A prescription veterinary product shall not be deemed to be used "in the course of the veterinarian's professional practice" unless the veterinarian is supervising the use of the product; and an appropriate veterinarian/client/patient relationship exists.

9.1(3) An appropriate veterinarian/client/patient relationship shall be deemed to exist when:

a. The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian; and when

b. There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s); or by medically appropriate and timely visits to the premises where the animal(s) is kept; and when

c. The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy.

842—9.2(169) Extra label use of veterinary drugs and immunization products. Any extra label use of veterinary products shall be considered, prescribed or used by a practicing veterinarian only; and shall be subject to the following criteria:

9.2(1) There shall be a valid veterinarian/client/patient relationship as defined in subrule 9.1(3).

9.2(2) There are no marketed products specifically labeled for the conditions diagnosed; or if the labeled dosage is inadequate for the condition, in the opinion of the veterinarian.

9.2(3) The health of the treated animal(s) is immediately threatened and suffering or death would result from a failure to treat the affected animal(s).

These rules are intended to implement Iowa Code chapter 169, as amended by 1983 Iowa Acts, chapter 115.

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ARC 5012

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority of Iowa Code section 455B.133, the Water, Air and Waste Management Commission hereby amends Chapter 23, "Emission Standards for Contaminants" by adopting, by reference, recently promulgated federal regulations pertaining to new source performance standards and emission standards for hazardous air pollutants. Two amendments are adopted.

Subrule 900—23.1(2) is amended by adding the following new categories of sources subject to the new source performance standards: Bulk gasoline terminals, beverage can surface coating operations, synthetic organic chemical manufacturing industry, pressure sensitive tape and label coating operations, metallic mineral processing and synthetic fiber plants.

Chapter 23 is further amended by adopting by reference EPA rules promulgated as 40 C.F.R. Part 61. Part 61 sets forth emission standards for hazardous air pollutants. By this amendment the Commission adopts changes to the emission standards for asbestos which were promulgated by the EPA. These rewritten rules pertain to the prohibition of surfacing of roadways with asbestos tailings or asbestos containing waste; the setting of a standard for certain manufacturing operations using commercial asbestos; the setting of standards for spraying and fabricating asbestos and insulating with asbestos. Rewritten standards for air cleaning, active and inactive waste disposal sites are also adopted.

The Notice of Intended Action for these amendments was published as **ARC 4823** in the July 18, 1984 Iowa Administrative Bulletin. A public hearing was held to elicit oral comments on this rule on August 7, 1984 and written comments were accepted until August 17, 1984. No written or oral comments were received.

The Department makes one change in the amendments which were proposed on July 18, 1984. The Department inadvertently excluded 40 C.F.R. §61.148 from adoption by reference in subrule 23.1(3) and paragraph 23.1(3)"a" 40 C.F.R. §61.148 specifically addresses standards for the spraying of asbestos-containing materials. This Department intended to exclude from its regulation only those standards for demolition and renovation operations, because these operations are currently being regulated by other state agencies and the EPA.

These rules are intended to implement Iowa Code section 455B.133.

The following amendments were adopted by the Commission on September 18, 1984 and will become effective November 14, 1984:

ITEM 1. The first unnumbered paragraph of subrule 23.1(2) is amended as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, 40 Code of Federal Regulations Part 60 as amended through ~~June 30, 1983~~ *April 26, 1984*, shall apply to the following affected facilities as defined in said part.

Further amend subrule **23.1(2)** by adding the following paragraphs.

nn. Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry. Any pumps, compressors, pressure relief devices, sampling systems, valves and lines which handle volatile organic compounds (VOC).

oo. Beverage can surface coating. Any beverage can surface coating lines for two-piece steel or aluminum containers in which soft drinks or beer are sold.

pp. Bulk gasoline terminals. Any loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks.

qq. Pressure sensitive tape and label surface coating operations. Any coating line used in the tape manufacture of pressure sensitive tape and label materials.

rr. Metallic mineral processing plants. Any ore processing and handling equipment.

ss. Synthetic fiber production facilities. Any solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year.

ITEM 2. The first unnumbered paragraph of subrule 23.1(3) is amended as follows:

23.1(3) Emission standards for hazardous air pollutants. The federal standards of emissions for hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended, through ~~June 30, 1984~~ *April 26, 1984*, are adopted by reference except 40 CFR ~~§61.22(d)~~ *§61.145 through 61.147*, and shall apply to the following affected pollutants as defined in that part.

Further amend subrule **23.1(3)**paragraph "a" as follows:

a. Asbestos. Any of the following involving asbestos emissions: Asbestos mills, surfacing of roadways, manufacturing operations, and spraying applications. Demolition and renovation emissions as stated in 40 CFR ~~61.22(d)~~ *§61.145 through 61.147* are not included.

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ARC 5013

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority granted by Iowa Code sections 455B.105 and 455B.412, the Water, Air and Waste Management Commission adopts amendments to Chapter 141, "Hazardous Waste," Iowa Administrative Code. The Commission adopts by reference rules governing the operation of facilities which generate hazardous wastes and facilities which treat, store and dispose of hazardous waste. These rules are adopted by this Department in order to ensure the equivalence of the state hazardous waste program with the federal hazardous waste program. This requirement is imposed upon the department by the EPA as a condition to the obtaining of final authorization to implement and enforce the state hazardous waste program in lieu of the federal program.

In detail, the following amendments are adopted:

Item 1 amends subrule 141.1(1) to include, as federal rules adopted by reference, those rules pertaining to 40 C.F.R. Part 260 which have been promulgated through March 26, 1984. Since the most recent rule adoptions by this Department the Environmental Protection Agency (EPA) has promulgated two new rules pertaining to Part 260. On March 20, 1984, the EPA amended rule 40 C.F.R. §260.10 to include a new definition of the terms "manifest" and "manifest document number." On March 26, 1984, the EPA promulgated amendments to Part 260 which corrected a number of technical errors.

Item 2 amends rule 900—141.2(455B) to include, as federal rules adopted by reference, those rules pertaining to 40 C.F.R. Part 261 which have been promulgated by the EPA through May 10, 1984. The Commission adopts a new "listed" hazardous waste, a group of wastes of a generic category generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having a carbon content from one to five. The basis for the listing of this waste is the presence of 33 hazardous constituents among them toluene, benzene, and tetrachloroethylene. There are currently no manufacturers of these hydrocarbons in Iowa. Also, the original designation of wastes containing warfarin at concentrations of 0.3 percent or less or zinc phosphides at concentrations of 10 percent or less as "acutely hazardous waste" is changed to the designation of "hazardous waste."

Item 3 amends rule 900—141.3(455B) to include, as federal rules adopted by reference, those rules pertaining to 40 C.F.R. Part 262 which have been promulgated by the EPA through March 26, 1984. These rules include 40 C.F.R. §262.20 which amends the general manifest requirements, 40 C.F.R. §262.21 which amends rules regarding the acquisitions of manifests, 40 C.F.R. §262.50 which amends rules pertaining to the manifesting of international shipments of hazardous waste and, finally, amendments to the Appendix to Part 262 which provides instructions for completion of an EPA approved manifest. Also adopted by reference are a number of corrections of technical errors promulgated by the EPA on March 26, 1984.

Item 4 amends rule 900—141.6(455B) to include as a federal rule adopted by reference an amendment to 40 C.F.R. Part 265 promulgated by the EPA on November 22, 1983. On that date the EPA amended the rules pertaining to the operation of interim status facilities to provide, by 40 C.F.R. §265.1, that Part 265 standards are to be applied to facilities which have fully complied with the requirements for interim status and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by section 3010(a) of RCRA or failed to file a Part A Permit Application. Prior to the adoption of this amendment, the rules were unclear as to the applicability

of the Part 265 standards to facilities which had not achieved interim status. This amendment formalizes the policy regarding the application of these standards to facilities which have not achieved interim status. This interpretation has been implemented by the EPA and this Department for the last three years.

Item 5 amends rule 900—141.14(455B) to include two recently promulgated EPA rules pertaining to the hazardous waste permit program. By amending rule 900—141.14(455B) to include, as rules adopted by reference, rules promulgated by the EPA through April 24, 1984, the Commission adopts a change which will allow permit applications to be signed by a corporate official responsible for direct supervision of the persons who gather the data and complete the application forms. The Commission also adopts an amendment which grants the authority to the Department to provide a person an opportunity to cure any defect in a Part A Permit Application prior to being subject to enforcement action for operating without a permit.

The Notice of Intended Action for these amendments appeared as **ARC 4824** in the July 18, 1984, Iowa Administrative Bulletin. A public hearing was held on August 7, 1984, to elicit oral comments on these amendments. Written comments were accepted until August 17, 1984. No oral or written comments were received.

There are two changes in the rules which are to be adopted from the rules initially proposed. On May 10, 1984, the EPA adopted an additional amendment to 40 C.F.R. Part 261, specifically 40 C.F.R. §261.31, the "listed hazardous wastes from nonspecific sources." The EPA has reclassified wastes containing warfarin at concentrations of 0.3 percent or less and zinc phosphides at concentrations of 10 percent or less as "hazardous wastes." Originally these wastes were classified as "acutely hazardous wastes" and as such were subject to more restrictive regulation. In Item 4 the Commission inadvertently listed the wrong adoption date of federal rules. The actual adoption date was "1983" instead of "1984."

The Commission has considered additional amendments and has determined that these amendments are consistent with the original Notice of Intended Action. For this reason, these amendments do not appear under a separate notice.

These rules are intended to implement Iowa Code sections 455B.105 and 455B.412.

The effective date of these rules is November 14, 1984.

ITEM 1. Subrule 141.1(1) is amended to read as follows:

141.1(1) The following is adopted by reference: 40 C.F.R. Part 260 as amended through ~~April 1, 1983~~ *March 26, 1984*.

Provided that "Underground source of drinking water (USDW)" means an aquifer or its portion.

a. Which supplies any public water system, or

b. Which contains a sufficient quantity of ground water to supply a public water system, and

(1) Currently supplies drinking water for human consumption, or

(2) Contains fewer than 10,000 mg/l total dissolved solids.

ITEM 2. Rule 900—141.2(455B) is amended to read as follows:

900—141.2(455B) Identification and listing of hazardous waste. The following is adopted by reference: 40 C.F.R. Part 261 as amended through ~~June 30, 1983~~ *May 10, 1984*.

Provided that any reference to 40 C.F.R. Part 124 shall mean 141.13(455B) of these rules.

ITEM 3. The first unnumbered paragraph of rule 900—141.3(455B) is amended to read as follows:

900—141.3(455B) Standards applicable to generators of hazardous waste. The following is adopted by reference: 40 C.F.R. Part 262 as amended through ~~April 1, 1983~~ *March 26, 1984*.

ITEM 4. The first unnumbered paragraph of rule 900—141.6(455B) is amended to read as follows:

900—141.6(455B) Interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. The following is adopted by reference: 40 C.F.R. Part 265 as amended through ~~June 30, 1983~~ *November 22, 1983*.

ITEM 5. Rule 900—141.14(455B) is amended to read as follows:

900—141.14(455B) The hazardous waste permit program. The following is adopted by reference: 40 C.F.R. Part 270 as promulgated through ~~June 30, 1983 (48 FR 14228 - 14248)~~ *April 24, 1984*.

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State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER THIRTEEN

WHEREAS, the Governor's Task Force on Efficiencies and Cost-Effectiveness in Iowa State Government has recommended that Executive Branch agencies undertake a comprehensive study of their span of control - the number of employees a manager can effectively supervise.

WHEREAS, the Inspector General will establish guidelines, methods and procedures each agency can use to analyze its management structure; and

WHEREAS, each agency director is responsible for operating an efficient, cost-effective management program.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby order that:

I. Each state department under the Executive Branch shall undertake a comprehensive review of its supervisory span of control in accordance with guidelines and methods established by the Inspector General; and

II. Each department shall, based upon its supervisory span of control analysis, submit a report and plan of action to the Inspector General identifying management changes which have been made since January 1, 1984, and identifying management changes which will be made to streamline supervisory staffing and thereby reduce the cost of government. Management changes may include steps such as retirement, consolidations, reclassifications, transfers, or supervisory staff reductions. All reports and plans of action are due to the Inspector General on or before November 21, 1984.

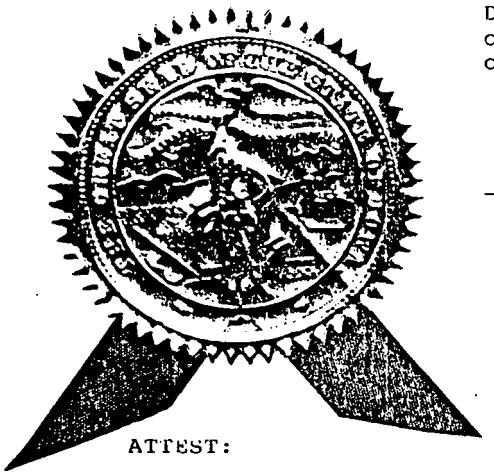
III. Each department's plan of action shall be reviewed by the Inspector General for adequacy, for the purpose of reporting agency progress to the Governor; and

IV. Upon approval of each department plan by the Inspector General, each department shall take immediate action to implement its plan.

V. After implementation of an approved plan, future departmental changes, such as filling vacancies, adding positions or deleting positions must be done in a manner to retain or improve upon the agency's overall supervisory span of control plan. The Inspector General will review and monitor subsequent personnel actions affecting the original plan.

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 31st day of September in the year of our Lord one thousand nine hundred eighty-four.

Terry E. Branstad
GOVERNOR



ATTEST:

Mary Jane Odell
SECRETARY OF STATE

State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FOURTEEN

WHEREAS, the federal Water Polution Control Act as amended, 33 USCA 1251 et. seq., provides federal grant funding for construction of municipal wastewater treatment works; and

WHEREAS, the federal Water Pollution Control Act in subsection 201 (g)(1) provides that the Governor of a state shall establish the percentage of funds, not to exceed 20 percentum, that shall be spent on and after October 1, 1984, on projects other than those for secondary treatment or more stringent treatment or any cost-effective alternatives thereto, new interceptors and appurtenances, and infiltration-in-flow correction; and

WHEREAS, it is in the best interest of the state that up to twenty (20) percent of the funds allotted to Iowa be spent on projects other than those for secondary treatment or more stringent treatment or any cost-effective alternatives thereto, on interceptors and appurtenances and infiltration-in-flow correction.

NOW, THEREFORE, I Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby order that:

The maximum percentage of federal funds allotted to Iowa that may be spent on and after October 1, 1984, on projects other than those for secondary treatment or more stringent treatment or any cost-effective alternatives thereto, new interceptors and appurtenances, and infiltration-in-flow correction shall be twenty (20) percentum.

IN TESTIMONY WHEREOF, I have here unto subscribed my name, and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of September in the year of our Lord one thousand nine hundred eighty-four.

Terry E Branstad
GOVERNOR

ATTEST:

Mary Jane Odell
SECRETARY OF STATE

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

July, 1984

CONSTITUTIONAL LAW

Corporations; Insurance: Constitutionality of Amended Section 514.4 and Validity of Rules Providing for Limited Role of Nominating Petitions for Subscriber and Provider Directors of Nonprofit Health Service Corporations. Iowa Code Supp. Section 514.1 (1983); Iowa Code Supp. Section 514.4 (1983), as amended by 1984 Iowa Acts, S.F. 2277, § 1, 510 I.A.C. §§ 34.7(2), 34.7(5). The insurance commissioner's rules 34.7(2) and 34.7(5), in limiting the role of the nominating petitions for subscriber and provider directors, initial and replacement, to a suggesting one are valid as a matter of administrative rulemaking and statutory construction. Amended Section 514.4 is constitutional under the due process, taking, and contract clauses of the state and federal constructions. (Haskins to Foudree, Commissioner of Insurance, 7/31/84) #84-7-10

INSURANCE

Taxation: Premium Tax on Workers' Compensation Group Self-Insurance Associations. Iowa Code Sections 87.1, 87.4, 87.11, 87.21, 432.1 (1983). An association of employers under Iowa Code Section 87.4 is subject to the tax under Iowa Code Section 432.1 on the premiums or assessments paid by its members for coverage from liability for workers' compensation benefits. (Osenbaugh to Foudree, Commissioner of Insurance, 7/9/84) #84-7-3(L)

MUNICIPALITIES

Council Members. Disqualification From Volunteer Fire Department. An ordinance which prohibits a city council member from serving on a volunteer fire department, assuming a legitimate intent, is valid. (Walding to Hutchins, State Senator, 7/3/84) #84-7-2(L)

OPEN MEETINGS LAW

Governmental Body, Area Agency on Aging. Iowa Code Sections 28A.2(1)(c); 249B.8, 45 C.F.R. 1321.61. By designation, the Iowa Commission on Aging formally created the Iowa Lakes Area Agency on aging to fulfill public policy-making and decision-making functions which requires its meetings to be open to the public. The Iowa Association of Area Agencies has not been created by the State Commission and its meetings may be closed to the public. (Allen to Zenor, 7/11/84) #84-7-4(L)

PUBLIC FUNDS

State Fish and Game Protection Fund; Interest Earned. Iowa Code Chapters 18 and 107; Iowa Code §§ 107.17, as amended by 1984 Iowa Acts, H.F. 2401, § 3; 453.7, and 453.7(2) (1983); Iowa Code Supp. § 18.120 (1983); 1982 Iowa Acts, Ch. 1084 and 1979; Iowa Acts, Ch. 12 § 6.3. Interest earned on fish and game protection fund payments to the motor vehicle dispatcher depreciation fund is to be credited to the state's general fund as opposed to being credited back to the fish and game protection fund. (Lyman to Wilson, Director, State Conservation Commission, 7/26/84) #84-7-5(L)

SCHOOLS

Redistricting. 1983 Iowa Code Supp. § 275.23A(4). Where two school district directors reside in the same new director district after redistricting and were elected to terms extending beyond the effective date of redistricting, both directors' terms expire at the next regular election. (Fleming to Heeren, Tama County Attorney, 7/26/84) #84-7-6(L)

Secretary of State. Redistricting of School Board Director Districts. 1983 Iowa Code Supp. §§ 275.12(2), 275.23A. When the Secretary of State is required to redistrict a school district because the board of directors has failed to do so, the criteria of 1983 Iowa Code Supp. § 275.23A(1) must be applied. The method chosen by the district for electing directors from those authorized by 1983 Iowa Code Supp. § 275.12(2) must be utilized. Expenses incurred by the Secretary of State in the redistricting process shall be assessed to the school district. (Fleming to Whitcome, Director of Elections, 7/26/84) #84-7-9(L)

SECRETARY OF STATE

Corporation Division Duties. Senate File 510, 1984 Session, 70th G.A. Upon receiving, from an agricultural supply dealer, a request for a certificate showing any effective financing statements or verified lien statements naming a certain debtor and the crops to which a newly filed lien attaches, the secretary should supply a listing of all financing statements and verified lien statements which name the specified debtor and relate to crops or real property. Likewise, when a request for a certificate relates to livestock, the secretary should supply a listing of all financing statements and verified lien statements which name the specified debtor and relate to livestock. (Galenbeck to Odell, Secretary of State, 7/26/84) #84-7-7(L)

STATE OFFICERS AND DEPARTMENTS

Health; Cosmetologists: The Practice of Rendering Cosmetology Services to Residents of Nursing Homes in Iowa by Licensed

Cosmetologists. Iowa Code § 157.13(1) and 470 I.A.C. 58.31(3), 59.36(3), 58.32(2), 59.37(2), 61.6(1). Cosmetologists who provide cosmetology services with or without compensation in an intermediate or skilled nursing facility for residents who have a physical or mental disability are exempt from practicing cosmetology in an unlicensed salon under Iowa Code § 157.13(1). (Hart to Pawlewski, Commissioner of Health, 7/3/84) #84-7-1(L)

Human Services: Licensing; Funding; Foster Care; Substance Abuse; Juvenile. Senate File 2176, 70th G.A.; Chapters 125, 135B, 135C, 236; §§ 125.43, 125.44, 125.45, 218.1, 232.142, 234.35, 237.1, 237.1(3), 237.4, Code of Iowa, 1983; 498 Iowa Administrative Code §§ 202.1(5), 202.1(7), 202.2(1), 202.4(4). A juvenile substance abuse facility licensed under Ch. 125 need not be also licensed under Ch. 237 in order to receive foster care funds, assuming that the facility in a particular child's case meets the other criteria for payment for foster care. (Lynn to Rosenberg, State Representative, 7/26/84) #84-7-8(L)

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

August, 1984

ADMINISTRATIVE LAW

Open Meetings; Public Records. Independent Subscriber Nominating Committees. Iowa Code Chapter 17A; Iowa Code Sections 28A.2, 68A.1 (1983); 1984 Iowa Acts, S.F. 2277, § 1; Iowa Code Supp. Section 514.4 (1983). The independent subscriber nominating committees under Iowa Code Supp. Section 514.4 (1983), as amended by 1984 Iowa Acts, S.F. 2277, § 1, are subject to both the Open Meetings Law and the Public Records Act. (Haskins to Priebe, Chair, Administrative Rules Review Committee, 8/1/84) #84-8-1(L)

CIVIL RIGHTS

Public Accommodation. Iowa Code §§ 601A.2(10) and 601A.7 (1983); 1984 Iowa Acts, House File 2466. A private club must be considered a public accommodation, within the meaning of Iowa Code § 601A.2(10) as amended, 1984 Iowa Acts, House File 2466, and is therefore subject to all the requirements of Iowa Code § 601A.7 (1983) for the duration of all time periods when guests are allowed on the premises. In addition, the use of the facilities on a trial basis by prospective members will also subject a private club to all requirements of Section 601A.7 for the duration of that prospective member's presence on the premises. The issue of whether a prospective member receives an offer for the services, facilities or goods by the club while touring the premises would require a determination of the facts surrounding such a tour and is thus an issue which should be entrusted in the first instance to the Iowa Civil Rights Commission. (Hamilton to Pavich, State Representative, 8/1/84) #84-8-3(L)

COUNTIES AND COUNTY OFFICERS

Iowa Code § 252.24 Does Not Allow Each County to Limit Its Liability to Counties Rendering Relief. Iowa Code Ch. 252, §§ 252.24, 252.25, 252.27. The county of legal settlement is responsible for all reasonable charges and expenses incurred in the relief and care of a poor person, regardless of whether those expenses would have been incurred within the county of legal settlement. (Williams to Poppen, Wright County Attorney, 8/7/84) #84-8-4(L)

ENVIRONMENTAL LAW

Drainage Districts. Iowa Code §§ 455.128, 455.202(1), 457.28 (1983). The joint boards of supervisors of the counties forming a drainage district organized under chapter 457 of the Iowa Code or the District Trustees have authority to levy taxes to fund the District's portion of a fish tagging study which will not be paid by the federal government where the study is a cost either incident to the district's adoption of a plan for original construction of an improvement or the repair or alteration of an existing structure to be undertaken by a proper agency of the United States government or incident to the construction itself. (Hamilton to Ballou, Executive Director, Department of Water, Air and Waste Management, 8/7/84) #84-8-6(L)

GAMBLING; REVENUE, DEPARTMENT OF

Revocation of Gambling Licenses. Iowa Code §§ 99B.2, 99B.14. Even if a gambling license is revoked for a period of less than two years, a gambling license may not be issued for the location at which the violation occurred for two years. A gambling licensee whose license was revoked permanently under the statute prior to July 1, 1984, may not have the period of revocation shortened to the two year maximum revocation which is effective after July 1, 1984. (Williams to Bair, Director, Department of Revenue, 8/7/84) #84-8-5(L)

SOIL CONSERVATION DISTRICTS

Construction of an Office Building. Iowa Const. Art. XI, § 3; Iowa Code §§ 346.24, 467A.2, 467A.7(5) (1983). It may be appropriate for a soil conservation district to construct an office building if the particular circumstances further the legislative policies prescribed for districts. A promissory note and a mortgage may be entered to finance the acquisition so long as the debt created does not exceed the appropriate limitation or is secured solely by the real property itself. (Norby to Gulliford, Director, Department of Soil Conservation, 8/1/84) #84-8-2(L)

STATE OFFICERS AND DEPARTMENTS

Incompatibility of Officers. Iowa Code Chs. 280 and 331 (1983). The positions of member of the board of directors of an area vocational school and member of the county board of supervisors are not incompatible. (Weeg to Tofte, State Representative, 8/21/84) #84-8-7(L)

STATUTES CONSTRUED

Code, 1983	Opinion
28A.2(1)(c)	84-7-4(L)
87.4	84-7-3(L)
87.11	84-7-3(L)
87.21	84-7-3(L)
107.17	84-7-5(L)
125.43	84-7-8(L)
125.44	84-7-8(L)
125.45	84-7-8(L)
157.13(1)	84-7-1(L)
218.1	84-7-8(L)
232.142	84-7-8(L)
234.35	84-7-8(L)
237.1(3)	84-7-8(L)
237.4	84-7-8(L)
249B.8	84-7-4(L)
252.24	84-8-4(L)
252.25	84-8-4(L)
252.27	84-8-4(L)
275.12(2)	84-7-9(L)
275.23	84-7-9(L)
275.23(4)	84-7-6(L)
280	84-8-7(L)
346.24	84-8-2(L)
432.1	84-7-3(L)
453.7	84-7-5(L)
457.28	84-8-6(L)
467A.2	84-8-2(L)
467A.7(5)	84-8-2(L)
601A.2(10)	84-8-3(L)
99B.2,14	84-8-6(L)

Const. of Iowa	Opinion
Art. XI, § 3	84-8-2(L)

Iowa Code Supp.	Opinion
18.120	84-7-5(L)
514.1	84-7-10
514.4	84-7-10

Iowa Acts	Opinion
S.F. 2277, § 1	84-8-1(L)
H.F. 2466	84-8-3(L)
Ch. 1084	84-7-5(L)
Ch. 1979	84-7-5(L)
S.F. 510	84-7-7(L)
S.F. 2176	84-7-8(L)

Ia. Admns. Code	Opinion
58.31(3)	84-7-1(L)
59.36(3)	84-7-1(L)
58.32(2)	84-7-1(L)
59.37(2)	84-7-1(L)
61.6(1)	84-7-1(L)
202.1(5),(7)	84-7-8(L)
202.2(1)	84-7-8(L)
202.4(4)	84-7-8(L)
34.7(2)	84-7-10
34.7(5)	84-7-10

C.F.R.	Opinion
45 C.F.R. 1321.61	84-7-4(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - September 19, 1984

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 83-1095. POLLY v. STATE.

Appeal from the Iowa District Court for Monona County, James P. Kelley, Judge. Reversed. Considered en banc. Opinion by Reynoldson, C.J. Dissent by McCormick, J.
(32 pages $12.80)

The State appeals from a judgment granting petitioner Polly postconviction relief and a new trial on his 1975 guilty-plea conviction of second-degree murder. OPINION HOLDS: I. Under Redding v. State, 274 N.W.2d 315 (Iowa 1979), postconviction petitioner, upon pain of waiver, has the burden to prove he had not "deliberately and inexcusably failed to pursue on direct appeal" the grounds asserted for postconviction relief. II. We now modify the Redding "deliberate bypass" rule by imposing the requirements set out in Wainwright v. Sykes, 433 U.S. 72, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977), that the postconviction petitioner not only show "cause" (or under Iowa Code section 663A.8 "sufficient reason") for failure to challenge the alleged errors in trial court, but also show actual prejudice resulting from those errors. Under the circumstances of this case, we hold Polly has not shown "sufficient reason" or "cause" for failing to raise in a direct appeal the issues relating to procedural irregularities in his plea and sentencing hearings. Nor has Polly demonstrated he was prejudiced by the hearing infirmities he now points out. III. Also under the circumstances of this case and the Sykes cause-prejudice standard, we hold trial court's failure to hear the testimony of witnesses at a degree-of-guilt hearing under Iowa Code section 690.4 (since repealed) was not error that would justify setting aside the conviction in a postconviction proceeding years after the event. DISSENT ASSERTS: I. There is no basis for abandonment of this court's previous interpretation of Iowa Code section 663A.2. The postconviction court's finding that petitioner was unaware of the factual and legal grounds urged in the present action until after the period for appeal had expired is supported by substantial evidence and should be given the force of a jury verdict. II. Upon this record I would hold that petitioner's conviction should be reversed and he should be permitted to plead anew. III. The present issue is one of interpretation of Iowa statute and does not justify imposition of the Sykes cause-prejudice standard. The standard should in any event not be applied to decisions that cannot be delegated to counsel, such as the decision whether to appeal.

No. 83-967. JONES V. CITY OF DES MOINES.
Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge. Affirmed on both appeals. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Schultz, JJ. Opinion by Harris, J. (9 pages $3.60)

Defendant appeals and plaintiff cross-appeals from judgment upon a jury verdict for plaintiff in a personal injury suit. OPINION HOLDS: I. A jury instruction on proximate cause which used the words "moving or producing cause" sufficiently informed the jury of the substantial factor aspect of proximate cause. Although the instruction could have been improved, it was not reversible error. II. Defendant's argument that the court should have instructed the jury that there must be proof of actual amount of damages was without merit. There was proof of the actual amounts of the various items of damages, and a jury question as to those items was presented. It is only required that jurors be adequately instructed as to fairly answer the jury questions presented. III. The pro tanto rule provides for diminution of a recovery to the extent of a payment previously made, whether or not diminution is agreed upon. Trial court correctly allowed pro tanto credits in its computation of plaintiff's recovery.

No. 83-477. STATE v. DOSS.
Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (17 pages $6.80)

The defendant appeals from his conviction and sentence for the crime of murder in the first degree, a violation of Iowa Code sections 707.1 and 707.2. OPINION HOLDS: I. There was sufficient circumstantial evidence that the defendant knew about the murder plan to justify his conviction on a theory of aiding and abetting. II. There was sufficient corroborating evidence of accomplice testimony to permit the jury to find guilt. III. The trial court did not err by refusing to dismiss the indictment. A motion that merely challenges the sufficiency of the evidence supporting an indictment is not a ground for setting aside an indictment. Motions to dismiss indictments are governed by Iowa R. Crim. P. 10(6) rather than Iowa R. Crim. P. 4(3); the defendant's two motions did not state grounds for dismissal under rule 10(6). Moreover, the trial court did not abuse its discretion by refusing to supplement the indictment with a bill of particulars; the indictment, when read with minutes of testimony, was specific enough to apprise the defendant of the charge against him. IV. The trial court's instruction defining "accomplice" was adequate.

No. 69291. ADAM V. MT. PLEASANT BANK & TRUST CO.
On review from the Court of Appeals. Appeal from the Iowa District Court for Monroe County, James P. Rielly, Judge. Decision of court of appeals affirmed; judgment of district court reversed; case remanded. Considered by

Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Schultz, JJ. Opinion by Harris, J. (13 pages $5.20)

We granted further review of a decision of the court of appeals which reversed a partial summary judgment entered by the trial court in favor of defendant Blake Phelps in action by farmers to recover damages for grain lost in the financial collapse of the Prairie Grain Company of Stockport. OPINION HOLDS: I. Under notice pleading practice the plaintiffs' claim that defendant Phelps was personally liable for damages by piercing the corporate veil was not lost by reason of faulty pleading. II. Because the court did not enter an order under Iowa Rule of Civil Procedure 138 reciting any action taken at the pretrial conference, the dimensions of plaintiffs' claim were not limited by plaintiffs' failure to disclose in a pretrial conference brief the theory of recovery based on piercing the corporate veil. III. We adopt the court of appeals opinion that because plaintiffs' challenge to corporate legality is merely a casual issue in a case involving enforcement solely of private rights which do not relate to questions of public interest, the quo warranto remedy is neither the appropriate procedural device nor relevant to plaintiffs' theory of piercing the corporate veil. IV. We also subscribe to that part of the court of appeals opinion which holds that plaintiffs' allegations are sufficient to raise a fact question whether the company's corporate veil should be pierced in this case and, therefore, whether Phelps may be found personally liable. V. The court of appeals was correct in determining that limited liability for the company's officers, agents, and shareholders does not exist for matters occurring during suspension of the corporate charter.

No. 83-1244. IN RE MARRIAGE OF LEYDA.

Appeal from the Iowa District Court for Henry County, David B. Hendrickson, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Wolle, JJ. Opinion By Reynoldson, C.J. (12 pages $4.80)

In this dissolution decree modification proceeding, the parents contest the legal custody and physical care of their minor daughter. Trial court terminated joint custody, awarding custody and continued physical care to the mother. OPINION HOLDS: I. The father bears the burden to establish by a preponderance of evidence that conditions since the dissolution decree was entered have so materially and substantially changed that the child's best interests make it expedient to transfer her sole custody and care to him. II. The child's best interests would be served by granting her sole custody and care to the father with visitation rights to the mother.

No. 83-1302. SCHROEDER V. FULLER.

Appeal from the Iowa District Court for Mahaska County, James D. Jenkins, Judge. Affirmed. Considered by

Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by McCormick, J. (5 pages $2.00)

The defendants appeal with permission from a trial court order overruling their motion for summary judgment. OPINION HOLDS: I. A trial court has discretion to consider an affidavit filed by the party resisting summary judgment later than the time of filing provided in Iowa Rule of Civil Procedure 237(c). In the present case the defendants did not carry their burden to show an abuse of discretion. II. The defendants failed to demonstrate the absence of a genuine issue of material fact; the court did not err in overruling their motion for summary judgment.

No. 83-1618. ALLIS-CHALMERS CORP. V. EMMET COUNTY COUNCIL OF GOVERNMENTS.

Certified question of law from United States District Court, Edward J. McManus, Judge. Certified question answered. Considered en banc. Opinion by McCormick, J. (10 pages $4.00)

Pursuant to Iowa Code section 684A.1 (1983), the United States District Court certified a legal question involving the liability of governmental units that form entities under Iowa Code chapter 28E. OPINION HOLDS: Under the stipulated facts in the present case the individual members of a public corporate entity created under Iowa Code sections 28E.4 and 28E.5 are not jointly and severally liable with the corporate entity upon a written contract entered by the entity with a third party.

No. 83-1094. STATE V. GORDON.

Appeal from the Iowa District Court for Cerro Gordo County, Ray E. Clough, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by McGiverin, J. (6 pages $2.40)

The defendant appeals his conviction for first-degree murder. OPINION HOLDS: The trial court did not err by sustaining the State's relevancy objection to the defendant's proffered evidence that drugs and drug paraphernalia had been found in the victim's apartment.

No. 83-1078. STATE V. BRATTHAUER.

Appeal from the Iowa District Court for Clinton County, Robert K. Stohr, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by McCormick, J. (7 pages $2.80)

The defendant appeals from his conviction for operating a motor vehicle while intoxicated (third offense), in violation of Iowa Code section 321.281(1). An instruction had permitted the jury to find him guilty on either of two theories: proof that he was "under the influence", as

stated in section 321.281(1)(a), or proof that he had "thirteen hundredths or more of one percent by weight of alcohol in the blood", as stated in section 321.281(1)(b). The defendant had unsuccessfully challenged this instruction on the ground it permitted the jury to find him guilty without reaching unanimity as to the theory of guilt. OPINION HOLDS: The trial court did not deny due process by overruling the defendant's objection to the instruction. Section 321.281(1) does not define multiple offenses, but rather a single offense which can be committed in alternative ways. The alternatives are compatible with and not repugnant to each other. Because of this compatibility, the defendant was not denied his right to a unanimous verdict by the failure of the instruction to require jury unanimity on one of the alternative means for committing the offense.

No. 83-874. STATE V. WASHINGTON.
Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge. Affirmed in part; sentence vacated; remanded for resentencing. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by McGiverin, J. (12 pages $4.80)

Defendant appeals from his conviction of second-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(2), and his sentence as an habitual offender under sections 902.8 and 902.9(2). OPINION HOLDS: I. Defendant's motion to strike certain photographs and the testimony regarding them on the basis that several of the items shown were not listed in the minutes of evidence was untimely and error was therefore not preserved. II. It was not improper for the jury to consider whether defendant had actually stolen property because the State produced evidence sufficient to submit this issue to the jury, and an affirmative finding on the issue would have led to a verdict that defendant was guilty of the offense he was charged with (theft by exercising control over stolen property). III. The trial court properly denied defendant's motion to strike evidence pertaining to stolen items not in his possession at the time of his arrest. Defendant is liable to conviction for any commissions of the offense charged that fall within the statute of limitations. IV. The trial court's belief that no sentencing options were available was incorrect. The court's failure to exercise its sentencing discretion requires remand for resentencing.

NO. 183/69378. STATE v. MUNZ.
Appeal from the Iowa District Court for Johnson County, Thomas M. Horan, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Schultz, JJ. Opinion by Larson, J. (22 pages $8.80)

Defendant appeals his conviction on two counts of third-degree sexual abuse in violation of Iowa Code sections 709.1 and 709.4(5). At the time of the crimes charged here defendant was thirty-six and the victim was fourteen. OPINION HOLDS: I. The trial court did not err in admitting

photographs of defendant and the victim engaged in sex acts on dates other than the dates charged in the information over objection that the evidence was cumulative and more prejudicial than probative. II. The victim's testimony that seven days after the last offense took place defendant beat her when she attempted to break off their relationship was not admissible to bolster her credibility but was admissible as a subsequent similar act tending to show defendant's passion or propensity for illicit sexual relations with the victim. III. The trial court did not abuse its discretion in overruling a motion to strike as unresponsive an answer of the victim's mother to a question asked by defense counsel on cross-examination. IV. Defendant failed to preserve error on either of his two constitutional challenges to the facial validity of Iowa Code section 709.4(5) when he raised no constitutional attack on the statute until his motion for judgment of acquittal. V. The constitutional right to privacy does not prevent the state from criminalizing an adult's sexual activity with a minor. The statutory classification which discriminates among sex abuse defendants on the basis of age is not violative of equal protection. Because both constitutional challenges lack merit, trial counsel's failure to preserve error did not constitute ineffective assistance.

NO. 83-1102. BATY v. BINNS.

Appeal from Iowa District Court for Mahaska County, Robert Bates, Judge. Affirmed on both appeals. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by Carter, J. (7 pages $2.80)

Defendants and plaintiffs appeal from judgment for plaintiffs in an automobile negligence action. OPINION HOLDS: I. The doctrine of pure comparative negligence applied to the present case which was tried prior to, but decided after, our decision in Goetzman was filed. The doctrine applied to all cases pending, including appeals, in which the issue had been preserved. Plaintiffs' 179(b) motion requesting that the trial court alter its conclusions so as to apply the Goetzman doctrine of pure comparative negligence was the proper method of raising the issue since a party in a nonjury trial may challenge an erroneous conclusion of law embodied in a final decision after the decision is rendered. II. Evidence that after plaintiff observed defendants' auto approaching the highway in front of her from a driveway, she reduced speed but again increased speed on the assumption that defendants would stop before proceeding, was sufficient to support a finding of twenty percent negligence on the part of the plaintiff. Reasonable minds could differ with respect to the validity of plaintiff's assumption.

NO. 83-992. CARTER v. MACMILLAN OIL CO., INC.

Appeal from Iowa District Court for Polk County, J. P. Denato, Judge. Affirmed in part; reversed in part and

remanded. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by Carter, J. (10 pages $4.00)

Plaintiff appeals from an order sustaining a motion for judgment notwithstanding the verdict following a jury verdict awarding him damages in a malicious prosecution action. The trial court's ruling granting that motion was based on its conclusion that its instructions to the jury permitted recovery on an improper legal theory. In addition, the trial court sustained an alternative motion for new trial on the same ground. OPINION HOLDS: I. We agree with the trial court that to permit recovery on a theory of simple negligence in the instigation of a prosecution would be an unwarranted expansion of a plaintiff's right to recover on this type of tort claim. The proper remedy is a grant of a new trial on the issues of malicious prosecution and abuse of process rather than a judgment for defendant. II. The trial court did not err in sustaining relevancy objections to evidence that defendant had threatened to sue him for abuse of process if he commenced this action, that such a suit would have had no basis in law, that the employee of the defendant who accused him of theft was discharged for dishonesty, and that defendant had failed to recommend criminal prosecution in other instances involving somewhat similar fact situations. III. The trial court's instruction on malicious prosecution was erroneous because it required the jury to find "actual malice" rather than "legal malice." IV. The trial court did not err in failing to instruct the jury that plaintiff's acquittal on the criminal charge constitutes a prima facie showing of a lack of probable cause for the instigation of the prosecution. The obvious difference in the standard of proof required to establish guilt beyond a reasonable doubt, as contrasted with probable cause, negates any logical basis for such an instruction.

NO. 83-867. STATE v. HARTFORD.
Appeal from Iowa District Court for Marshall County, M. D. Seiser, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Per curiam. (4 pages $1.60)

The defendant appeals from his conviction and life sentence for the crime of kidnapping in the first degree. OPINION HOLDS: The mandatory life sentence imposed for first-degree kidnapping under Iowa Code section 710.2 is not cruel and unusual punishment on its face or as applied to this defendant; the mandatory life sentence does not offend against the proportionality requirements of the eighth amendment.

No. 69088. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT V. HUMPHREY.
Original action. Injunction issued. Considered en banc. Opinion by Harris, J. Dissent by Larson, J. (32 pages $12.80)

In an original action before this court plaintiff committee sought to enjoin defendant lawyers from advertising in violation of a disciplinary rule prohibiting television advertising which contains background sound, visual displays, more than a single, non-dramatic voice or self-laudatory statements. By counterclaim defendants sought that the rule, to the extent of their violation of it, be set aside as unconstitutional. OPINION HOLDS: I. Because the challenge is limited to the rule's constitutional basis, we set aside a number of criticisms that go only to the wisdom of the rule. II. The rule does not restrict the flow of relevant information needed to enable a consumer of legal services to reach an informed decision. The commercial speech which is restricted is not constitutionally protected. III. The state interests in the challenged provisions of the rule are substantial. IV. The prohibition against background sound, visual displays, multiple dramatic statements, and self-laudatory statements is not more extensive than necessary to serve the state interests. V. The terms used in the rule are not unconstitutionally vague. VI. Because we find that our advertising rule withstands defendants' constitutional challenge, we order that a writ issue, restraining defendants from continuing to place their advertisements. DISSENT ASSERTS: Our present advertising rules unnecessarily inhibit dissemination of relevant information without a showing of a substantial state interest. I would grant judgment for defendants on their counterclaim.

No. 83-1060. STATE v. EUBANKS

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McCormick, McGiverin, Carter, and Wolle, JJ. Opinion by Wolle,J. (9 pages $3.60)

The State was granted discretionary review of an order suppressing contraband seized from the defendant's purse. OPINION HOLDS: The officer was justified in conducting a warrantless serch of the defendant's automobile because both probable cause and exigent circumstances were present. Once the officer lawfully stopped the car and had probable cause to search for contraband, all containers within the car when it was stopped were fair game for the car search. The defendant could not insulate the purse from search by removing it from the car while the search was in progress. Moreover, regardless of whether the defendant would ordinarily have a reasonable expectation of privacy in her purse or billfold, that interest must yield to the State's legitimate interest in thoroughly searching lawfully stopped vehicles once there is probable cause for the vehicle search.

NO. 83-290. KENDALL v. LOWTHER.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. Affirmed as modified. Considered by Reynoldson, C.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by Wolle, J. (24 pages $9.60)

Former owners of real estate appeal from the decree in a quiet title action awarding the present owners damages for breach of warranties. OPINION HOLDS: I. The former owners were not entitled to reformation either on the strength of the evidence presented or on any legal principle governing boundaries. II. The doctrine of practical location is inapplicable to the facts of this case. III. In rejecting the former owners' position on the issues of reformation and practical location we necessarily affirm that portion of the decree in which the trial court decided where the present boundary should be located, because neither of the present property owners have appealed from that portion of the trial court's decree and no other theory has been offered for changing the location fixed by the decree. IV. The holders of legal title to the property in dispute established a right to recover from the former owners for breach of warranty when they lost title and were effectively evicted from a substantial part of the property described in their deed. V. The trial court properly awarded the holders of equitable title recovery of their attorney fees and expenses incurred in defending this action, based on the theory that the former owners had failed to warrant and defend the premises against a tenable but unsuccessful claim based on a superior legal title. We also find persuasive the alternative contention that they should recover their attorney fees because it was the former owners' negligence in failing to procure a proper survey and deed description that thrust them into this litigation. VI. There is no merit to the former owners' contention that the action was not brought in good faith and that attorney fees therefore should not have been awarded to plaintiffs. VII. The amounts awarded for expert witness expenses were not excessive. VIII. The trial court's decree is modified to disallow a portion of the award of attorney fees to plaintiffs not representing fees incurred in connection with the defense of their title to the property in dispute. Plaintiffs' request for attorney fees on appeal as an element of damages is denied.

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