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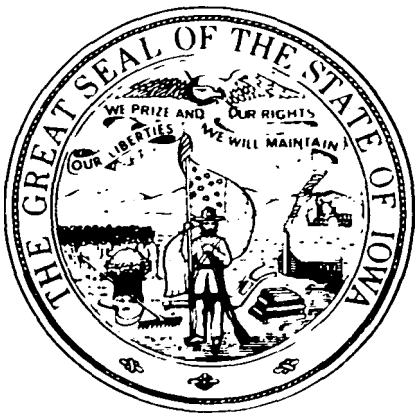

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME IX December 3, 1986 NUMBER 12 Pages 989 to 1088

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PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

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, regulatory flexibility analyses 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
DONNA WATERS, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
13	**Friday, November 28, 1986**	**December 17, 1986**
14	**Friday, December 12, 1986**	**December 31, 1986**
15	**Monday, December 29, 1986**	**January 14, 1987**

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, 1986, to June 30, 1987	$133.00 plus $5.32 sales tax
Second quarter	October 1, 1986, to June 30, 1987	$ 99.50 plus $3.98 sales tax
Third quarter	January 1, 1987, to June 30, 1987	$ 67.00 plus $2.68 sales tax
Fourth quarter	April 1, 1987, to June 30, 1987	$ 33.50 plus $1.34 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 - $700.00 plus $28.00 sales tax
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Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-5231

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Schedule for Rulemaking
1986

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 10	Jan. 29	Feb. 18	Mar. 5	Mar. 26	Apr 30	July 28
Jan. 24	Feb. 12	Mar. 4	Mar. 19	Apr. 9	May 14	Aug. 11
Feb. 7	Feb. 26	Mar. 18	Apr. 2	Apr. 23	May 28	Aug. 25
Feb. 21	Mar. 12	Apr. 1	Apr. 16	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	July 16	Aug. 20	Nov. 17
May 16	June 4	June 24	July 9	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 27	Oct. 1	Dec. 29
June 27	July 16	Aug. 5	Aug. 20	Sep. 10	Oct. 15	Jan. 12 '87
July 11	July 30	Aug. 19	Sep. 3	Sep. 24	Oct. 29	Jan. 26 '87
July 25	Aug. 13	Sep. 2	Sep. 17	Oct. 8	Nov. 12	Feb. 9 '87
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 22	Nov. 26	Feb. 23 '87
Aug. 22	Sep. 10	Sep. 30	Oct. 15	Nov. 5	Dec. 10	Mar. 9 '87
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Nov. 19	Dec. 24	Mar. 23 '87
Sep. 19	Oct. 8	Oct. 28	Nov. 12	Dec. 3	Jan. 7 '87	Apr. 6 '87
Oct. 3	Oct. 22	Nov. 11	Nov. 26	Dec. 17	Jan. 21 '87	Apr. 20 '87
Oct. 17	Nov. 5	Nov. 25	Dec. 10	Dec. 31	Feb. 4 '87	May 4 '87
Oct. 31	Nov. 19	Dec. 9	Dec. 24	Jan. 14 '87	Feb. 18 '87	May 18 '87
Nov. 14	Dec. 3	Dec. 23	Jan. 7 '87	Jan. 28 '87	Mar. 4 '87	June 1 '87
Nov. 28	Dec. 17	Jan. 6 '87	Jan. 21 '87	Feb. 11 '87	Mar. 18 '87	June 15 '87
Dec. 12	Dec. 31	Jan. 20 '87	Feb. 4 '87	Feb. 25 '87	Apr. 1 '87	June 29 '87
Dec. 26	Jan. 14 '87	Feb. 3 '87	Feb. 18 '87	Mar. 11 '87	Apr. 15 '87	July 13 '87

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. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

NOTICE

Beginning on June 14, 1985, the deadline for filing rules with the office of the Administrative Rules Coordinator will be **12 o'clock noon** rather than 4:30 p.m.

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

UNIFORM RULES OF STATE AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member Task Force in the summer of 1985 to draft uniform rules of agency procedure.

On December 16, 1985, the Task Force presented a report to the Governor. The Governor has accepted the Task Force recommendations on petitions for rule making and petitions for declaratory rulings which have been printed at the front of the Iowa Administrative Code for adoption by state agencies. [Green Tab — Uniform Rules]

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
On-site containment of pesticides, fertilizers and soil conditioners; amendments to ch 9 IAB 11/19/86 **ARC 7124**	Conference Room Second Floor Henry A. Wallace Bldg. Des Moines, Iowa	December 9, 1986 1 p.m.
ALCOHOLIC BEVERAGES DIVISION[185]		
Liquor licenses—beer permits—wine permits, 4.7(6) IAB 12/3/86 **ARC 7176**	Conference Room Central Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	December 29, 1986 1 p.m.
Intoxication notice, 4.39 IAB 12/3/86 **ARC 7178** (See also ARC 7177, herein)	Conference Room Central Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	December 29, 1986 1 p.m.
CONSERVATION COMMISSION[290]		
Motor regulations, 40.4(2) IAB 12/3/86 **ARC 7205**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	January 6, 1987 10 a.m.
CREDIT UNION DIVISION[189]		
Amendments to ch 5, Small employee groups; ch 6, Branch offices; ch 15, Foreign branch offices; New ch 16, Director election - absentee ballot IAB 11/19/86 **ARC 7153**	Conference Room Second Floor Executive Hills West Des Moines, Iowa	December 9, 1986 11 a.m.
ECONOMIC DEVELOPMENT DEPARTMENT[261]		
Young adult component, 14.7 IAB 11/19/86 **ARC 7125**	Office of Economic Development 200 E. Grand Ave. Des Moines, Iowa	December 9, 1986 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Controlling pollution, amendments to ch 22; Emission standards for contaminants, 23.1 IAB 12/3/86 **ARC 7188**	Conference Room Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	December 23, 1986 1 p.m.
	Conference Room Room 109 Geological Survey Bureau 123 N. Capitol St. Iowa City, Iowa	December 30, 1986 11 a.m.
	Community Hall Room Council Bluffs Parks and Recreation Office 205 South Main St. Council Bluffs, Iowa	January 6, 1987 11 a.m.
Animal feeding operations, amendments to ch 65 IAB 12/3/86 **ARC 7189**	Conference Room Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	December 23, 1986 10 a.m.
	Conference Room Room 109 Geological Survey Bureau 123 N. Capitol St. Iowa City, Iowa	December 30, 1986 1 p.m.
	Farm Credit Bldg. 1705 N. Lake Ave. Storm Lake, Iowa	January 5, 1987 1 p.m.

HUMAN SERVICES DEPARTMENT[498]		
Food stamp program, amendments to ch 65 IAB 12/3/86 **ARC 7180**	Cedar Rapids District Office Conference Room Sixth Floor 221 4th Avenue, S.E. Cedar Rapids, Iowa	December 29, 1986 10 a.m.
	Council Bluffs District Office Lower Level 417 E. Kanesville Boulevard Council Bluffs, Iowa	December 30, 1986 10 a.m.
	Davenport District Office Conference Room Fifth Floor 428 Western Avenue Davenport, Iowa	December 29, 1986 10:30 a.m.
	Des Moines District Office Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	December 29, 1986 1 p.m.
	Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	December 29, 1986 10 a.m.
	Ottumwa District Office Conference Room Fourth Floor 226 West Main Ottumwa, Iowa	December 29, 1986 10 a.m.
	Sioux City District Office Conference Room Second Floor 808-5th Street Sioux City, Iowa	December 29, 1986 7 p.m.
	Waterloo District Office Black Hawk County Conference Room Second Floor KWWL Building 500 East 4th Waterloo, Iowa	December 30, 1986 10 a.m.
INSURANCE DIVISION[193]		
Rule making and declaratory rulings, chs 2, 4 IAB 11/5/86 **ARC 7084**	Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	December 4, 1986 9 a.m.
JOB SERVICE, DIVISION OF[343]		
Claims and benefits, amendments to ch 4 IAB 11/19/86 **ARC 7141** (See also ARC 7140)	Office of Employment Services 1000 East Grand Ave. Des Moines, Iowa	December 10, 1986 9:30 a.m.
PUBLIC HEALTH DEPARTMENT[470]		
Mass gatherings, requirements, amendments to ch 19 IAB 11/19/86 **ARC 7137**	Conference Room No. 2 Third Floor Lucas State Office Bldg. Des Moines, Iowa	December 9, 1986 10 a.m.
Financial assistance for renal disease patients, amendments to ch 111 IAB 12/3/86 **ARC 7175**	Conference Room Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	December 23, 1986 1 p.m.

RACING AND GAMING DIVISION[195]		
Greyhound and mutual rules, amendments to chs 7 and 8 IAB 12/3/86 **ARC 7192**	Conference Room A 1918 S.E. Hulsizer Ave. Ankeny, Iowa	December 23, 1986 9 a.m.
TRANSPORTATION, DEPARTMENT OF[820]		
All-terrain vehicles, [07,D] 11.21(4) IAB 11/5/86 **ARC 7075** (See ARC 7074)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	December 16, 1986
Energy conservation trust fund appropriation, [09,B] ch 4, ch 5 IAB 11/5/86 **ARC 7072A** (See ARC 7072)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	December 16, 1986
Motor vehicle dealers, manufacturers and distributors exhibition permits, [07,D] 10.10(8) IAB 11/19/86 **ARC 7123** (See also ARC 7122)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	January 6, 1987
Designated highway system, amendments to [07,A] ch 1 IAB 12/3/86 **ARC 7161**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	January 20, 1987
UTILITIES, DIVISION OF[199]		
Purchased gas adjustments, 19.10; annual review of gas procurement practices, 19.11 IAB 11/5/86 **ARC 7115** Amended Notice IAB 12/3/86 **ARC 7195**	Board Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	December 16, 1986 10 a.m.
Inter LATA Telecommunications IAB 11/19/86 **ARC 7143**	Board Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	January 6, 1987 10 a.m.

ARC 7194

UTILITIES DIVISION[199]

NOTICE OF INVESTIGATION

Pursuant to Iowa Code section 476.1, the Utilities Board gives Notice that on November 13, 1986, the Board issued an "Order Initiating Investigation" in Docket No. INU-86-10, In Re: Deregulation of Billing and Collection Services. On June 18, 1986, the Board initiated a rulemaking proceeding proposing to amend its rules to prevent the detariffing of intrastate billing and collection services, see In Re: Intrastate Billing and Collection Service Tariffs, Docket No. RMU-86-16. The filed comments in that docket, however, opposed the proposed Board action, and so on August 22, 1986, the Board gave notice that, based on that record, at least parts of the billing and collection services would be deregulated. The Board intends to deregulate the majority of billing and collection services, and has initiated this investigation under 199 Iowa Administrative Code section 5 to investigate deregulation of those services.

There are several parts to billing and collection services, including the recording function, assembly and editing, message processing, message bill processing, bill rendering, and inquiry functions. Based on the comments received in Docket No. RMU-86-16, which has been officially noticed in this proceeding, all billing and collection functions except the recording function appeared to be competitive services. The recording function is the data collection phase of the service, in which Northwestern Bell records the time, location, and duration of the call. This represents the raw data on which all billing must be based. Based on the record in Docket No. RMU-86-16, it appears anyone with access to this raw data can process it into bills for services rendered. As long as Northwestern Bell shares this data with the interexchange carriers, it appears the rest of the billing and collection services may be deregulated.

The comments filed in RMU-86-16 appear to provide an adequate basis for deregulation of all except the recording function, and the Board proposes to deregulate those services as of January 1, 1987 (or as soon thereafter as is possible). At the same time, the Board intends to continue full rate regulation of the recording function, to prevent exploitation of this monopoly service. Therefore, the Board requests comment on both deregulation of the majority of the billing and collection services and on continued regulation of the recording service.

Any interested person may file a written statement of position pertaining to the proposed Board action, pursuant to 199 Iowa Administrative Code subrule 5.4(1). The statement must be filed on or before December 23, 1986, by filing an original and ten copies in a form substantially complying with 199 Iowa Administrative Code subrule 2.2(2). All communications shall be directed to the Executive Secretary, Utilities Board, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319.

ARC 7176

ALCOHOLIC BEVERAGES DIVISION[185]

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 123.21, subsection 11, the Iowa Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code. The amendment prohibits miniature bottles from being taken out of an on-premise establishment any time of the year but allows empty glasses, empty wine and liquor bottles, and empty beer containers to be taken out of an establishment.

Any interested party may make written suggestions or comments on these proposed amendments prior to December 29, 1986. Such written materials should be directed to the Licensing Supervisor, Iowa Alcoholic Beverages Division, 1918 S. E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Alcoholic Beverages Division at 515/964-6831. Also, there will be a public hearing on Monday, December 29, 1986, at 1 p.m. in the Conference Room in the Division'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 amendment is proposed.

Subrule 4.7(6) is amended to read as follows:

4.7(6) No licensee, permittee, its agents or employees, shall allow any filled, *or* partially filled, ~~or empty~~ liquor glasses or liquor bottles, including miniature liquor bottles ~~during the holiday season~~, to be taken off the licensed premises. However, unopened and opened containers and glasses of beer, *empty glasses, empty wine and liquor bottles, and empty beer containers* may be allowed to be taken off the licensed premises. A Class "E" liquor control licensee, its agents or employees, shall not permit other liquor control licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the Class "E" licensed premises.

ARC 7178

ALCOHOLIC BEVERAGES DIVISION[185]

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 1986 Iowa Acts, House File 2493, section 24, the Iowa Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code. The substance of these rules is published in this bulletin as **ARC 7177**, filed emergency and is hereby incorporated by reference.

Any interested party may make written suggestions or comments on these proposed amendments prior to December 29, 1986. Such written materials should be directed to the Licensing Supervisor, Iowa Alcoholic Beverages Division, 1918 S. E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Alcoholic Beverages Division at 515/964-6831. Also, there will be a public hearing on Monday, December 29, 1986, at 1 p.m. in the Conference Room in the Division'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.

ARC 7211

COLLEGE AID COMMISSION[245]

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 261.15, the College Aid Commission proposes to amend Chapter 4, "Iowa Tuition Grant Program," Iowa Administrative Code.

The amendments will require that institutions eligible to participate in the Iowa tuition grant program renew and refile their eligibility applications every three years rather than every five years. The amendments also will require the Commission to investigate and review institutional compliance at least every three years rather than at least every five years.

Interested persons may comment or submit requests for an oral presentation by writing the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, on or before January 5, 1987.

This rule is intended to implement Iowa Code chapter 261.

COLLEGE AID COMMISSION[245] *(cont'd)*

ITEM 1. Subrule 4.2(1), last paragraph, is proposed to read as follows:

Each applicant must renew and refile its application every ~~five (5)~~ *three (3)* years subsequent to initial approval for participation in the program.

ITEM 2. Subrule 4.2(5), paragraph "a," is proposed to read as follows:

a. The commission shall periodically, ~~no less than~~ *at least* every ~~five (5)~~ *three (3)* years, investigate and review compliance of institutions participating in the tuition grant program with criteria described in Iowa Code section 261.9 and this rule.

This rule is intended to implement Iowa Code chapter 261.

ARC 7205

CONSERVATION COMMISSION[290]

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 1986 Iowa Acts, Senate File 2175, section 1805, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Motor Regulations," Iowa Administrative Code.

This rule adds Lake Macbride, Johnson County, and Big Creek Lake, Polk County—unrestricted horsepower operated at a no-wake speed only from September 8 to May 20 of each year to the horsepower limitation exceptions for artificial lakes larger than 100 acres.

Any interested person may make written suggestions or comments on the proposed rule prior to January 6, 1987. Such written materials should be directed to the Law Enforcement Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50315-0034. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at 515/281-5919 or at the law enforcement offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on January 6, 1987, at 10 a.m. in the fourth floor conference room of the Wallace State Office Building, at which time persons may present their views either orally or in writing.

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

This rule is intended to implement the provisions of Iowa Code sections 106.3, 106.9, 106.26,and 106.31.

Subrule 40.4(2), paragraph "b," is amended by adding the following:

Lake Macbride, Johnson County—unrestricted horsepower operated at a no-wake speed only from September 8 through May 20 of each year.

Big Creek Lake, Polk County—unrestricted horsepower operated at a no-wake speed only from September 8 through May 20 of each year.

ARC 7179

EDUCATION, DEPARTMENT OF[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 section 280A.33, the Iowa Department of Education hereby gives Notice of Intended Action to amend Chapter 5, "Area Vocational Schools and Community Colleges," Iowa Administrative Code, by adding a new subrule to rule 5.2(280A).

The inclusion will formulate administrative rules for the governance of credit hours and minimal credit course requirements.

Any interested person may make written comments or suggestions on the proposed amendment prior to December 23, 1986. Written materials should be directed to Chief, Bureau of Area Schools, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. Persons who wish to convey their views orally should contact the Chief, Bureau of Area Schools at (515) 281-3599, or in the Bureau of Area Schools on the third floor of the Grimes State Office Building. No public hearing is planned.

The following amendment is proposed:

Amend rule 670—5.2(280A) by adding the following subrule:

5.2(13) Credit hour. Credit hours shall be determined in line with the following procedures.

a. Specifically stated criteria are minimal requirements only which institutions may exceed at their discretion.

b. Instruction is subdivided into four (4) instructional methods as herein defined.

(1) Classroom work — lecture and formalized classroom instruction under the supervision of an instructor.

(2) Laboratory work — experimentation and practice by students under the supervision of an instructor.

(3) Clinical practice — applied learning experience in a health agency or office under the supervision of an instructor.

(4) Work experience — work experience planned and coordinated by an institutional representative and the employer, with control and supervision of the student on the job being the responsibility of the employer.

c. Structured culminating activity(ies) for each course offering is above and beyond the minimal instructional requirements. Appropriate activities for structured culminating activity(ies) include but are not limited to:

(1) Written final examinations.

(2) Oral final examinations.

(3) Skill performance evaluations.

(4) Other structured activities deemed supplementary to the instructional process.

d. No registration or orientation hours may be included when determining credit hours.

e. Institutions shall take into account the soundness of the learning environment being created by the scheduling sequence and length of classroom, laboratory,

clinical, and work experience sessions. However, the final decision on these matters is left to the institutional administration so long as minimal standards are met.

f. A fractional unit of credit may be awarded in a manner consistent with the specific minimal credit course requirements.

g. Only minutes for students officially registered for courses or programs, including audit registration, may be included when determining credit hours.

h. Credit hours shall be identified for self-paced courses or programs in accord with the credit hours that would have been assigned if the program had been taught by conventional methods.

i. Individualized learning experiences for which an equivalent course is not offered shall have the program length computed from records of attendance using such procedures as a time clock or sign-in records.

j. Classroom work.

(1) The minimal requirements for one semester hour of credit shall be 800 minutes of scheduled instruction plus (when applicable) a scheduled culminating activity.

(2) The minimal requirement for one quarter hour of credit shall be 533 minutes of scheduled instruction plus (when applicable) a scheduled culminating activity.

k. Laboratory work.

(1) The minimal requirement for one semester hour of credit shall be 1,600 minutes of scheduled laboratory work plus (when applicable) a scheduled culminating activity.

(2) The minimal requirement for one quarter hour of credit shall be 1,066 minutes of scheduled laboratory work plus (when applicable) a scheduled culminating activity.

l. Clinical practice.

(1) The minimal requirement for one semester hour of credit shall be 2,400 minutes of scheduled clinical practice plus (when applicable) a scheduled culminating activity.

(2) The minimal requirement for one quarter hour of credit shall be 1,599 minutes of scheduled clinical practice plus (when applicable) a scheduled culminating activity.

m. Work experience.

(1) The minimal requirement for one semester hour of credit shall be 3,200 minutes of scheduled work experience plus (when applicable) a scheduled culminating activity.

(2) The minimal requirement for one quarter hour of credit shall be 2,132 minutes of scheduled work experience plus (when applicable) a scheduled culminating activity.

This rule will be effective in the fall term of 1987-1988 school year.

This rule is intended to implement Iowa Code section 280A.33.

ARC 7188

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.133(2), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution" of the Iowa Administrative Code as it pertains to the permit requirements for new stationary sources of air pollution. These amendments also propose related changes in Chapter 23, "Emission Standards for Contaminants."

Iowa Code section 455B.133(1) authorizes the Commission to develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in Iowa. Among other measures specified in 455B.133(1) to be included in the plans and programs are measures to prevent the significant deterioration of air quality. By this action, the Commission proposes to adopt a program for the review and permitting of major sources which intend to locate in areas which have been designated as "attainment" or which are unclassified. This Prevention of Significant Deterioration (PSD) program is required to be developed, implemented and enforced by Part C of the Clean Air Act, and is currently being conducted in Iowa by the Environmental Protection Agency.

The proposed amendments, in detail, are as follows:

Item 1 pertains to amendment of subrule 22.1(2) providing for exemptions to the general requirement to obtain a permit prior to constructing, installing, reconstructing or altering equipment or control equipment. The amendment provides that the exemption applies only if a permit is not required as a special requirement. In this instance, if a PSD permit is required no exemptions apply.

Item 2 adopts by reference the federal rules pertaining to the federal PSD air permit program, 40 C.F.R. subsection 52.21 as amended through August 7, 1980. Specific subsections include definitions (subsection 52.21(c)), exclusions from increment consumption (subsection 52.21(f)), stack heights (subsection 52.21(h)), and air quality analysis (subsection 52.21(m)). The entire rule, subsection 52.21(a)-(w), is available from the Department.

Item 3 amends subrule 23.1(1) to include, as federal emission standards applicable to sources in Iowa, the federal PSD standards adopted by reference by the Department.

Any person may file with the director written comments on the proposed rules by January 10, 1987. Interested persons may also provide oral comments at public hearings to be held at 1 p.m. on December 23, 1986, in the Fifth Floor Conference Room of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319; at 11 a.m. on December 30, 1986, in Conference Room 109, Geological Survey Bureau,

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Department of Natural Resources, 123 N. Capitol Street, Iowa City, Iowa; and on January 6, 1987, at 11 a.m. in the Community Hall Room of the Council Bluffs Parks and Recreation Office, 205 South Main Street, Council Bluffs, Iowa.

These rules are intended to implement Iowa Code section 455B.133.

The following amendments are proposed:

ITEM 1. Amend the first unnumbered paragraph of subrule 22.1(2) to read as follows:

22.1(2) Exemptions. The provisions of this rule shall not apply to the following listed equipment or control equipment unless review of ~~such~~ *the* equipment or control equipment is necessary to comply with rule *22.4(455B) or* 22.5(455B), in which case a permit must be obtained.

ITEM 2. Amend chapter 22 by adding rule 22.4(455B) which reads as follows:

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 C.F.R. subsection 52.21 as amended through August 7, 1980.

22.4(1) Federal rules 40 C.F.R. 52.21(a) (Plan Approval), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority), are not adopted by reference. Also, for the purposes of 40 C.F.R. 52.21(l), the department adopts the 1986 edition of EPA's document "Guideline on Air Quality Models."

22.4(2) The term "administrator" shall mean the director of the department of natural resources except that:

a. In subparagraph 52.21(b)(3)(iii) relating to "net emissions increase," it shall mean both the director of the Department of Natural Resources and the administrator of the Environmental Protection Agency (EPA).

b. It shall mean the administrator of EPA in 52.21(b)(17), 52.21(f)(1)(v), 52.21(f)(3), 52.21(f)(4)(i), 52.21(g)(1)-(g)(6), 52.21(l)(2), 52.21(p)(1) and (p)(2), and 52.21(t).

22.4(3) The procedural requirements of 40 C.F.R. 51.24(q) (except the phrase "The plan shall provide that . . .") are hereby adopted by reference. For the purposes of this subrule the phrase "specified time period" shall mean thirty (30) days. The term "administrator" as it appears in subparagraph 51.24(q)(2)(iv) shall mean the administrator of EPA.

ITEM 3. Subrule 23.1(1) is amended to read as follows:

23.1(1) In general. The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in 23.1(3). *The federal standards for best available control technology (BACT) shall be applicable as specified in subrule 22.4(1).* Compliance with emission standards specified elsewhere in this chapter shall be in accordance with chapter 21 of these rules.

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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 §17A.4(1)"b", Iowa Code.

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 1986 Iowa Acts, Senate File 2175, section 1806, and Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission of the Iowa Department of Natural Resources hereby gives Notice of Intended Action to amend Chapter 65, "Animal Feeding Operations." The purpose of these proposed amendments is to implement recommendations of a Governor's task force and legislative committees regarding the Department's regulation of animal-feeding operations. In general, the changes simplify the rules, make them more consistent with federal regulations and provide more flexibility to feedlot operators.

Item 1 deletes, modifies, or adds definitions of terms that apply in these rules, in the interest of simplification and clarification, and to provide more information.

Item 2 revises the minimum waste control requirements which apply to all animal-feeding operations, again primarily to simplify or clarify the rules. Subrule 65.2(2) adds a cross-reference to a new Appendix A (Item 10), which is intended to provide operators with control and disposal options that will enable them to comply. Subrule 65.2(3) adds operational conditions for confinement feeding operations. These conditions were placed in operation permits under existing rules. Since these proposed amendments will delete the requirement to obtain an operation permit for most confinement operations, the standard operating conditions are now being placed in the rules. A new subrule 65.2(8) is added to require that wastes be removed from discontinued operations within a reasonable time. This requirement is added to clarify the Department's authority and put operators on clear notice of their obligations.

Item 3 rewrites the Department's rules as to what operations are required to have an operation permit, to be equivalent to the federal rules. The subrule commonly referred to as the "two-foot" rule and the subrule requiring many confinement units to obtain operation permits will be removed.

Item 4 revises the current rule on departmental, case-by-case evaluation of operations to determine whether an operation permit should be required. The revisions are to make the wording clearer and to conform the rules to federal regulations.

Item 5 makes minor revisions in the Department's rules regarding operation permit application and issuance procedures.

Item 6 makes similar minor revisions to the Department's construction permit requirements. Some confinement units which will no longer be required to obtain operation permits will still need to obtain a construction permit. Those operations which will need a construction permit are open feedlots that need an operation permit under the rules, or confinement units that (1) utilize an

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anaerobic lagoon, (2) utilize an earthen storage basin and exceed specified (moderately sized) animal capacities, or (3) exceed specified (very large) animal capacities.

Item 7 makes minor clarifications in the rule relating to transfer of operations.

Item 8 simply changes a rule number.

Item 9 adopts a new interpretive rule regarding the applicability of these rule revisions vis-a-vis Iowa Code chapter 172D.

Item 10 adopts a new Appendix A to the rules, which provides four options to open feedlot operators required to have an NPDES permit, regarding the design and operation of waste control facilities to enable compliance with the Department's rules. The Department also solicits comments on whether a fifth control and disposal option, calling for waste disposal in the April-May and October-November time periods should be added.

Item 11 makes minor modifications to the Department's land disposal guidelines, in the interest of clarity.

Any interested person may make written suggestions or comments on these proposed rules on or before January 16, 1987. Such written materials should be directed to the Chief, Surface and Ground Water Protection Bureau, Environmental Protection Division, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Interested persons may also provide oral comments at public hearings to be held on December 23, 1986, at 10 a.m. in the fifth floor conference room of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa; December 30, 1986, at 1 p.m. in Conference Room 109, Geological Survey Bureau, Department of Natural Resources, 123 N. Capitol Street, Iowa City, Iowa; and on January 5, 1987, at 1 p.m. at the Farm Credit Building, 1705 North Lake Avenue, Storm Lake, Iowa.

These rules are intended to implement Iowa Code chapter 455B, division III, part I, as amended by 1985 Iowa Acts, chapter 176 and 1986 Iowa Acts, Senate File 2175, sections 1899, 1899A, and 1899B, House File 2065, section 29, and House File 2221, section 1, and Iowa Code section 455B.134(3)"e."

ITEM 1. Amend rule **567—65.1(455B)** by striking the subrule numbers, placing the definitions in alphabetical order, striking the definitions of "animal enclosure," "application for construction permit," and "application for operation permit," and amending or adding definitions as follows:

"Anaerobic lagoon" means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot feeding operation; or

2. A waste slurry storage basin which receives waste discharges from confinement-feeding operations and which is designed for complete removal of accumulated wastes from the basin at least semiannually; or

3. Any anaerobic treatment system which includes collection and treatment facilities for all off gases.

"Animal capacity" means the maximum number of animals which *the owner or operator* will ~~be~~ confined~~, as determined by the applicant,~~ in an animal-feeding operation at any one time.

"Animal-feeding operation" means ~~an animal enclosure~~ *a lot, yard, corral, building, or other area* in which animals are confined and fed or maintained *for forty-five (45) days or more in any twelve (12)-month period.* Two or more animal ~~enclosures~~ *feeding operations* under common ownership or management are deemed to be a single animal-feeding operation if ~~the enclosures~~ *they* are adjacent or *utilize* a common area or system ~~is utilized~~ for *waste* ~~the~~ disposal ~~of waste from the enclosures~~.

"Animal unit" means a unit of measurement used to determine the animal capacity of an animal-feeding operation containing two or more species of animals. The animal unit capacity of an operation is determined by multiplying the number of animals of each species by the appropriate equivalency factor from Table 1, and summing the resulting totals for all animal species contained in the operation.

TABLE 1

Animal Unit Equivalency Factors

Animal Species	*Equivalency Factor*
Slaughter and feeder cattle	*1.0*
Mature dairy cattle	*1.4*
Swine, butcher and breeding (over 55 lbs.)	*0.5*
Sheep or lambs	*0.1*
Horses	*2.0*
Turkeys	*0.018*
Chickens, broiler or layer	*0.01*

"Confinement-feeding operation" means ~~an~~ *totally roofed* animal-feeding operation ~~consisting of one or more totally roofed animal enclosures in which animals are confined and fed or maintained for 45 days or more in any twelve-month period and~~ in which wastes are stored or removed as a liquid or semiliquid.

"Construction permit" means a written approval of the ~~executive director~~ *department* to construct a ~~waste disposal system~~ *waste control facility* or part thereof ~~in accordance with the plans and specifications approved by the department~~.

"Discontinued animal-feeding operation" means an animal-feeding operation whose use has been discontinued and the owner or operator does not intend to resume its use for a period of twelve (12) months or more.

"Man-made waste drainage system" means a drainage ditch, flushing system, or other drainage device which was constructed by man and is used for the purpose of transporting wastes.

"New animal-feeding operation" means an animal-feeding operation whose construction was ~~commenced~~ *begun* ~~on or~~ after ~~August 16, 1976~~ *(effective date of rule revisions)*, or whose operation is ~~again commenced~~ *resumed* after *having been discontinued for* a period of twelve *(12)* months or more ~~of discontinued operation~~.

"Open feedlot" means an *unroofed or partially roofed* animal-feeding operation ~~consisting of one or more unroofed or partially roofed animal enclosures in which animals are confined and fed or maintained for 45 days or more in any twelve-month period and~~ *in which* no crop, vegetation, or forage growth or residue cover is ~~sustained~~ *maintained* during the period ~~of confinement~~ *that animals are confined in the operation.*

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"Operation permit" means a written permit ~~by the executive director specifying the conditions and requirements under which the operation of a waste disposal system or part thereof or discharge source is authorized, and, if applicable, the conditions and requirements under which the discharge of wastes from said disposal system or part thereof or discharge source to a water of the state is authorized~~ *of the department authorizing the operation of a waste control facility or part thereof.*

ITEM 2. Amend 567—65.2(455B) as follows:

567—65.2(455B) Minimum waste control requirements. Waste control facilities shall be constructed and maintained to meet the minimum waste control requirements stated in the following paragraphs:~~ provided that if site topography, operating procedures, experience and available information indicate that adequate water pollution control can be achieved with less than the minimum requirements, the minimum requirements may be waived; provided further that if site topography, operating procedures, experience and other available information indicate that more than minimum requirements will be necessary to achieve adequate water pollution control, additional control provisions may be required.~~

65.2(1) The minimum level of waste control for any animal-feeding operation shall be the removal of settleable solids from the wastes prior to discharge into a water of the state.

a. Settleable solids removal may be accomplished by use of solids-settling basins, terraces, diversions, or other solids-removal methods. Construction of solids-settling facilities shall not be required where existing site conditions provide adequate settleable solids removal.

b. Removal of ~~S~~settleable waste solids ~~removal~~ shall be considered adequate when the ~~waste flow~~ velocity *of waste flows* has been reduced to less than 0.5 foot per second for a minimum of five *(5)* minutes. ~~Settleable solids-removal facilities shall provide, as a minimum, adequate volume~~ *Sufficient capacity shall be provided in the solids-settling facilities* to store settled ~~waste~~ solids between periods of *waste* disposal and *to* provide the ~~specified~~ *required* flow-velocity reduction ~~and retention~~ for ~~runoff~~ *waste* flow volumes resulting from precipitation events of less~~er~~ intensity than the ten-year, one-hour frequency ~~precipitation~~ event. ~~For settleable solids removal from~~ *Solids-settling facilities receiving* open feedlot runoff, *shall provide* a minimum of one square foot of surface area ~~shall be provided in the solids-removal facilities~~ for each eight *(8)* cubic feet of runoff per hour resulting from the ten *(10)*-year, one *(1)*-hour frequency-precipitation event. ~~Wastes removed from the animal-feeding operation and settled waste solids shall be disposed of by land disposal in accordance with 65.2(6).~~

NOTE: Last paragraph was moved to new paragraph "a."

65.2(2) The minimum level of waste control for an open feedlot covered by the operation permit application requirements of subrule 65.3(1)~~, 65.3~~ or 65.3(4*2*) shall be retention of all waste *flows* from the feedlot areas and ~~from~~ *all* other waste-contributing areas resulting from the twenty-five *(25)*-year, twenty-four *(24)*-hour ~~frequency~~ precipitation event. ~~As an alternative to providing the above specified level of waste control, a feedlot may take such actions as are necessary to eliminate the conditions under which the feedlot was required to apply for a permit, provided that elimination of such conditions will provide an adequate level of waste control. All waste removed from the feedlot and its waste-control facilities shall be disposed of by land disposal in accordance with 65.2(6).~~ *Open feedlots which design, construct, and operate waste control facilities in accordance with the requirements of any of the waste control alternatives listed in Appendix A of these rules shall be considered to be in compliance with this rule, unless waste discharges from the waste control facility cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional waste control requirements upon the feedlot, as specified in subrule 65.2(4).*

Control of wastes from open feedlots may be accomplished through use of waste retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or waste-storage areas may be required. Waste solids-settling facilities shall precede the waste retention basins or terraces.

65.2(3) The minimum level of waste control for a confinement-feeding operation shall be the retention of all wastes produced in the confinement enclosures *between periods of waste disposal* ~~and land disposal of such wastes in accordance with 65.2(6)~~. *In no case shall wastes from a confinement-feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.*

a. Control of wastes from confinement-feeding operations may be accomplished through use of earthen waste storage structures (such as lagoons or earthen waste storage basins), formed waste storage tanks (such as concrete, steel, or wood tanks), or other waste control methods. ~~Adequate waste storage~~ *Sufficient* capacity shall be provided *in the waste control facilities* to ~~retain~~ *store* all wastes ~~produced~~ between periods of waste disposal. Additional capacity shall be provided if *precipitation or* wastes from other sources ~~are to be handled by~~ *can enter* the waste ~~disposal system~~ *control facilities.*

b. Wastes shall be removed from the waste control facilities as necessary to prevent overflow or discharge of wastes from the facilities. Wastes stored in earthen waste storage structures (lagoons or earthen waste storage basins) shall be removed from the structures as necessary to maintain a minimum of two (2) feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent waste overflow.

c. To ensure that adequate capacity exists in the waste control facilities to retain all wastes produced during periods when waste disposal operations cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors), waste shall be removed from the waste control facilities as needed prior to these periods.

65.2(4) *If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of waste control than that specified in subrule 65.2(1), 65.2(2), or 65.2(3) is required to provide an adequate level of water pollution control for a specific animal-feeding operation, the department may establish different minimum waste control requirements for that operation.*

65.2(45) In lieu of ~~providing~~ *using* the ~~applicable level of~~ waste control *methods* specified in *subrule* 65.2(1), 65.2(2), or 65.2(3), the department may ~~permit~~ *allow* the use of waste treatment or other methods of waste control ~~when the department~~ *if it* determines that an adequate level of waste control will ~~be provided~~ *result.*

65.2(56) No direct ~~waste~~ discharge shall be allowed from an animal-feeding operation into a publicly owned

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lake ~~or impoundment or into~~, a sinkhole, *or an agricultural drainage well.*

65.2(67) All wastes removed from an animal-feeding operation or its waste control facilities shall be disposed of by land application in a manner which will not cause surface or groundwater pollution. Disposal in accordance with the land disposal guidelines ~~adopted by the Iowa water quality commission on June 23, 1976,~~ *listed in Appendix B of these rules* shall be deemed as compliance with this requirement.

65.2(8) *As soon as practical but not later than six (6) months after the use of an animal-feeding operation is discontinued, all wastes shall be removed from the discontinued animal-feeding operation and its waste control facilities and be disposed of by land application.*

ITEM 3. Rescind rule 567—65.3(455B) and replace it with the following:

567—65.3(455B) Operation permit required. An animal-feeding operation shall apply for and obtain an operation permit if any of the following conditions exist:

65.3(1) The capacity of an open feedlot exceeds any of the following:

a. 1,000 beef cattle
b. 700 dairy cattle
c. 2,500 butcher and breeding swine (over 55 lbs.)
d. 10,000 sheep or lambs
e. 55,000 turkeys
f. 500 horses
g. 1,000 animal units

65.3(2) Wastes from the operation are discharged into a water of the state through a man-made waste drainage system or are discharged directly into a water of the state which originates outside of and traverses the operation, and the capacity of the operation exceeds:

a. 300 beef cattle
b. 200 dairy cattle
c. 750 butcher and breeding swine (over 55 lbs.)
d. 3,000 sheep or lambs
e. 16,500 turkeys
f. 30,000 broiler or layer chickens
g. 150 horses
h. 300 animal units

65.3(3) The department notifies the operation in writing that, in accordance with the departmental evaluation provisions of subrule 65.4(2), paragraph "a," application for an operation permit is required.

ITEM 4. Adopt a new rule 567—65.4(455B) as follows:

567—65.4(455B) Departmental evaluation.

65.4(1) The department may evaluate any animal-feeding operation to determine if any of the following conditions exist:

a. Wastes from the operation are being discharged into a water of the state and the operation is not providing the applicable minimum level of waste control as specified in subrule 65.2(1), 65.2(2), or 65.2(3);

b. Wastes from the operation are causing or may reasonably be expected to cause pollution of a water of the state; or

c. Wastes from the operation are causing or may reasonably be expected to cause a violation of state water quality standards.

65.4(2) If departmental evaluation determines that any of the conditions listed in subrule 65.4(1) exist, the operation shall:

a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in subrule 65.3(2) shall be required to apply for a permit unless wastes from the operation are discharged into a water of the state through a man-made waste drainage system or are discharged into a water of the state which traverses the operation.

b. Institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal-feeding operations, regardless of animal capacity.

ITEM 5. Renumber existing rule 567—65.4(455B) as 567—65.5(455B) and further amend it as follows:

567—65.5(455B) Operation permits.

65.5(1) Existing animal-feeding operations holding an operation permit. Animal-feeding operations which hold a valid ~~state~~ operation permit issued ~~by the department or the Iowa department of health prior to August 16, 1976,~~ *prior to (effective date of rule revisions)* ~~shall~~ *are* not ~~be~~ required to reapply for ~~a state~~ *an* operation permit ~~but shall submit such information as deemed necessary by the executive director to determine conformity of the operation with rules of the department within ninety days of receipt of a request for such information from the executive director. The previous sentence notwithstanding,~~ *However,* ~~such~~ *the* operations ~~shall make application~~ *are required to apply* for permit renewal in accordance with *subrule* 65.45(10) ~~for continued operation beyond the permit expiration date~~.

65.5(2) Existing animal-feeding operations not holding an operation permit. Animal-feeding operations in existence on ~~August 16, 1976, and~~ *(effective date of rule revisions) which are* covered by *the* operation permit provisions of *subrule* 65.3(1) ~~to 65.3(4)~~ *or 65.3(2) but have not obtained a permit* shall ~~make application~~ *apply* for ~~a state~~ *an* operation permit prior to ~~April 1, 1977~~ *(new date which is six (6) months after effective date of rule revisions).* Once ~~proper~~ application has been made ~~and the application is in process, continued operation of~~ the animal-feeding operation *is authorized to continue to operate* without a permit ~~is authorized unless and~~ until the application has either been approved or disapproved by the ~~executive director~~ *department.*

65.5(3) Expansion of existing animal-feeding operations. A person intending to expand an existing animal-feeding operation which ~~will~~, upon completion of the expansion, *will* be covered by the operation permit provisions of *subrule* 65.3(1) ~~to 65.3(4)~~ *or 65.3(2)* shall apply for ~~a state~~ *an* operation permit at least ~~ninety~~ *one hundred eighty (180)* days prior to the date operation of the expanded facility is scheduled ~~unless a shorter period of time is approved by the executive director. The previous sentence notwithstanding, a person intending to expand an existing animal feeding operation which would, upon completion of the expansion, be subject to 40 C.F.R. subsection 125.51 as amended by 41 Federal Register 11460 (March 18, 1976) shall apply for a state operation permit at least one hundred eighty days prior to the date operation of the expanded facility is scheduled. A person shall not begin o~~Operation of the expanded portion of the facility ~~without first obtaining~~ *shall not begin until* an operation permit ~~from the executive director~~ *has been obtained.*

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65.5(4) New animal-feeding operations. A person intending to ~~initiate~~ *begin* a new animal-feeding operation which ~~will~~, upon completion, *will* be covered by the operation permit provisions of *subrule* 65.3(1) ~~to 65.3(4)~~ *or 65.3(2)* shall apply for ~~a state~~ *an* operation permit at least ~~ninety~~ *one hundred eighty (180)* days prior to the date operation of the new animal-feeding facility is scheduled~~, unless a shorter period of time is approved by the executive director. The previous sentence notwithstanding, a person intending to initiate a new animal-feeding operation which operation would, upon completion, be subject to 40 C.F.R. subsection 125.51 as amended by 41 Federal Register 11460 (March 18, 1976) shall apply for a state operation permit at least one hundred eighty days prior to the date operation of the new animal-feeding facility is scheduled. A person shall not begin o~~*O*peration of ~~such~~ *the* new facility ~~without first obtaining~~ *shall not begin until* an operation permit ~~from the executive director~~ *has been obtained.*

65.5(5) Permits required as a result of departmental ~~investigation~~ *evaluation.* An animal-feeding operation which is required to apply for ~~a state~~ *an* operation permit as a result of departmental ~~investigation~~ *evaluation* (in accordance with the provisions of ~~65.3(5)~~ *subrule 65.4(2), paragraph "a,"*) shall ~~make application~~ *apply* for an operation permit within ninety *(90)* days of *receiving* written notification ~~by the executive director~~ of the need to ~~apply for~~ *obtain* a permit. Once ~~proper~~ application has been made ~~and the application is in process, continued operation of~~ the animal-feeding operation ~~without an operation permit~~ *is authorized to continue to operate without a permit* ~~is authorized unless and~~ until the application has either been approved or disapproved by the ~~executive director~~ *department.*

65.5(6) *Voluntary operation permit applications. Applications for operation permits received from animal-feeding operations not meeting the operation permit requirements of subrules 65.3(1) to 65.3(3) will be acknowledged by the department and returned to the applicant. Operation permits will not be issued for facilities not meeting the permit requirements of subrules 65.3(1) to 65.3(3).*

65.5(~~6~~7) Application forms. An application for an operation permit shall be made on a form provided by the department. The application shall be complete and shall ~~include~~ *contain* ~~such~~ detailed information as deemed necessary ~~to~~ *by* the ~~executive director~~ *department.* The application shall be signed by the person who is legally responsible for the animal-feeding operation and its associated waste ~~disposal~~ *control* system.

~~**65.4(7) Deadline for acting on operation permit applications for new or expanded operations. The executive director shall issue or deny an operation permit for a new or expanded operation within ninety days of receipt of a complete application unless a longer period of time is required and the applicant is so notified in writing prior to expiration of the ninety-day period. Notwithstanding the ninety-day requirement of 65.4(3) and 65.3(4), operation of the approved system may commence immediately after the issuance of an operation permit.**~~

65.5(8) Compliance schedule. When necessary to comply with a present standard or a standard which must be met at a future date, an operation permit shall include a schedule for ~~alteration~~ *modification* of the permitted facility to meet ~~said~~ *the* standard. Such schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to *subrule* ~~65.5(1)~~ *65.6(1).*

65.5(9) Permit conditions. Operation permits shall contain ~~such~~ conditions ~~as are deemed~~ *considered* necessary by the ~~executive director~~ *department* to assure compliance with all applicable rules of the department, to assure that the waste-disposal system is properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from waste storage or disposal operations. *Self-monitoring and reporting requirements which may be imposed on animal-feeding operations are specified in departmental subrule 63.4(1).*

65.5(10) Permit renewal. An operation permit may be ~~granted~~ *issued* for any period of time not to exceed five *(5)* years. *An* ~~A~~application for renewal of an operation permit must be submitted to the department at least one hundred ~~twenty~~ *eighty (180)* days ~~in advance of~~ *prior to* the date the permit expires. Each permit to be renewed shall be subject to the provisions of those rules of the department which apply to the ~~operation~~ *facility* at the time of renewal.

~~a. An operation permit which contains an expiration date will be reviewed at the time of renewal to determine the need for an operation permit in accordance with 65.3(1) to 65.3(5). An~~ *A permitted* animal-feeding operation *which does* not meet~~ing~~ the operation-permit requirements of *subrules* 65.3(1) to 65.3(~~5~~*3*) will be exempted from the need to retain that permit at the time of permit renewal, and the existing operation permit will not be renewed.

~~b. An operation permit which does not contain an expiration date will be reviewed to determine the need for an operation permit in accordance with 65.3(1) to 65.3(5). An animal-feeding operation not meeting the operation-permit requirements of 65.3(1) to 65.3(5) will be exempted from the need to retain that permit at the time of permit review, and the existing operation permit will be revoked. An animal-feeding operation which meets the operation-permit requirements of 65.3(1) to 65.3(5) will be notified of the need to retain an operation permit at the time of permit review, and the existing operation permit shall be modified to include an expiration date.~~

65.5(11) Permit modification, suspension, or revocation. The ~~executive director~~ *department* may modify, suspend, or revoke in whole or ~~in~~ part any operation permit for cause. Cause for modification, suspension, or revocation of a permit *may* includes the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to submit the records and information ~~as~~ *that* the ~~executive director~~ *department* ~~shall~~ requires ~~both generally and as a condition of the operation permit~~ in order to assure compliance with the operation and discharge conditions ~~specified in~~ *of* the permit.

ITEM 6. Renumber existing rule 567—65.5(455B) as 567—65.6(455B) and further amend it as follows:

567—65.6(455B) Construction permits.

65.6(1) Animal-feeding operations ~~for which~~ *required to obtain* a construction permit ~~is required~~.

a. An animal-feeding operation covered by the operation permit ~~application requirements~~ *provisions* of *subrules* 65.3(1) to 65.3(~~4~~*3*) shall obtain a construction permit

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

prior to constructing, installing, or modifying ~~a~~ *the* waste ~~storage and disposal~~ *control* system for that ~~animal feeding~~ operation. ~~Animal feeding operations required to obtain an operations permit under provisions of 65.3(5) shall obtain a construction permit for any required upgrading of its waste disposal system.~~

b. A confinement-feeding operation shall obtain a construction permit prior to constructing, installing, or modifying a waste control system for that operation if any of the following conditions exist:

1. The confinement-feeding operation uses an anaerobic lagoon as part of its waste control system.

2. The capacity of a confinement-feeding operation using an earthen waste storage facility other than an anaerobic lagoon exceeds:

Species	*Animal Capacity Exceeds*
Slaughter and feeder cattle	*200*
Mature dairy cattle	*140*
Swine, butcher and breeding (over 55 lbs.)	*500*
Turkeys	*11,000*
Chickens, broiler or layer	*18,000*
Animal units	*200*

3. The capacity of a confinement-feeding operation using formed waste storage tanks (e.g. concrete tanks, concrete block tanks, wood tanks, or steel tanks) exceeds:

Species	*Animal Capacity Exceeds*
Slaughter and feeder cattle	*2,000*
Mature dairy cattle	*1,400*
Swine, butcher and breeding (over 55 lbs.)	*5,000*
Turkeys	*110,000*
Chickens, broiler or layer	*180,000*
Animal units	*2,000*

65.6(2) *Permit application.* An ~~application~~ *animal-feeding operation required to obtain a construction permit in accordance with the provisions of subrule 65.6(1) shall apply* for a construction permit ~~must be submitted~~ at least ninety *(90)* days *before the date that* ~~in advance of the planned date of start of~~ construction, *installation, or modification of the waste control system is scheduled to start.*

~~65.6(2). Deadline for acting on construction permit applications. The executive director shall act upon the application within sixty days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing, unless a longer review period is required and the applicant is so notified in writing prior to expiration of the sixty-day period. Notwithstanding the ninety-day requirement in 65.3(1) above, construction of the approved system may commence immediately after the issuance of a construction permit.~~

65.6(3) Application forms. Application for a construction permit shall be made on a form provided by the department. The application shall be complete and shall include ~~such~~ detailed engineering plans as determined necessary by the ~~executive director~~ *department.*

65.6(4) Plan requirements. Waste ~~storage and disposal facility~~ *control system* plans shall be designed and submitted in conformance with *Iowa Code* chapter 114 ~~of the Code~~.

65.6(5) Plan review criteria. Review of plans and specifications shall be conducted to determine the potential of the proposed waste ~~disposal~~ *control* system to achieve the level of waste control being required of the animal-feeding operation. In conducting this review, applicable criteria contained in *these rules*, federal guidelines and ~~standards~~ *specifications*, soil conservation service *design* standards and specifications, *and* department of commerce precipitation data~~, and the land disposal guidelines adopted by the Iowa water quality commission on June 23, 1976,~~ shall be used. *For waste control systems which include use of anaerobic lagoons, the separation distance requirements contained in Iowa Code section 455B.133 and the design criteria contained in the department's chapters 22 and 23 rules shall also be used.* If the proposed facility plans are not adquately covered by these criteria, applicable criteria contained in current technical literature shall be used.

ITEM 7. Renumber existing rule 567—65.6(455B) as 567—65.7(455B), and further amend it as follows:

567—65.7(455B) Transfer of legal responsibilities or title. If legal responsibility for a permitted animal-feeding operation and its associated ~~disposal~~ *waste control* system is transferred, the person to whom legal responsibility is transferred shall be subject to all terms and conditions of said permit. The *person to whom the permit was issued shall notify the* department ~~shall be notified~~ of the transfer of legal responsibility or title of ~~such an~~ *the* operation within thirty *(30)* days of the transfer.

ITEM 8. Renumber existing rule **567—65.7(455B)** as **567—65.8(455B)**.

ITEM 9. Adopt a new rule 567—65.9(455B) as follows:

567—65.9(455B) Interpretive rule. Iowa Code section 172D.3 defines the applicability of rules of the deparment adopted after November 1, 1976, by delaying their applicability to some existing animal-feeding operations. However, the 1987 revisions of these rules in effect reduce the regulation by permit of existing or new animal-feeding operations or merely clarify the rules adopted and implemented prior to November 1, 1976. Therefore, Iowa Code section 172D.3 shall not be construed to diminish or delay applicability of this chapter 65, as revised in 1987, to any animal-feeding operation. In the event a court rules otherwise, the rules in effect prior to the 1987 revisions shall apply.

ITEM 10. Adopt Appendix A to **Chapter 65**, as shown in the attached Appendix A.

ITEM 11. Amend the "Guidelines of Iowa Water Quality Commission on Land Disposal of Animal Wastes," currently an addendum to **Chapter 65**, as shown in the attached Appendix B.

APPENDIX A

WASTE CONTROL ALTERNATIVES FOR OPEN FEEDLOTS

Introduction: Water pollution control requirements for animal feeding operations are given in Chapter 65 of the rules of the Iowa Department of Natural Resources. Under these rules, open feedlots meeting the operation permit application requirements of rules 65.3(1) or 65.3(2) must also comply with the minimum waste control requirements of rule 65.2(2). Rule 65.2(2) requires that all feedlot runoff and other waste flows resulting from precipitation events less than or equal to the twenty-five year, twenty-four hour rainfall event be collected and land applied.

This appendix describes four feedlot runoff control systems that meet the requirements of rule 65.2(2). The systems differ in the volume of waste storage provided and in the frequency of waste disposal. In general, the time interval between required disposals increases with increased storage volume.

A feedlot operator who constructs and operates a waste control facility in accordance with the requirements of any of these four systems will not have additional waste control requirements imposed, unless waste discharges from the facility cause state water quality standards violations.

In describing the four systems, the major features of each are first reviewed, followed by detailed information on the construction and operation requirements of the system. The system descriptions are presented in this appendix as follows:

SYSTEM 1: ONE WASTE DISPOSAL PERIOD PER YEAR

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average annual runoff from all feedlot and nonfeedlot areas which drain into the waste control system (additional storage is required if process waters or wastes from other sources also drain into the control system).
- Collected wastes must be removed from the control system and land applied at least once annually (interval between successive disposals cannot exceed twelve months).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

DETAILED SYSTEM REQUIREMENTS:

Waste Control System: The waste control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Waste solids settling facilities which meet or exceed the requirements of rule 65.2(1) must precede the feedlot runoff control system.

2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:

   A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 1.

   B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 1.

   C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:

      - The amount of runoff expected from these areas as a result of the twenty-five year, twenty-four hour precipitation event*

      - The average annual runoff expected from these areas*

   D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average annual runoff expected from these areas*

   E. The volume of process wastewater which drains into the control system during a twelve-month period.

   F. The volume of wastes from other sources which discharges into the control system during a twelve-month period.

Waste Disposal Requirements: Wastes must be removed from the waste control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, solids shall be removed at least once annually.

2. Feedlot Runoff Control System: Accumulated wastes shall be removed from the feedlot runoff control system and disposed of by land application at least once annually. The interval between successive disposal periods shall not exceed twelve months.

   During disposal periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated wastes from the runoff control system in ten (10) or fewer disposal days. Waste removal is considered complete when the wastes remaining in the runoff control system occupy less than ten (10) percent of the system's design waste storage volume.

*Expected twenty-five year, twenty-four hour and average annual runoff values shall be determined using runoff prediction methodologies of the U. S. Soil Conservation Service (or equivalent methodologies).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

Land application of wastes shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for waste disposal if:

- Land disposal areas are not frozen or snow-covered
- Temperatures during disposal are greater than 32 degrees Fahrenheit
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding disposal and no precipitation is occurring on the day of disposal.

SYSTEM 2: JULY AND NOVEMBER WASTE DISPOSAL

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur over the eight-month period from December 1 through July 31 from all feedlot and nonfeedlot areas which drain into the waste control system (additional storage is required if process waters or wastes from other sources also drain into the control system).
- Collected wastes may be removed from the control system and land applied during any period of the year that conditions are suitable. While disposal during other periods will minimize the need for July and November disposal, sufficient wastes must still be disposed of during July and November to reduce the volume of wastes remaining in the control system during these months to less than ten (10) percent of the system's design waste storage volume.

DETAILED SYSTEM REQUIREMENTS:

Waste Control System: The waste control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Waste solids settling facilities which meet or exceed the requirements of rule 65.2(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:
   A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 2.
   B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 2.
   C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
      - The amount of runoff expected from these areas as a result of the twenty-five year, twenty-four hour precipitation event*
      - The average runoff expected to occur from these areas during the eight-month period from December 1 to July 31*
   D. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the average runoff expected to occur from these areas during the eight-month period from December 1 to July 31*
   E. The volume of process wastewater which drains into the control system during the eight-month period from December 1 through July 31.
   F. The volume of wastes from other sources which discharges into the control system during the eight-month period from December 1 through July 31.

*Expected twenty-five year, twenty-four hour runoff and average runoff for the eight-month period December 1 through July 31 shall be determined using runoff prediction methodologies of the U. S. Soil Conservation Service (or equivalent methodologies).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

Waste Disposal Requirements: Wastes must be removed from the waste control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, solids shall be removed at least once annually.

2. Feedlot Runoff Control System:

   A. A feedlot operator must comply with the following waste disposal requirements if disposal operations are limited to the months of July and November.

   During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated wastes from the runoff control system in ten (10) or fewer disposal days. Waste removal is considered complete when the wastes remaining in the runoff control system occupy less than ten (10) percent of the system's design waste storage capacity.

   During July and November, waste disposal operations shall be initiated on the first day that conditions are suitable for land application of wastes, and disposal must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete disposal of wastes to be accomplished during July or November, disposal must be continued into the following month. Waste disposal operations may cease when complete disposal has been achieved.

   Weather and soil conditions are normally considered suitable for land application of wastes if:

   - Land disposal areas are not frozen or snow-covered
   - Temperatures during disposal are greater than 32 degrees Fahrenheit
   - Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding disposal and no precipitation is occurring on the day of disposal.

   B. A feedlot operator may dispose of accumulated wastes during any period of the year that conditions are suitable. While disposal during other periods will minimize the need for disposal during July and November, the feedlot operator will still need to dispose of sufficient wastes during July and November to reduce the waste volume remaining in the runoff control system during these months to less than ten (10) percent of the system's design waste storage capacity.

   A feedlot operator who does not limit waste disposal operations to the months of July and November is not required to comply with the specific waste disposal requirements which apply when disposal is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct disposal operations at rates and times which are sufficient to ensure that the waste volume remaining in the runoff control system during July and November will be reduced to less than ten (10) percent of the system's design waste storage capacity.

SYSTEM 3: APRIL, JULY AND NOVEMBER WASTE DISPOSAL

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur during the five-month period from December 1 through April 30 from all feedlot and nonfeedlot areas which drain into the waste control system (additional storage is required if process waters or wastes from other sources also drain into the control system).

- Collected wastes may be removed from the control system and land applied during any period of the year that conditions are suitable. While disposal during other periods will minimize the need for disposal during the specified disposal months, sufficient wastes must still be disposed of during April, July and November to reduce the volume of wastes remaining in the control system during these months to less than ten (10) percent of the system's design waste storage volume.

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

DETAILED SYSTEM REQUIREMENTS:

Waste Control System: The waste control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Waste solids settling facilities which meet or exceed the requirements of rule 65.2(1) must precede the feedlot runoff control system.

2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:

   A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 3.

   B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 3.

   C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:

      - The amount of runoff expected from these areas as a result of the twenty-five year, twenty-four hour precipitation event*

      - The average runoff expected to occur from these areas during the five-month period from December 1 to April 30*

   D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average runoff expected to occur from these areas during the five-month period from December 1 to April 30*

   E. The volume of process wastewater which drains into the control system during the five-month period from December 1 through April 30.

   F. The volume of wastes from other sources which discharges into the control system during the five-month period from December 1 through April 30.

Waste Disposal Requirements: Wastes must be removed from the waste control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, solids shall be removed at least once annually.

2. Feedlot Runoff Control System:

   A. A feedlot operator must comply with the following waste disposal requirements if disposal operations are limited to the months of April, July and November.

      During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated wastes from the runoff control system in ten (10) or fewer disposal days. Waste removal is considered complete when the wastes remaining in the runoff control system occupy less than ten (10) percent of the system's design waste storage capacity.

      During April, July and November, waste disposal operations shall be initiated on the first day that conditions are suitable for land application of wastes, and disposal must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete disposal of wastes to be accomplished during any of these months, waste disposal must be continued into the following month. Waste disposal operations may cease when complete disposal has been achieved.

      Weather and soil conditions are normally considered suitable for land application of wastes if:

*Expected twenty-five year, twenty-four hour runoff and average runoff for the five-month period December 1 through April 30 shall be determined using runoff prediction methodologies of the U. S. Soil Conservation Service (or equivalent methodologies).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

- Land disposal areas are not frozen or snow-covered.
- Temperatures during disposal are greater than 32 degrees Fahrenheit.
- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding disposal and no precipitation is occurring on the day of disposal.

B. A feedlot operator may dispose of accumulated wastes during any period of the year that conditions are suitable. While disposal during other periods will minimize the need for disposal during April, July and November, the feedlot operator will still need to dispose of sufficient wastes during July and November to reduce the waste volume remaining in the runoff control system during these months to less than ten (10) percent of the system's design waste storage capacity.

A feedlot operator who does not limit waste disposal operations to the months of April, July and November is not required to comply with the specific waste disposal requirements which apply when disposal is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct disposal operations at rates and times which are sufficient to ensure that the waste volume remaining in the runoff control system during April, July and November will be reduced to less than ten (10) percent of the system's design waste storage capacity.

SYSTEM 4: DISPOSAL AFTER EACH SIGNIFICANT PRECIPITATION EVENT

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the runoff expected to occur as a result of the twenty-five year, twenty-four hour precipitation event from all feedlot and nonfeedlot areas which drain into the waste control system (additional storage is required if process waters or wastes from other sources also drain into the control system).
- Collected wastes must be removed from the control system and land applied whenever the available (unoccupied) storage capacity remaining in the control system is less than ninety (90) percent of that needed to store runoff from the twenty-five year, twenty-four hour storm -- land application must begin on the first day that conditions are suitable and must continue until disposal is completed.

DETAILED SYSTEM REQUIREMENTS:

Waste Control System: The waste control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Waste solids settling facilities which meet or exceed the requirements of rule 65.2(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:

   A. The volume determined by multiplying the total feedlot area which drains into the control system by the amount of runoff expected to occur from this area as a result of the twenty-five year, twenty-four hour precipitation event*

*Expected twenty-five year, twenty-four hour runoff shall be determined by using runoff prediction methodologies of the U. S. Soil Conservation Service (or equivalent methodologies).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

B. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the amount of runoff expected to occur from these areas as a result of the twenty-five year, twenty-four hour precipitation event*

C. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the amount of runoff expected to occur from these areas as a result of the twenty-five year, twenty-four hour precipitation event*

D. The volume of process wastewater which drains into the control system during the five-month period from December 1 through April 30.

E. The volume of wastes from other sources which discharges into the control system during the five-month period from December 1 through April 30.

Waste Disposal Requirements: Wastes must be removed from the waste control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, solids shall be removed at least once annually.

2. Feedlot Runoff Control System: Accumulated wastes shall be removed from the feedlot runoff control system and disposed of by land application following each precipitation or snowmelt runoff event which results in significant waste accumulations in the control system. Waste accumulations will be considered significant whenever the available (unoccupied) storage capacity remaining in the control system is less than ninety (90) percent of that required to store the runoff from the twenty-five year, twenty-four hour storm.

   Once the available storage capacity remaining in the waste control system is reduced to the point that waste disposal is necessary, waste disposal operations must be initiated on the first day that conditions are suitable for land application of wastes, and disposal must continue on subsequent days that suitable conditions exist. Disposal operations may cease when the storage capacity available in the control system has been restored to greater than ninety (90) percent of that required to store runoff from the twenty-five year, twenty-four hour storm.

   During disposal periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated wastes from the control system in ten (10) or fewer disposal days.

   Weather and soil conditions are normally considered suitable for land application of wastes if:

   - Land disposal areas are not frozen or snow-covered.
   - Temperatures during disposal are greater than 32 degrees Fahrenheit.
   - Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding disposal and no precipitation is occurring on the day of disposal.

*Expected twenty-five year, twenty-four hour runoff shall be determined by using runoff prediction methodologies of the U. S. Soil Conservation Service (or equivalent methodologies).

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

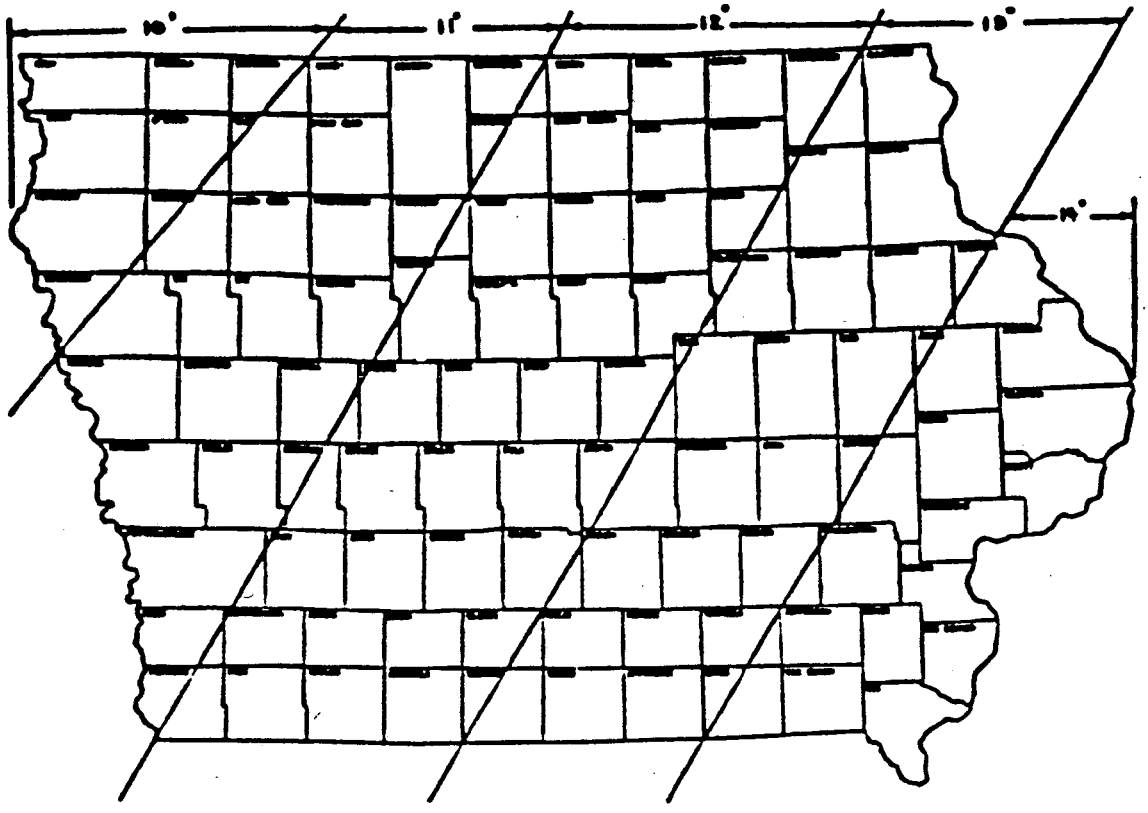


FIGURE 1. Capacity required for open feedlot catchment basins in Iowa with one disposal per year. Capacity is shown as inches of runoff from the entire feedlot drainage area.

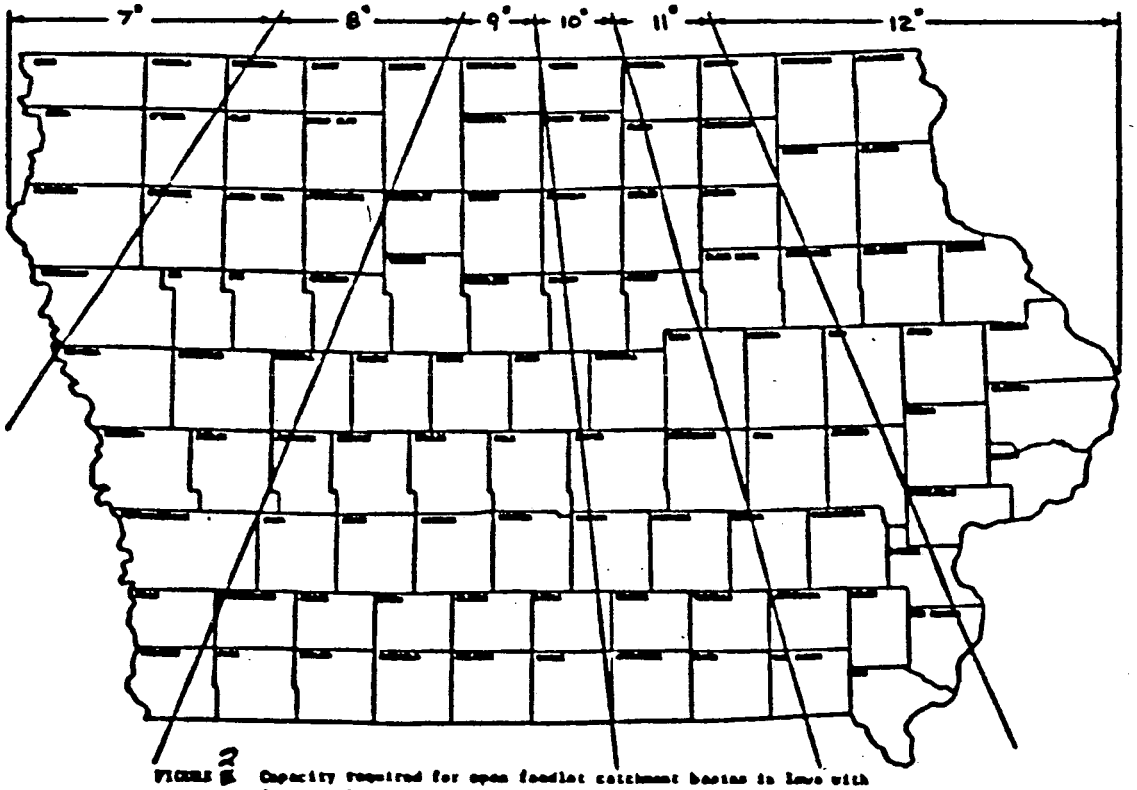
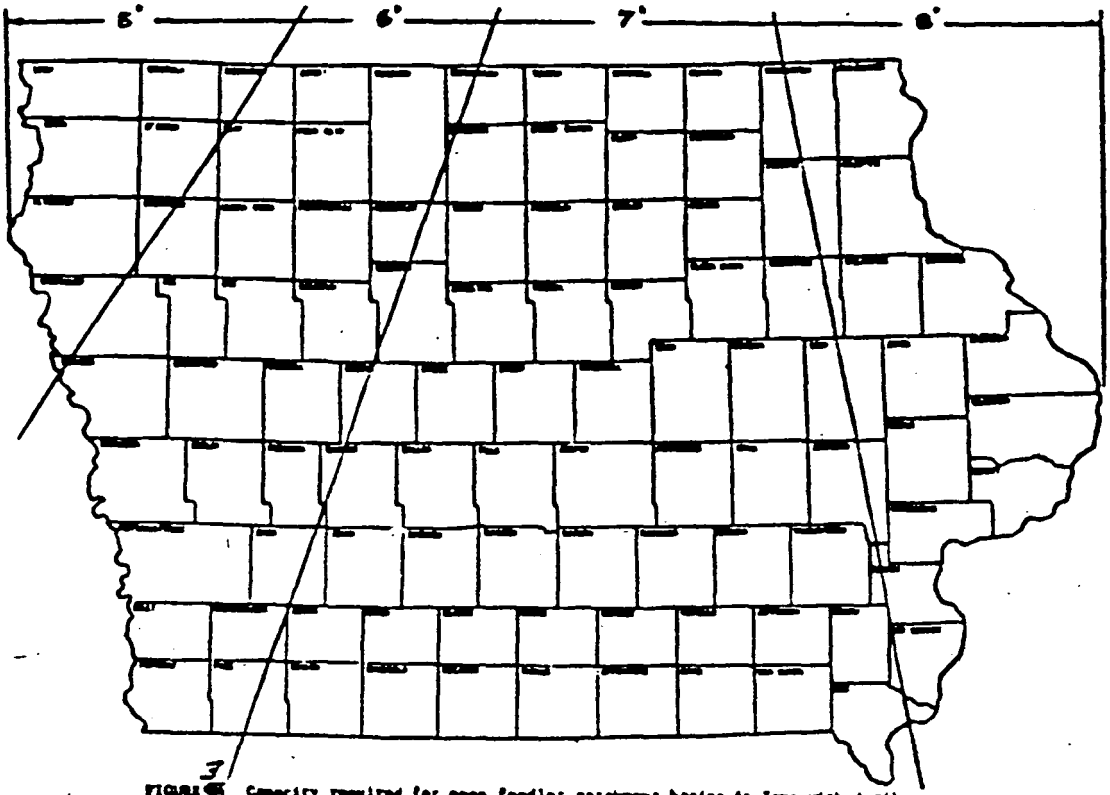


FIGURE 2. Capacity required for open feedlot catchment basins in Iowa with July and November disposal each year. Capacity is shown as inches of runoff from the entire feedlot drainage area.



~~FIGURE 3~~ Capacity required for open feedlot catchment basins in Iowa with April, July, and November disposal each year. Capacity is shown as inches of runoff from the entire feedlot drainage area.

APPENDIX B

GUIDELINES ~~OF IOWA WATER QUALITY COMMISSION~~ ON

LAND DISPOSAL OF ANIMAL WASTES

GENERAL

~~Land application of a~~*A*nimal wastes ~~has~~ *have* long been ~~utilized for the final disposal of such wastes.~~ *disposed of by land application.* Although advancements in waste treatment technology ~~may provide~~ *are making other* disposal alternatives *available,* ~~land disposal is expected to continue as the primary means of disposal.~~ *these alternatives are unlikely to replace land application as the primary disposal method in the near future.*

Several ~~E~~environmental and crop production concerns ~~exist~~ *are associated* with the land disposal of animal wastes. Improper or excessive applications ~~of animal wastes on land~~ can create water pollution problems due to ~~excessive~~ runoff of waste materials into streams or leaching of ~~nitrogen~~ *nitrates* into ground~~water supplies.~~ *waters.* Excessive *waste* applications ~~of animal wastes~~ can also ~~lead to excessive~~ *cause the* buildup of nutrients or trace elements in *the* soils. ~~Excessive~~ *If* nutrient or trace element ~~buildups may affect~~ *levels become excessive,* soil structure or plant growth~~.~~ *(*and ~~can~~ ultimately ~~affect~~ crop yields*) can be affected.*

A number of factors affect the environmental hazard potential of animal waste disposal. These include chemical composition of waste materials, the rate and frequency of ~~waste application~~ *disposal,* crops grown, land topography, and soil characteristics.

Due to the number of factors involved, it is not ~~presently~~ possible to make specific recommendations which take into account all variables. However, *conducting animal waste disposal operations in accordance with the* recommendations ~~can be made to assure that animal waste disposal will not increase existing environmental hazards or create new~~ *given below should minimize* environmental or crop ~~growth problems~~ *production hazards.* ~~The recommendations made below are made with this goal in mind.~~

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

WASTE APPLICATION RATE

A. Nitrogen: ~~Excessive n~~*N*itrogen applications are of concern ~~to the Iowa Water Quality Commission,~~ since excessive applications may ~~result in excessive~~ *cause increased* nitrate leaching ~~in~~to groundwaters.

To minimize the potential for nitrate leaching to groundwaters, it is recommended that total annual nitrogen application rates (considering both manure and commercial nitrogen sources) not exceed the annual nitrogen use requirements of the crops being grown.

In certain instances, insufficient land disposal areas or other factors make it necessary to apply wastes at rates which exceed annual crop nitrogen needs. To ~~avoid~~ *minimize* problems *resulting from the applications*, the following recommendations are made:

~~2~~*1.* The maximum total nitrogen application ~~to land~~ in any one year should not exceed four hundred pounds per acre. *In determining total nitrogen applications, both manure and commercial fertilizer sources should be considered.*

~~1~~*2.* Annual nitrogen application rates should not exceed two hundred fifty pounds available nitrogen per acre. This level of application should only be used with high nitrogen use crops. *In determining available nitrogen applications, both manure and commercial fertilizer sources should be considered.*

The *following guidelines can be used to determine the* available nitrogen content of animal waste ~~is considered to be~~:

(a) During the first crop season following waste application, the available nitrogen content is:

1. Seventy-five percent of the total nitrogen content of the applied waste if the wastes ~~is~~ *are* injected or ~~is~~ incorporated into the soil immediately following application.

2. Fifty percent of the total nitrogen content of the applied wastes if the wastes ~~is~~ *are* surface applied and allowed to dry prior to incorporation into the soil.

(b) During the second crop season following waste application, the available nitrogen content is twelve and one-half percent of the total nitrogen content of the applied wastes.

(c) During the third crop season following waste application the available nitrogen content is ~~7%~~ *seven percent* of the total nitrogen content of the applied wastes.

(d) After more than three crop seasons following waste application, no further credit to available nitrogen is given to the applied wastes.

3. For ~~proposed~~ annual *available* nitrogen applications in excess of two hundred fifty pounds ~~available nitrogen~~ per acre, a specific crop management plan should be developed. This plan should indicate amounts and frequency of nitrogen applications, cropping systems and harvesting frequency, projected nitrogen removal by ~~the~~ crops, and other projected nitrogen losses. Nitrogen applications in excess of two hundred fifty pounds ~~of available nitrogen~~ should not be made if the crop management plan indicates that surface or groundwater pollution may result.

B. Phosphorus: It should be recognized that ~~providing~~ *satisfying* crop nitrogen needs through application of animal wastes alone will, in most cases, result in phosphorus applications in excess of crop requirements. Excessive phosphorus applications are of concern since ~~excessive~~ *high soil* phosphorus ~~buildup~~ *levels* may lead to crop production problems. To avoid such problems, the following recommendations are made:

1. For soils testing low in phosphorus (soil test levels below forty-~~five~~ pounds per acre), phosphorus applications in excess of crop removal can be used to obtain maximum crop production.

2. For soils where tests indicate adequate phosphorus levels (between forty-~~five~~ and ~~one hundred~~ *sixty* pounds per acre), phosphorus applications ~~at rates equivalent to~~ *should not exceed* crop uptake ~~are recommended~~ *rates.*

In determining waste application rates which will comply with the above ~~recommendations~~, a producer should know the chemical composition of the wastes, the soil fertility level, and the nutrient requirements of ~~his~~ *the* crops ~~production system~~ *produced.* ~~Several sources of t~~*T*his information ~~are~~ *is* available *from several sources.*

It is recommended that ~~T~~the chemical composition of ~~a~~ *the* wastes ~~material can~~ be determined by having a representative sample analyzed by a laboratory. As an alternative, a producer can use estimated nutrient composition values determined by previous research. A summary of representative nutrient composition data on animal wastes is contained in Midwest Plan Service booklet "Livestock Waste Facilities Handbook," MWPS-18, ~~1975~~ *1985*, which is available from the Co-operative Extension Service of Iowa State University.

Soil fertility levels can best be determined by periodic soil tests. Information on soil testing is available from the *Iowa State University* Extension Service ~~of Iowa State University~~. Information on crop nutrient requirements can be obtained from a number of sources, including the Iowa State University Extension Service.

WASTE DISPOSAL ON FROZEN OR SNOW-COVERED LAND

~~It is recommended that w~~*W*aste disposal on frozen or snow-covered land *should* be avoided~~. if possible.~~ If wastes are spread on frozen or snow-covered land, ~~it is recommended that~~ disposal *should* be limited to land areas on which:

(a) Land slopes are four percent or less, or

(b) Adequate erosion control practices ~~or diversions~~ exist. Adequate erosion control practices ~~might~~ *may* include such practices as terraces, ~~mulch~~ *conservation* tillage, cover crops, ~~or~~ contour farming~~.~~, *or similar practices.*

WASTE DISPOSAL ON LAND SUBJECT TO FLOODING

~~It is recommended that w~~*W*astes applied on land subject to flooding more than once every ten years *should* be incorporated into the soil ~~within thirty days~~ after spreading. ~~It is recommended that w~~*W*astes *should* not be spread on such areas during frozen or snow-covered conditions. Wastes applied at usual peak flood periods (April, May and June) should be injected or immediately incorporated into the soil.

WASTE DISPOSAL ON LAND ~~NEAR WATERCOURSE~~ *ADJACENT TO WATER BODIES*

~~Where waste runoff might enter any of the following, it is recommended that w~~*W*astes *should* not be ~~spread~~ *disposed of on land areas which are located* ~~closer than~~ *within* two hundred feet ~~to~~ *of and drain into* any of the following unless *adequate erosion control practices exist and* the wastes are injected or incorporated into soil:

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

(a) stream
(b) surface intake of tile line or other buried conduit
(c) sinkhole
(d) shoreline or a lake or pond
(e) any well with an open surface inlet

No wastes should be spread on waterways except for the purpose of establishing seedings.

~~INCORPORATION~~ *DISPOSAL* OF WASTES ~~INTO SOIL~~ *ON STEEPLY SLOPING LAND*

~~Immediate incorporation or soil injection is recommended for w~~*W*astes ~~applied~~ *disposal* on tilled land with ~~slopes~~ greater than ten percent ~~and on floodplains subject to flooding more frequently than once every ten years.~~ *slopes should be limited to areas where adequate erosion control practices exist. Injection or soil incorporation of wastes is recommended, and all waste disposal and incorporation operations should be done so as to maintain an adequate level of erosion control.*

~~When required for odor control, wastes should be incorporated into the soil.~~

~~ODOR CONTROL FROM LAND DISPOSAL OPERATIONS~~

~~In the absence of odor control standards, it is recommended that the following be considered in an effort to minimize odor problems from land disposal operations:~~

~~(a) Use good judgment concerning location of disposal areas and time disposal operations with climatic conditions. Bright, cool, sunny days with gusty winds blowing away from neighbors are the best for land disposal.~~

~~(b) Soil incorporation immediately after spreading or soil injection helps control the release of odorous gases.~~

ARC 7173

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 17A.22, the Department of Human Services proposes to amend Chapter 7, "Fair Hearings and Appeals," appearing in the Iowa Administrative Code.

Under current rules for all programs except food stamps if a request for a fair hearing is made within thirty (30) days after official notification of an action a hearing shall be held. If the request is made more than thirty (30) days, but less than ninety (90) days after notification, the Commissioner shall determine whether a hearing shall be held.

A recent court case, Gloria Buckanaga vs. Iowa Department of Human Services, called the Department's attention to the fact that Department rules provide no guidance in determining whether or not to grant a hearing in the thirty (30)- to ninety (90)-day period.

Because no rules or standards are available, different hearing officers can easily arrive at different conclusions. The decision to grant a hearing is an entirely subjective one and this unrestricted discretion is unfair to the client.

This amendment establishes criteria for granting a request for a fair hearing received from the thirtieth to the ninetieth day after notification.

This amendment also clarifies the hearing officer's right to communicate with experts within or outside the Department not connected with the decision to secure advice and direction. Minor grammatical changes are also made.

Consideration will be given to all written data, views or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before December 24, 1986.

These rules are intended to implement Iowa Code section 17A.12.

ITEM 1. Amend the definitions in rule **498—7.1(217)** by removing the phrase "as used in these rules" wherever it appears.

ITEM 2. Amend rule 498—7.5(217) as follows:

Amend subrule 7.5(1) as follows:

7.5(1) When hearing is granted. A hearing shall be granted to any person aggrieved by an action of the department of human services when the right to a hearing is granted by state or federal law or Constitution, except ~~as limited herein. A~~ *that a* hearing will not be granted when a state or federal law or regulation provides for a different forum for appeals. The commissioner of the department of human services shall decide whether to grant a hearing when either state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation. A prematurely filed appeal may be dismissed.

Amend subrule 7.5(3) as follows:

7.5(3) Time limit for request. Subject to the provisions of subrule 7.5(1), when a request for a fair hearing is made, *the granting of a hearing to that request shall be governed by the following timeliness standards:*

a. If the request is made within thirty *(30)* days after official notification of an action, *or before the effective date of action,* a hearing shall be held.

b. When the request for a hearing is made more than thirty *(30)* days, but less than ninety *(90)* days after notification, the commissioner shall determine whether a hearing shall be held. *The commissioner may grant a hearing if one or more of the following conditions existed:*

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

(1) There was a serious illness or death of the appellant or a member of the appellant's family.

(2) There was a family emergency or household disaster, such as a fire, flood, or tornado.

(3) The appellant offers a good cause, similar to the above, beyond the appellant's control.

(4) There was a verifiable failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant.

c. The time in which to appeal an agency action shall not exceed ninety *(90)* days. *Appeal requests made more than ninety (90) days after notification shall not be heard.*

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

ITEM 3. Amend subrule 7.8(5) as follows:

7.8(5) Interference. The conference shall never be used to discourage claimants from proceeding with their appeals. The right of appeal shall not be limited or interfered with in any way, even though the person's complaint may be without basis in fact, or ~~due to~~ *because of* the person's own misinterpretation of law, agency policy, or methods of implementing policy, subject to the right of the department to deny or dismiss a request for a hearing when it has been withdrawn by the claimant in writing; when the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients; or when it has been abandoned. Abandonment may be deemed to have occurred when the claimant, without good cause ~~therefor~~, or the claimant's authorized representative fails to appear at the hearing. Facts of harassing, threats of prosecution, denial of pertinent information needed by the claimant in preparing the appeal, as a result of the claimant's communicated desire to proceed with the appeal shall be taken into consideration by the hearing officer in reaching a proposed decision. The evidence will raise a presumption of denial of due process, and will be referred to the proper official of the agency for appropriate administrative action.

ITEM 4. Amend the introductory paragraph of subrule 7.10(4) as follows:

7.10(4) Notification. The department of inspections and appeals shall send a letter to the appellant, as prescribed in *Iowa Code* section 17A.12(2), setting forth the date, time, and place of the hearing, ~~of~~ the manner in which the hearing will be conducted, that any evidence may be presented orally or documented in any way desired, and that the appellant may bring witnesses of the appellant's choice and be represented by others, including an attorney.

ITEM 5. Amend subrule 7.13(2) as follows:

7.13(2) Conduct of hearing. The hearing shall be conducted by a hearing officer designated by the department of inspections and appeals. It shall be informal rather than a formal judicial procedure, and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce~~, on the appellant's own behalf,~~ any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

ITEM 6. Amend the first paragraph of subrule 7.16(6) as follows:

7.16(6) Time limit. Prompt, definitive and final administrative action to carry out the decision rendered shall be taken within ninety *(90)* days from the date of the appeal. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed thirty *(30)* days except with the approval of the department of inspections and appeals, will be granted and the extra time may be added to the maximum time for final administrative action. Immediately upon receipt of a copy of the final decision, the local office shall take the action required by the decision and ~~shall~~ submit a report of that action to the department of inspections and appeals.

ITEM 7. Amend subrule 7.18(1) as follows:

7.18(1) Communication of the hearing officer or commissioner. The hearing officer or commissioner may communicate with any person or party concerning any appeal issue provided that the substance of the communication and any information received in reply are presented to all parties, allowing them an adequate opportunity to respond.

However, persons assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case may, without notice to the parties, communicate with members of the department, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating, either the case under consideration or a pending factually related case involving the same parties.

ARC 7180

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 234.6(7), the Department of Human Services proposes to amend Chapter 65, "Administration," appearing in the Iowa Administrative Code.

This amendment proposes major changes in the content, structure, and administration of the work requirements of the Food Stamp program.

There are currently three (3) major components to the Food Stamp program's work requirements. First, all nonexempt household members must be registered for

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

work at least once every twelve (12) months. This requirement will remain unchanged.

The second component is job search. Work registrants deemed to be job ready are assigned to perform a job search which consists of the registrant contacting up to twenty-four (24) employers in an eight (8)-week period in pursuit of employment. The Food Security Act of 1985, Public Law 99-198, section 1517, requires each state to implement an employment and training program by April 1, 1987, which will replace job search requirements.

The third component is optional at the current time and remains optional. States may establish and operate a workfare program in which recipients are assigned to public service work in return for the household's food stamp allotment.

Proposed federal regulations dated October 1, 1986, have been received which, if finalized, will make the following mandatory changes in the program:

1. Under current rules only persons between the ages of eighteen (18) and sixty (60) are subject to work registration. The proposed rule making subjects heads of household who are ages sixteen (16) and seventeen (17) and not attending school or participating in an employment training program half-time or more, to the work requirements.

2. Under proposed regulations the applicant may still register for work for other household members, but the Department must now provide the household with a statement of rights and responsibilities. This statement is intended to make other household members who have been registered by the person filing the application aware of their work registration rights and responsibilities and the consequences of failure to comply.

3. The maximum number of hours the members of a household may be required to devote to an employment and training obligation shall not exceed the number of hours equal to the household's food stamp allotment for the month divided by the federal minimum wage.

4. No individual household member may be required to work more than one hundred and twenty (120) hours per month at a combination of an employment and training assignment and paid employment.

5. The current sanction for noncompliance with work registration and job search requirements is ineligibility for food stamps for the entire household for two (2) months. Proposed regulations provide that the sanction apply to the entire household only if the person committing the violation is the primary wage earner or head of the household.

If the person who committed the violation leaves the household and joins another household as the primary wage earner or head of the household, the new household becomes ineligible for the balance of the disqualification period.

6. Under current regulations, if the primary wage earner voluntarily quits employment, the household is disqualified for food stamps for three (3) months. There is no way for the household to regain eligibility while the person who committed the violation remains in the household. The proposed regulations provide two (2) methods to regain eligibility: (1) The household member who caused the disqualification secures new employment comparable in salary or hours to the job which was quit, (2) The member who caused the disqualification becomes exempt from the work registration provisions.

Proposed regulations also provide that if the member who caused the disqualification leaves the household, the sanction will follow that member. If the member joins another household as head of the household, the new household will be ineligible for the remainder of the disqualification period.

7. In cases where the household's composition is different than it was when any of its members voluntarily quit a job, proposed regulations provide that a determination be made if the member who quit would have been the primary wage earner if there had been no quit. If the member would have been the primary wage earner based on previous earnings, the sanction shall apply.

8. Current rules apply the voluntary quit provisions only when the most recent job quit was twenty (20) hours per week or more. Proposed regulations specify the provisions apply if the member quits any job of twen[illegible] (20) hours a week or more within sixty (60) days prior to applying for benefits.

9. At the present time if a household leaves the food stamp program before a voluntary quit sanction is imposed, the sanction is not imposed until the household returns to the program. These rules propose that the sanction be imposed beginning with the first of the month after all normal procedures for taking adverse action have been followed and run continuously for ninety (90) days or until it is cured.

10. If a participant quits a job in the last month of the certification period and the quit is discovered during the recertification process, these rules propose that the household be treated as an applicant household, and that eligibility be denied for ninety (90) days.

11. Under current rules, persons exempt from work registration are exempt from voluntary quit provisions. These proposed rules retain this provision except for persons exempt from work registration because they are working thirty (30) hours or more.

The Department is proposing that the following three (3) options allowed states by the proposed regulations not be implemented at this time for the reasons listed:

1. Regulations allow workfare or work experience assignments as employment and training components for work registrants. Workfare and work experience components are not being chosen at this time because there is not information available to determine their effectiveness prior to the April 1, 1987, implementation date.

2. Participants in employment and training programs are to be reimbursed their actual costs of participation up to $25 per month. Allowable costs may include the cost of transportation, child care, or personal safety items required for the performance of work. The federal government will reimburse states for fifty percent (50%) of the costs.

These regulations also allow states to assist participants with costs beyond $25 per month. This reimbursement would not be subject to federal match. State funds are not available for this option.

3. Under these regulations states may establish additional criteria for defining suitable employment.

The following are options allowed by the regulations on which the Department has not yet made a decision. Comments on the multiple options from recipients, advocate groups, and other interested persons will be welcomed and will assist the Department in making a decision.

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

1. The proposed regulations allow each state to design an employment and training program which will best suit its needs and which is compatible with similar programs operating within the state. The Department will contract with the Department of Employment Services to provide the employment and training programs. While states are allowed a great deal of latitude, plans must be approved by the Secretary of Agriculture. The employment and training program must contain one (1) or more of the following components, yet to be decided:

a. A job search program comparable with that of the Aid to Dependent Children program. This entails up to an eight (8)-week job search program which may be imposed at the time of application for the food stamp program.

b. A job search training program that includes reasonable job search training and support activities. This program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs to expand the job search abilities or employability of those subject to the program.

c. A project, a program, or experiment aimed at accomplishing the purpose of the employment and training program.

2. States are to design their employment and training components so that, at a minimum, compliance will require that each participant spend an average of twelve (12) hours of activity per month for two (2) months. The total requirement can be spread across a different number of months, i.e., a one (1)-month job club which would take twenty-four (24) hours to complete. This minimum level of effort does not apply to persons whose benefit level divided by the minimum wage would result in fewer hours than the minimum.

3. Food stamp recipients will be required to participate in an employment and training program unless they are exempt. There are two (2) methods for exempting recipients. First, federal regulations list reasons for exempting persons from the work registration requirement at the time of application and annually thereafter. Second, once a participant is registered, regulations allow states to determine additional reasons for exempting these registrants in order to maximize the impact of the resources expended on employment and training programs. These exemptions have to be justified to the Food and Nutrition Service and cannot exempt more than twenty percent (20%) of the persons registered unless there are compelling reasons.

The reasons are yet to be determined, but may include:

a. Persons who have participated in the food stamp program for thirty (30) days or less.

b. Categories of persons for whom an employment and training requirement would be impracticable. Factors such as the availability of work opportunities and the cost effectiveness of the requirements may be considered. In making the determination of exemption the department may designate a category of all households residing in a specific area of the state.

c. Individual household members for whom participation is impracticable because of lack of job readiness, the remote location of work opportunities, physical condition, and the availability of child care.

d. Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause may be considered exempted if the reason for good cause will last for sixty (60) days or longer.

4. States may permit persons who are exempt from work registration or from participating in an employment and training program to participate voluntarily in an employment and training component. States shall permit, to the extent they deem practicable, nonexempt registrants to participate voluntarily in the program.

5. Because of the lack of adequate funding the Department will need to devise a methodology to serve work registrants on a selective basis.

The Department of Agriculture is planning to finalize these regulations by December 1986. States must submit their employment and training plans no later than March 2, 1987. These regulations also establish performance standards and extensive requirements for states. Failure to comply with these regulations will result in the Secretary of Agriculture withholding administrative funds.

One hundred percent (100%) federal funding will be provided for the employment and training components. Iowa has been allocated $464,848 for the period from April 1, 1987, to September 30, 1987. The funding for the participant allowances will be fifty percent (50%) federal and fifty percent (50%) state. The estimated cost to the state for participant allowances is $200,000.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before December 24, 1986.

Oral presentations may be made by appearing at the following meetings. Written comments will also be accepted at that time.

Cedar Rapids - December 29, 1986 Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue S.E. Cedar Rapids, IA 52401	10 a.m.
Council Bluffs - December 30, 1986 Council Bluffs District Office 417 E. Kanesville Boulevard, Lower Level Council Bluffs, IA 51501	10 a.m.
Davenport - December 29, 1986 Davenport District Office 5th Floor Conference Room 428 Western Avenue Davenport, IA 52801	10:30 a.m.
Des Moines - December 29, 1986 Des Moines District Office City View Plaza, Conference Room 100 1200 University Des Moines, IA 50306	1 p.m.
Mason City - December 29, 1986 Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, IA 50401	10 a.m.
Ottumwa - December 29, 1986 Ottumwa District Office 4th Floor Conference Room 226 West Main Ottumwa, IA 52501	10 a.m.

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

Sioux City - December 29, 1986 7 p.m.
Sioux City District Office
2nd Floor Conference Room
808 - 5th Street
Sioux City, IA 51102

Waterloo - December 30, 1986 10 a.m.
Waterloo District Office
Black Hawk County Conference Room
2nd Floor — KWWL Building
500 East 4th
Waterloo, IA 50703

These rules are intended to implement Iowa Code section 234.12.

ITEM 1. Amend rule 498—65.27(234) as follows:

498—65.27(234) Voluntary quit. Participating households subject to sanction because the primary wage earner voluntarily quit employment shall be subject to a disqualification period of three (3) calendar months beginning with the month following the adverse notice period.

~~When the primary wage earner who caused the disqualification leaves the household, the disqualification shall remain with the primary wage earner. Any other household containing this member shall be subject to the disqualification for the remainder of the disqualification period.~~

~~In order for eligibility to be re-established for the household which~~ *If* the primary wage earner *who caused the disqualification leaves the household* ~~left~~, it will be necessary for the household to reapply *to reestablish eligibility.*

ITEM 2. Rescind rule 498—65.28(234) and insert the following in lieu thereof:

498—65.28(234) Work requirements.

65.28(1) Persons required to register. Each household member who is not exempt by subrule 65.28(2) shall be registered for employment at the time of application, and once every twelve (12) months after initial registration, as a condition of eligibility. Registration is accomplished when the applicant signs a food stamp application form that contains a statement that the applicant is willing to register for work. This signature registers all members of that food stamp household that are required to register.

65.28(2) Exemptions from work registration. The following persons are exempt from the work registration requirement:

a. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or is enrolled in an employment training program on at least a half-time basis is exempt.

b. A person physically or mentally unfit for employment.

c. A household member who is mandatorily referred to the work incentive demonstration program (WIN) under Title IV of the Social Security Act and is participating.

d. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person.

e. A person receiving unemployment compensation.

f. A regular participant in a drug addiction or alcoholic treatment and rehabilitation program which is certified by the Iowa department of public health, division of substance abuse.

g. A person who is employed or self-employed and working a minimum of thirty (30) hours weekly or receiving weekly earnings at least equal to the federal *minimum wage multiplied by thirty (30) hours.*

h. A student enrolled at least half-time in any recognized school, recognized training program, or an institution of higher education (provided that students have met the requirements of federal regulation, Title 7, Part 273.5, as *amended to November 1, 1986).*

65.28(3) Losing exempt status. Persons not required to monthly report who lose exempt status because of any changes in circumstances (i.e., loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. Persons required to monthly report who lose exempt status due to a change in circumstances shall register for employment at the household's next recertification.

65.28(4) Registration process. Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply shall be explained to the applicant. A written statement of the above shall be provided for each registrant in the household.

Registration for all nonexempt household members required to work register is accomplished when the applicant or recipient signs an application form containing an affirmative response to the question, "Do all members who are required to work register agree to do so?" or similarly worded statement.

65.28(5) Deregistration. Work registrants who obtain employment or otherwise become exempt from the work requirement subsequent to registration or who are no longer certified for participation are no longer considered registered.

65.28(6) Work registrant requirements. Work registrants shall:

a. Report to the appropriate department of employment services office upon request for the assessment interview or to participate in an employment and training program.

b. Participate in an assigned employment and training program.

c. Respond to a request from the department or the department of employment services for supplemental information regarding employment status or availability for work.

d. Report to an employer to whom referred by the department of employment services if the potential employment meets the suitability requirements described in subrule 65.28(16).

e. Accept a bona fide offer of suitable employment at a wage not less than the federal minimum wage.

65.28(7) *Employment and training programs.* Persons required to register for work and not exempted by subrule 65.28(9) from placement in a job component shall be subject to employment and training requirements. The lack of federal funding may result in work registrants being served on a selective basis. Requirements may vary among participants. The minimum level of effort required by a participant shall be comparable

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

to spending approximately twelve (12) hours a month for two (2) months making job contacts.

65.28(8) Employment and training components. An employment and training program shall offer one (1) or more of the following components:

a. A job search training program comparable to that required for the aid to dependent children program under Part A of Title IV of the Social Security Act. This entails up to an eight (8)-week job search program which may be imposed at the time of application for the food stamp program.

b. A job search training program that includes reasonable job search training and support activities. This program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs to expand the job search abilities or employability of those subject to the program.

c. A project, a program, or experiment aimed at accomplishing the purpose of the employment and training program.

65.28(9) Exemptions from employment and training programs. The department may exempt certain individuals and categories of individuals from employment and training participation. Exempt status of individuals shall be reviewed at recertification to determine if the exemption is still valid. Exempt classifications may include:

a. Persons who have participated in the food stamp program for thirty (30) days or less.

b. Categories of persons for whom an employment and training requirement would be impracticable. Factors such as the availability of work opportunities and the cost effectiveness of the requirements may be considered. In making the determination of exemption the department may designate a category of all households residing in a specific area of the state.

c. Individual household members for whom participation is impracticable because of lack of job readiness, the remote location of work opportunities, physical condition, and the availability of child care.

d. Persons who are assigned to a job or training component, do not commence the component, and are determined to have good cause may be considered exempted if the reason for good cause will last for sixty (60) days or longer.

65.28(10) Time spent in an employment and training program. The number of months a participant spends in an employment and training component shall be determined by the department. The number of successive components in which a participant may be placed will also be determined.

a. The time spent participating each month in an employment and training program shall not exceed the number of hours equal to the household's allotment for that month divided by the federal minimum wage.

b. The total hours of participation for any household member individually in any month together with any hours worked for compensation shall not exceed one hundred and twenty (120).

65.28(11) Voluntary participation. The department may permit persons exempt from the work requirements, and shall permit, to the extent it deems practicable, those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

65.28(12) Participation allowance. Participants in employment and training programs, including volunteers, shall be reimbursed for actual costs of transportation or other actual costs reasonably necessary and directly related to participation in the programs up to, but not in excess of, $25 per month.

65.28(13) Failure to comply. When an individual other than the primary wage earner has refused or failed to comply with the work registration or employment and training requirements in this section, that individual shall be ineligible to participate in the food stamp program. If the primary wage earner, or if none exists, the person considered the head of household immediately prior to the noncompliance, fails to comply, the entire household is ineligible to participate.

a. Ineligibility shall continue either (1) until the member who caused the violation complies with the requirement as specified in subrule 65.28(15), leaves the household, or becomes exempt, or (2) for two (2) months, whichever occurs earlier.

b. If the member who failed to comply joins another household as the primary wage earner or head of the household, that entire household is ineligible for the remainder of the disqualification period.

c. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested.

65.28(14) Noncompliance with comparable requirements. When the household contains a member who was exempt from work registration because the member was a mandatory work incentive demonstration project (WIN) participant or registered for work for job insurance benefits (JIB or UIB) and the member fails to comply with a WIN or JIB requirement comparable to a food stamp work registration or employment and training requirement, the household shall be treated as though the member failed to comply with the corresponding food stamp requirements. Disqualification procedures in subrule 65.28(13) shall be followed.

65.28(15) Ending disqualification. Following the end of the two (2)-month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:

a. If the member refused to register, the member complies by registering.

b. If the member refused to respond to a request from the department or the department of employment services requiring supplemental information regarding employment status or availability for work, the member must comply with the request.

c. If the member refused to report to an employer to whom referred, the member must report to that employer if work is still available or report to another employer to whom referred.

d. If the member refused to accept a bona fide offer of suitable employment to which referred, the member must accept the employment if still available to the participant, or secure other employment which yields earnings per week equivalent to the refused job, or secure

any other employment of at least thirty (30) hours per week or secure employment of less than thirty (30) hours per week but with weekly earnings equal to the federal minimum wage multiplied by thirty (30) hours.

65.28(16) Suitable employment. Employment shall be considered unsuitable if:

a. The wage offered is less than the highest either of the applicable federal minimum wage or eighty percent (80%) of the federal minimum wage if the federal minimum wage is not applicable.

b. The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in paragraph "a" above.

c. The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining a legitimate labor organization.

d. The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78A) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

e. The household member involved can demonstrate or the department otherwise becomes aware that:

1. The degree of risk to health and safety is unreasonable.

2. The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

3. The employment offered within the first thirty (30) days of registration is not in the member's major field of experience.

4. The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds two (2) hours per day, not including the transporting of a child to and from a child care facility. Employment shall also not be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site.

5. The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.

65.28(17) Participation of strikers. Strikers whose households are eligible shall be subject to the work registration requirements unless exempt under subrule 65.28(2) at the time of application.

65.28(18) Applicants for supplemental security income (SSI) and food stamps. Household members who are jointly applying for SSI and for food stamps shall have the requirements for work registration waived until:

a. They are determined eligible for SSI and thereby become exempt from work registration, or

b. They are determined ineligible for SSI whereupon a determination of work registration status will be made.

65.28(19) Determining good cause. The department shall determine whether good cause exists for failure to comply with the work registration, employment and training, and voluntary quit requirements in 498—chapter 65. In determining whether or not good cause exists, the facts and circumstances shall be considered, including information submitted by the household member involved and the employer.

ARC 7181

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 sections 217.6 and 234.6, the Department of Human Services proposes to amend Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

This amendment places the rules in Chapter 170 in a more logical order and deletes unnecessary language. In addition a preamble is added to explain the purpose of the chapter.

This amendment does not add any new rules or change the meaning of any existing rules. Some outdated language is deleted and some language is deleted because it is contained in other chapters of the Iowa Administrative Code.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before December 24, 1986.

These rules are intended to implement Iowa Code section 234.6(6)"a."

Rescind **498—chapter 170** and insert the following in lieu thereof:

CHAPTER 170
CHILD DAY CARE SERVICES
Preamble

The intent of this chapter is to establish requirements for the purchase of child day care services. Child day care services are for children of low-income parents who are in vocational training; or employed full time; or who are unable to provide adequate and necessary care for a mentally retarded or handicapped child; or for a limited period of time, when the caring person is absent due to hospitalization, physical or mental illness, or death; or for protective services (without regard to income). Services may be provided in a licensed child care center, a registered group day care home, a registered family day care home, the home of relatives, or the child's own home.

498—170.1(234) Definitions.

"Child day care" means a service that provides child care in the absence of parents for a portion of the day, but less than twenty-four (24) hours. Day care supplements parental care by providing care and protection for children who need care in or outside their homes for part of the day. Child day care provides experiences for each child's social, emotional, intellectual, and physical development. Child day care may involve comprehensive child development care or it may include

special services for a mentally retarded or handicapped child. Components of this service include supervision, food services, program and activities, and transportation.

"Department" means the Iowa department of human services.

"Food services" means the preparation and serving of nutritionally balanced meals and snacks.

"Handicap" means a condition that prevents a child from functioning according to age-appropriate expectations in the areas of affective, cognitive, communicative, perceptual-motor, physical, or social development to such an extent that the child requires special help, program adjustments, and related services, on a regular basis, in order to function in an adaptive manner.

"Mental retardation" means a condition which reflects subaverage intellectual functioning that causes social incompetence.

"Program and activities" means the daily schedule of experiences in a day care setting.

"Provider" means:

1. A licensed child care center which has an approved purchase of services agreement with the department to provide child day care services.

2. A registered group day care home which has an approved child care placement agreement with the department to provide child day care services.

3. A registered family day care home which has an approved child care placement agreement with the department to provide child day care services.

4. A home of the child's relative which has an approved child care placement agreement with the department to provide child day care services.

5. A caretaker who has an approved child care placement agreement with the department to provide care for a child in the child's home.

"Supervision" means the care, protection, and guidance of a child.

"Transportation" means the movement of children in a four (4) or more wheeled vehicle designed to carry passengers, such as a car, van, or bus, between home and facility.

"Unit of service" means a full day, or a half day, or an hour as defined in subrule 130.4(3)"a."

"Vocational training" means department approved training that meets the same requirements as specified in rule 498—55.2(249C).

498—170.2(234) Eligibility.

170.2(1) Financial. Financial eligibility shall be determined according to rule 498—130.3(234) except recipients of aid to dependent children, refugee cash assistance or refugee medical assistance shall not be eligible for child day care services under this chapter when the recipient is eligible for child day care as a training allowance under 498—chapter 55.

170.2(2) General eligibility requirements. Child day care shall be provided only to children under eighteen (18) years of age.

170.2(3) Need for service. The need for child day care services shall be established through the assessment process as set forth in 498—chapter 131. The child or parents of the child shall meet one or more of the following requirements in order to be eligible for child day care services:

a. The parent or parents are in vocational training.

b. The parent is employed thirty (30) or more hours per week, or is employed an average of thirty (30) or more hours per week during the month. Child care services may be provided for the hours of employment of a single parent or the coinciding hours of employment of both parents in a two (2)-parent home, and for actual travel time between home, child care facility, and place of employment.

c. The child is mentally retarded or handicapped and the parent or parents are unable to provide adequate and necessary care.

d. Day care is part of a protective service plan to prevent or alleviate child abuse or neglect.

e. The person who normally cares for the child is absent from the home due to hospitalization, physical or mental illness, or death. Care under this paragraph is limited to a maximum of one (1) month, unless extenuating circumstances are justified and approved after case review by the district administrator.

498—170.3(234) Goals. Appropriate goals for child day care services are those described in subrule 130.7(1), paragraphs "a," "c," and "d."

498—170.4(234) Elements of service provision.

170.4(1) Case plan. The case plan shall be developed by the department service worker and contain information described in subrule 130.7(2).

170.4(2) Fees. Fees are assessed and collected in accordance with rule 498—130.4(234).

170.4(3) Method of provision. Child day care shall be purchased by the department only from a provider whose facility has been approved as set forth below.

A provider shall be one of the following:

a. Child care center. The department may enter into a Purchase of Service Agreement, Form SS-1501-0, with a provider that is licensed by the department and meets all the standards set forth in 498—chapter 109. The child care center shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the child care center into full compliance with the standards. Payment will be made only after the purchase of service contract is approved and signed by the department.

b. Group day care home. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a group day care home that meets all the requirements for registration, has a Certificate of Registration, Form SS-1209-3, and meets all the standards set forth in 498—chapter 110. The group day care home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the group day care home into full compliance with the standards. Payment will be made only after the group day care home has been approved by the department.

c. Family day care home. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a family day care home that meets all the requirements for registration, has a Certificate of Registration, Form SS-1202-3, and meets all the standards set forth in 498—chapter 110. The family day care home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care center into full compliance with the standards. Payment will be made only after the family day care home has been approved by the department

d. Family day care in the home of a relative. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a relative's family

day care home that meets all the requirements for registration for family day care homes. The home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care home into full compliance with the standards. Payment will be made only after the family day care home has been approved by the department.

e. In-home care. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with an adult caretaker who meets the minimum requirements for a family day care home provider to provide care in the child's own home, when the child's home is safe, sanitary, and free of hazards in accordance with the minimum requirements required for family day care home registration. The child's home shall be approved by the department as complying with all standards or the parent shall be notified of specific deficiencies and the action necessary to bring the home into compliance with the standards. The caretaker shall be an adult. Payment will be made only after the home and the caretaker have been approved by the department.

170.4(4) Components of service program. Every child eligible for child day care services shall receive supervision, food services, and program and activities. Transportation may be provided to children in child care centers if transportation is available under the facility's purchase of service contract, and if the parent or parents have no private means of transportation, and live more than one-half (½) mile from the facility.

170.4(5) Levels of service according to age. Child day care services have been divided into different levels according to age. A purchase of service agreement shall list the levels of care that are to be purchased under the agreement. Each level contains the components of supervision, food services, and program and activities. Transportation is an optional component that may be included. The components of supervision, food services, and transportation shall meet the minimum licensing and registration requirements. The program and activities component shall meet the following standards for each level of care:

a. Level one—age two (2) weeks to two (2) years. For each infant, activities and a program shall be planned that provides stimulation; opportunities for crawling and exploration; noises and sounds to encourage language development; sensory experiences for touching, tasting, seeing, and smelling; equipment that can be grasped and encourages discrimination and manipulation skills, i.e., stacking blocks, rings, and pull toys; furniture that is child size; and consistency in staff, physical environment, and daily routine.

b. Level two—age two (2) years to four (4) years. A program with a schedule of activities shall be planned that is flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand coordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and story book reading, nutrition, and safety and health.

c. Level three—age four (4) to kindergarten. A program with a schedule of activities shall be flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand coordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and story book reading, nutrition, and safety and health.

d. Level four—school-age children. A program with a schedule of activities shall be planned that is independent of the child's school experience, but meets the needs of the school-age child.

(1) Activities for the kindergarten child at the center part of the day shall include art, crafts, science, music, large and small muscle development, problem solving, and individual interaction with adults.

(2) Activities for children beyond kindergarten who are in child day care before and after school shall provide opportunities for quiet, solitary play and a variety of active, large muscle activities.

170.4(6) Provider's individual program plan. An individual program plan shall be developed by the child care center for each child within thirty (30) days after placement. The program plan shall be supportive of the service worker's case plan. The program plan shall contain goals, objectives, services to be provided, and time frames for review.

498—170.5(234) Adverse service actions. Services may be denied, terminated, or reduced according to rule 498—130.5(234).

498—170.6(234) Appeals. Notice of adverse actions and the right of appeal shall be given in accordance with 498—chapter 7.

These rules are intended to implement Iowa Code section 234.6(6)"a."

ARC 7172

NURSING, BOARD OF[590]

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 17A.3 and 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," appearing in the Iowa Administrative Code.

These amendments require the circulating registered nurse to be present in the operating room with the staff being supervised.

Any interested person may make written suggestions or comments prior to December 23, 1986. Such written

NURSING, BOARD OF[590] *(cont'd)*

materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, IA 50319. Persons who want to convey their views orally should contact the Executive Director at (515) 281-3256 or in the office at 1223 East Court Avenue.

These amendments are intended to implement Iowa Code section 152.1.

The following amendments are proposed.

ITEM 1. Amend subrule **6.3(3)**, paragraph "d," to read as follows:

d. Operating room. *(A licensed practical nurse working in this setting must have a registered nurse supervisor circulating in the same room.)*

ITEM 2. Amend chapter 6 by adding the following new rule:

590—6.7(152) Specific nursing practice for registered nurses. A registered nurse, while circulating in the operating room, shall provide supervision only to persons in the same operating room.

ARC 7174

PUBLIC HEALTH, DEPARTMENT OF[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 section 135B.7, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend 470—Chapter 51, "Hospitals," Iowa Administrative Code. Pursuant to the authority of Iowa Code section 135B.10 as amended by 1986 Iowa Acts, Senate File 2175, section 528, the proposed rule was also approved by the Hospital Licensing Board.

The proposed rule eliminates a requirement that separate buildings of a hospital must be located in the same service area if they are to be under the hospital's license.

Any interested person may submit written comments concerning the proposed rule not later than December 23, 1986, addressed to Susan Osmann, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This rule implements Iowa Code section 135B.7.

Amend subrule 51.3(1) to read as follows:

51.3(1) Separate license required. A separate license shall be required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but ~~are located in the same service area and~~ provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation and which are organized under a single owner or governing board with a single designated administrator and medical staff.

ARC 7175

PUBLIC HEALTH, DEPARTMENT OF[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 section 135.47, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 111, "Financial Assistance To Eligible End-Stage Renal Disease Patients," Iowa Administrative Code.

These proposed amendments:

1. Delete, add, or modify several definitions pertinent to the understanding, purpose, and operation of the chronic renal disease financial assistance program;
2. Clarify several subrules regarding program operation;
3. Provide additional clarification regarding the types and limitations of financial assistance available through the program to eligible applicants:
4. Encourage the use of generic drug substitutions (where available and when appropriate) to reduce program costs; and
5. Limit program reimbursement for drug claims to the "average wholesale price" plus a one dollar filing fee as an additional cost-saving measure.

The Iowa Department of Public Health will hold a public hearing on Tuesday, December 23, 1986, at 1 p.m., in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075, to consider any oral comments and any written comments received on or before December 23, 1986. Written comments should be addressed to: Joyce Spencer, Program Administrator, Chronic Renal Disease Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These proposed amendments have been reviewed by the Renal Disease Advisory Committee at their October 17, 1986 meeting and prior to notice of adoption will be reviewed by the Iowa State Board of Health.

These proposed amendments are intended to implement Iowa Code sections 135.45 to 135.48.

ITEM 1. Amend rule 111.1(135) by deleting all subrule numbers, arranging the definitions in alphabetical order, and changing the lettered paragraphs to numbered paragraphs. Further amend as follows:

Rescind subrule **111.1(4)**.

Amend subrule **111.1(6)** by adding a new paragraph "6," numbering the subsequent paragraphs, and amending newly numbered paragraph "7" as follows:

6. Public assistance, welfare payments, or child support payments specifically used for dependents of the applicant or patient,

~~g.~~ *7.* Funeral contract or burial trusts *not exceed $2,000 per family member,*

Add the following new definition:

"Family member" means the applicant, the applicant's spouse, any children under eighteen (18) years of age, and any disabled children eighteen (18) years of age or older who are still dependent and living in the home. If the

PUBLIC HEALTH, DEPARTMENT OF[470] *(cont'd)*

applicant is an unemancipated minor, family member means the applicant's parent(s) or guardian(s), any siblings under eighteen (18) years of age, and any disabled siblings under eighteen (18) years of age or older who are still dependent and living in the home.

Amend subrule 111.1(7) as follows:

~~111.1(7)~~ "Financial assistance" means the program funds provided to or on behalf of patients for ~~those~~ *renal disease* expenses ~~directly or indirectly related to their end-stage renal disease~~ as set forth in *rule 111.6(135)* ~~these rules~~.

Amend subrule **111.1(10)**, paragraph "i," as shown, delete paragraph "n" in its entirety, and renumber the remaining paragraphs accordingly:

~~i.~~ *9.* Public assistance or welfare payments such as ~~aid to dependent children and~~ supplemental security income,

~~n. Child support,~~

Add the following new definition:

"Health insurance" means health insurance expense reimbursement policies, but specifically excludes all hospital and surgical indemnity policies.

Rescind subrule **111.1(12)**.

Amend subrule **111.1(13)**, paragraph "c," as follows:

~~c.~~*3.* ~~Insurance~~ *Health insurance* policies~~,~~ *and* health maintenance organization contracts ~~and nonprofit health service or corporation contracts~~, whether issued on an individual or group basis ~~(hereinafter "private health insurance). This includes~~, *including* coverage carried by an absent or noncustodial parent.

Amend subrule 111.1(21) as follows:

~~111.1(21)~~ "Provider" means a professional, public or private organization which provides services~~, directly or indirectly,~~ for the treatment of end-stage renal disease.

ITEM 2. Amend subrule 111.4(4) as follows:

111.4(4) Approved applicants will receive financial assistance for time periods not to exceed six *(6)* months at which time a redetermination of eligibility shall be made by the department. If during an approved period the patient experiences a change in medical or financial status, the department shall be notified in writing within thirty *(30)* days of the date and nature of the change. Upon receipt of this information, the department shall evaluate the patient in accordance with the eligibility criteria identified in ~~this rule~~ *these rules* and any subsequent change in financial assistance shall become effective the month following the change in medical or financial status. Patients shall be notified ~~as stated in subrule 111.4(3).~~ *by mail of any change in financial assistance.* Failure of the patient to notify the department of any change in medical or financial status during an approved period of eligibility may deny to that patient any increase in financial assistance that may otherwise have been allowed. Similarly, failure of the patient to notify the department of any change in medical or financial status during an approved period of eligibility which would have caused a decrease in financial assistance may result in the recovery of financial assistance as set forth in ~~rule 111.10(135).~~ *subrule 111.5(6).*

ITEM 3. Amend subrule 111.5(1) as follows:

111.5(1) All gross income and other financial *and medical* resources available to an applicant shall be considered in determining eligibility and any financial participation that may be required of the applicant.

Amend subrule 111.5(2) as follows:

111.5(2) The gross income of an applicant's spouse shall be considered available to the applicant in determining the extent of eligibility and financial participation. Similarly, if the applicant is ~~a~~ *an unemancipated* minor, the gross income of the responsible parent(s), guardian or custodian of the minor shall be considered available to the applicant.

Amend subrule 111.5(4) as follows:

111.5(4) Financial assistance shall be approved only for those ~~services or that part of the cost of a given service~~ *charges specified in subrule 111.6(1)* for which no other financial or medical resource exists. Applicants shall take all steps necessary to apply for and, if entitled, accept any other financial or medical resource for which they qualify. Failure to do so, without good cause, shall result in the denial or termination of any financial assistance from this program that would have been covered by the other resource.

Amend subrule 111.5(5) as follows:

111.5(5) When another *financial or* medical resource can be obtained, that resource shall be considered to be available, unless good cause for failure to obtain that resource is determined to exist. Determination of good cause shall be made by the ~~program director~~ *department* and shall be based upon information and evidence provided by the applicant, or by one acting on the applicant's behalf.

Amend subrule 111.5(6) as follows:

111.5(6) Program staff may, for purposes of verification, contact any person or agency referred to in these rules in order to assure that any financial assistance that may be provided is not or will not be provided when another financial or medical resource exists. *The department may pursue the recovery of any financial assistance for any duplicate or unallowable payment made by the department to or on behalf of the patient.*

ITEM 4. Amend subrule 111.6(1) as follows:

111.6(1) Financial assistance for charges incurred for the provision of dialysis and kidney transplantation shall be limited to dialysis and transplantation facilities which meet the requirements of the Secretary of Health and Human Services as an *approved* end-stage renal disease (ESRD) provider under section 226(g), Title II of the Social Security Act. The types of financial assistance that may be provided shall be limited to the expense categories listed below depending upon the financial and medical resources available to the patient.

a. Hospital and independent ~~dialysis~~ facility charges for inpatient and outpatient *dialysis and kidney transplantation* services:

(1) For patients with no other resources, program payment to each provider shall *cover Medicare-approvable charges had Medicare been in effect and shall* not exceed *two thousand dollars (*$2,000*)* a month.

(2) For patients with Medicare only, program payment shall not exceed Part A and Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part A and Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment to each provider shall cover coinsurance and deductibles~~, if any,~~ *not to exceed Medicare-approvable charges had Medicare been if effect and shall* not ~~to~~ exceed *two thousand dollars (*$2,000*)* a month.

b. Medical charges approvable by Medicare that include, but are not limited to, physicians' services, ambulance transportation and oxygen equipment:

(1) For patients with no other resources, program payment to each provider shall *cover Medicare-approvable charges had Medicare been in effect and shall* not exceed *one thousand dollars (*$1,000*)* a month.

(2) For patients with Medicare only, program payment shall not exceed Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment to each provider shall cover coinsurance and deductibles~~, if any,~~ *not to exceed Medicare-approvable charges had Medicare been in effect and shall* not ~~to~~ *exceed one thousand dollars (*$1,000*)* a month.

c. Medicare-approvable home dialysis ~~equipment and~~ supply charges:

(1) For patients with no other resources, program payment ~~to each provider~~ shall not exceed what would have been Medicare-approvable charges had Medicare been in effect.

(2) For patients with Medicare only, program payment shall not exceed Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment ~~to each provider~~ shall cover coinsurance and deductibles, ~~if any,~~ not to exceed what would have been Medicare-approvable charges had Medicare been in effect.

d. Home hemodialysis assistants: Reimbursement for home hemodialysis assistants shall be ~~at a rate not to exceed~~ *limited to twenty-five dollars (*$25*)* per dialysis day when no other financial *or medical* resource is available. Home hemodialysis assistants are persons other than the applicant's family members ~~(including~~ *and* any siblings of the applicant~~)~~ who have been trained in home hemodialysis procedures by a Medicare-~~certified~~ *approved* end-stage renal disease provider and who have been hired to assist with the home hemodialysis procedure. *For home hemodialysis patients in financial status category 2, the reimbursement rate shall be eighty (80) percent. For home hemodialysis patients in financial status category 3, the reimbursement rate shall be fifty (50) percent.*

e. Pharmaceuticals: Legend (prescription) and nonlegend (nonprescription) drugs and other related medical supplies ordered by a physician not covered by any other resource. Pharmaceuticals include vitamins, but do not include food supplements. *Drug reimbursement shall be limited to the average wholesale price of generic drugs plus a one dollar ($1) filing fee when generically equivalent drug substitutions of demonstrated bioavailability are in stock unless the physician specifically states that no drug substitution is to be made. If generically equivalent drugs of demonstrated bioavailability are not in stock or if the physician has specified that drug substitution is not to occur, reimbursement shall be limited to the average wholesale price of the prescribed brand or trade name drug product plus a one dollar ($1) filing fee. Reimbursement shall be limited to eighty (80) percent for patients in financial status category 2, and to fifty (50) percent for patients in financial status category 3.*

f. Travel: To and from the nearest appropriate Medicare-~~certified~~ *approved* ESRD facility for outpatient dialysis, home dialysis training, transplantation and the three *(3)* months of post-transplant care following the date of discharge. Reimbursement shall be paid at ten cents *(10¢)* per mile for patients or family members (as defined in ~~paragraph 111.7(6)"a"~~) *these rules)* who are able to drive. When patients or family members are unable to drive and must hire a driver, reimbursement shall be paid at twenty cents *(20¢)* per mile. When a patient must travel by cab or other means of transportation, payment shall be at the rate normally charged for any farepaying passenger not to exceed *twenty dollars (*$20*)* per round trip. ~~Outpatient~~ *Travel reimbursement for outpatient* dialysis patients in financial status category 2 shall ~~receive~~ *be limited to* eighty *(80)* percent. ~~reimbursement of the appropriate travel rate.~~ *Travel reimbursement for outpatient dialysis patients in financial status category 3 shall be limited to fifty (50) percent.* Patients who travel to other than the nearest appropriate ESRD facility shall receive travel assistance not to exceed the amount that would be reimbursable had they traveled to the nearest appropriate facility. In the event of a transplant, when time is of the essence, and the patient (transplant recipient) is requested to utilize air transport, program payment shall be limited to the least costly fare available at the moment.

g. Lodging: For home dialysis training, transplantation and the three *(3)* months of post-transplant care following the date of discharge. Payment shall be made for actual lodging expenses not to exceed *eighteen dollars (*$18*)* per day. *Lodging reimbursement for patients in financial status category 2 shall be limited to eighty(80) percent. Lodging reimbursement for patients in financial status category 3 shall be limited to fifty (50) percent.*

h. ~~Private health~~ *Health* insurance and Medicare:

(1) Premiums for health insurance policies~~,~~ *and* enrollment fees for health maintenance organization contracts ~~or subscriber fees for nonprofit health service corporation contracts~~ that provide the patient with coverage for ESRD medical care. When a patient has family coverage, whether issued on an individual or group basis, program payment shall be limited to the premium or enrollment ~~or subscriber~~ fee for an individual policy or contract (from the same company) that provides the same or substantially the same benefits. *This does not include hospital and surgical indemnity policies.*

(2) Premiums for Medicare.

ITEM 5. Amend subrule 111.7(5) as follows:

111.7(5) Based on the evaluation of each application, the types of financial assistance provided shall be determined and made known to the applicant ~~as specified in subrule 111.4(3)~~ *by mail.* Financial assistance shall be available for approved dialysis and transplant-related expenses incurred no more than three *(3)* months prior to the month the application is received by the department.

Amend subrule 111.7(6) as follows:

111.7(6) The criteria that follow shall be the criteria utilized to determine the applicant's financial status and eligibility:

a. All income shall be included in the determination of gross income. In regard to nonexempt financial resources, *two thousand dollars (*$2,000*)* will be disregarded for the

PUBLIC HEALTH, DEPARTMENT OF[470] *(cont'd)*

first family member plus *one thousand dollars* ($1,000) for each additional family member living in the home. ~~Family members, unless otherwise specified in these rules, shall be considered to be the applicant's spouse, any children under eighteen years of age, and any disabled children eighteen years of age or older who are still dependent.~~

b. Four financial status categories, plus a Medical Assistance category, shall be used as set forth in ~~Table~~ *Appendix* 1. These categories are presented in dollar ranges based on percentage increases of the 1985 Department of Health and Human Services poverty income guidelines. Each range is increased proportionately by the number of family members. The financial status category into which the applicant falls for eligibility purposes is determined upon evaluation of the applicant's gross income and other financial and medical resources. The type(s) of financial assistance which may be provided is displayed in ~~Table~~ *Appendix* 2.

ITEM 6. Amend subrule 111.9(6) as follows:

111.9(6) When other *financial or* medical resources are available to the patient, the program will consider for payment any eligible expense claim or portion thereof provided the claim is for approved expenses incurred no more than twelve *(12)* months prior to the month the claim is received by the program.

ITEM 7. Rescind rule **111.10(135).**

ITEM 8. In reference to **TABLE 1**, change the name from TABLE 1 to APPENDIX 1.

ITEM 9. In reference to **TABLE 2**, the name is changed from TABLE 2 to APPENDIX 2, and a revised APPENDIX 2 is inserted in lieu thereof as follows:

APPENDIX 2

TYPES OF FINANCIAL ASSISTANCE AVAILABLE
BY FINANCIAL STATUS CATEGORY

TYPES OF ASSISTANCE	(A) MEDICAL ASSISTANCE	(1) TO 150% OF BASE	(2) TO 200% OF BASE	(3) TO 250% OF BASE	(4) TO 300% OF BASE
Hospital and independent facility charges	NA	AP	AP	AP	AP
Medical charges	NA	AP	AP	AP	AP
Home dialysis supply charges	NA	AP	AP	AP	AP
Home hemodialysis assistants	NA	AP	AP at 80%	AP at 50%	NA
Pharmaceuticals	Nonlegend and coinsurance	AP	AP at 80%	AP at 50%	NA
Travel for outpatient dialysis, home dialysis training, transplantation and three months post-transplant period only	In-city only	AP	AP at 80%	AP at 50%	NA
Lodging for home dialysis training, transplantation, and three months post-transplant period only	NA	AP	AP at 80%	AP AT 50%	NA
Health insurance and Medicare	AP (excluding Medicare)	AP	AP	AP	NA

NA = No Assistance AP = Assistance Provided BASE = Poverty Income Guidelines (See Appendix 1)

These rules are intended to implement Iowa Code sections 135.45 to 135.48.

ARC 7158

PUBLIC HEALTH, DEPARTMENT OF[470]

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 147.76 and 157.14, the Board of Cosmetology Examiners hereby gives Notice of Intended Action to amend Chapter 150 of the Iowa Administrative Code, "Sanitary Conditions for Beauty Salons and Schools of Cosmetology."

The proposed amendments require posting of the most recent inspection report in cosmetology establishments, allow more flexibility in the posting of cosmetologists' licenses, require sanitation of tools, instruments, and equipment which come into contact with a patron's nails, and prohibits the use of nail buffers and neck dusters.

Any interested person may make written comments concerning the proposed amendments not later than December 23, 1986, addressed to Grace West, Cosmetology Board Administrator, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code section 157.6.

ITEM 1. Amend rule 150.1(157) to read as follows:

470—150.1(157) Rules ***and inspection report*** **posted.** The owner or manager of every cosmetology establishment shall keep a copy of the rules of sanitation adopted by the *Iowa* department of *public* health *and the most recent inspection report* posted in a conspicuous place in each cosmetology establishment, for the information and guidance of all persons employed or studying therein and the public generally.

ITEM 2. Amend rule 150.2(157) to read as follows:

470—150.2(157) License. *Each cosmetologist* ~~Cosmetologists~~ shall *visibly* display ~~at their work cabinet~~ the original license and the annual renewal certifying the practitioner is a licensed cosmetologist. Beauty salon licenses shall be posted visible to the public therein.

ITEM 3. Amend rule **150.9(157) Sanitation.**—by adding ",nails," after the words "with a patron's hair" in the third line of the first sentence.

ITEM 4. Add a new subrule 150.10(3) to read as follows:

150.10(3) The use of nail buffers or neck dusters is strictly prohibited.

ARC 7192

RACING AND GAMING DIVISION[195]

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 99D.7, the Racing and Gaming Division hereby gives Notice of Intended Action to amend Chapter 7, "Greyhound Rules" and Chapter 8, "Mutuel Rules," Iowa Administrative Code.

These rules amend existing rules to add Superfecta Wagering as a betting interest available to licensees.

Any interested person may make written suggestions or comments on these proposed rule changes prior to December 23, 1986. Such written material should be directed to the Racing and Gaming Division, 1918 S.E. Hulsizer, Ankeny, Iowa, 50021. Persons who wish to convey their views orally should contact the commission office at 515/964-6840.

Also, there will be a public hearing December 23, 1986, at 9 a.m. in conference room A, at 1918 S.E. Hulsizer, Ankeny, Iowa. Persons may present their views at the public hearing either orally or in writing. These rules are necessary for implementation of Iowa Code chapter 99D.

ITEM 1. Rule 195—7.6(99D), is amended by rescinding subrule 7.6(16), and inserting in lieu thereof the following:

7.6(16) In purse races, there shall be at least six (6) greyhounds of completely different ownership in races at distances of ⅜ mile and longer; seven (7) greyhounds of completely different ownership in races at distances less than ⅜ mile; and notwithstanding the above, eight (8) greyhounds of completely different ownership in races upon which superfecta wagering is conducted. No trainer or owner shall have more than two (2) greyhounds in any race excepting in stakes or sweepstake races. No double entries shall be allowed until all single interests are used and double entries shall be uncoupled for wagering purposes.

ITEM 2. Rule **195—8.1(99D)** is amended by adding the following new definition in alphabetical order:

"Superfecta" means a wager selecting the exact order of finish for first, second, third, and fourth in that race and is not a parlay and has no connection with or relation to any other pool conducted by the association.

ITEM 3. Subrule **8.2(4)** is amended by adding the following new paragraph:

k. Superfecta pool. The amount wagered on the winning combination, being the first four (4) finishers in exact order as officially posted, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning superfecta combination. The payoff includes both the amount wagered and the profit.

(1) Superfecta wagering will be permitted only at licensed greyhound facilities upon application to and approval by the Iowa racing commission.

RACING AND GAMING DIVISION[195] *(cont'd)*

(2) This rule shall be prominently displayed in the mutuel area of the track conducting the superfecta or in the official track program.

(3) If a greyhound is declared a nonstarter, all tickets including such greyhound or greyhounds shall be deducted from the superfecta pool and money refunded to the purchasers of tickets on the greyhound or greyhounds so prevented from racing.

(4) If there is a failure to select, in order, the first four (4) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the first three (3) greyhounds, in order; failure to select the first three (3) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the first two (2) greyhounds, in order; failure to select the first two (2) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the winner to win; failure to select the winner to win the pool shall be divided among holders of superfecta tickets selecting the greyhound finishing second to place; failure to select the greyhound finishing second to place, the pool shall be divided among holders of superfecta tickets selecting the greyhound finishing third to show; failure to select the greyhound finishing third to show, the pool shall be divided among holders of superfecta tickets correctly selecting the greyhound finishing fourth.

(5) In the event of a dead heat or dead heats, all tickets selecting the correct order of finish, counting a greyhound in a dead heat as finishing in either position dead heated, shall be winning tickets, and distribution shall be made in accordance with the rules in this chapter relative to dead heats.

(6) If only three (3) greyhounds finish the race, the pool shall be divided among the holders of superfecta tickets selecting the first three (3) greyhounds, in order, ignoring the greyhound selected to finish fourth. If less than three (3) greyhounds finish the race, a complete refund of the superfecta pool shall be made (see subrule 7.14(11)).

ARC 7161

TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLES

NOTICE OF INTENDED ACTION

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 307.12 and 307A.2, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07,A] Chapter 1, entitled "Designated Highway System," Iowa Administrative Code.

Iowa Code subsections 321.454(2) and 321.457(3) grant to the Iowa Department of Transportation the authority to designate those routes designated by the U.S. Secretary of Transportation for use by wider and longer trucks. Federal rules require states to make reasonable provisions for access between these designated routes and terminals and facilities for food, fuel, repairs, and rest. These amendments provide for an additional type of access and establish a procedure for requesting this access. Corrections to Iowa Code sections referenced in the rules are also being made.

On January 20, 1987, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider these proposed administrative rules.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation at the Commission meeting. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.
5. Be delivered to this office or postmarked no later than January 6, 1987.

The Department shall notify a person or agency properly requesting an oral presentation of the time of day scheduled for the presentation.

Proposed rulemaking actions:

ITEM 1. Amend rule 820—[07,A]1.3(321) as follows:

820—[07,A]1.3(321) Other vehicles. If not specified in rule 820—[07,A]1.2(321), the ~~length and~~ width provisions of Iowa Code *sub*sections 321.454*(1)* and *the length provisions of Iowa Code subsections* 321.457*(1), (2) and (4)* shall apply to the designated system.

ITEM 2. Amend rule 820—[07,A]1.4(321) as follows:

820—[07,A]1.4(321) Access.

1.4(1) Access to and from designated highways shall be as follows:

a. ~~1.4(1)~~ Five *(5)* road miles from the interstate system for access to terminals or facilities for food, fuel, repairs, and rest.

b. ~~1.4(2)~~ Points of loading and unloading for household goods carriers.

c. ~~1.4(3)~~ All roads and streets within connected cities and within the following distances from such cities for access to terminals or facilities for food, fuel, repairs, and rest:

Population	Distance
Less than 2,500	3 miles
2,500 - 25,000	4 miles
25,000 - 100,000	6 miles
100,000 - 200,000	8 miles
Over 200,000	10 miles

d. On routes designated by the department solely for the purpose of access to points of loading and unloading, and within cities connected by such routes.

1.4~~(4)~~*(2)* Cities and counties may restrict truck operation on any road or street under their jurisdiction by local ordinance.

ITEM 3. Rescind rule 820—[07,A]1.5(321) and its implementation clause and insert in lieu thereof the following:

820—[07,A]1.5(321) Requesting access routes. A person may request that a route be designated solely for the purpose of access to points of loading and unloading, as permitted in paragraph 1.4(1)"d," by submitting a written request to: Director, Motor Vehicle

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

Division, 5268 N.W. 2nd Ave., Des Moines, Iowa 50313. The request shall specify the access route requested and the reasons for the request.

ITEM 4. Strike the implementation clause that appears at the end of 820—**[07,A] chapter 1** and insert in lieu thereof the following:

These rules are intended to implement Iowa Code subsections 321.454(2) and 321.457(3).

ITEM 1. Rescind the last paragraph of subrule 19.2(5)"k."

ITEM 2. Rescind the last paragraph of subrule 20.2(5)"j."

ITEM 3. Rescind the last paragraph of subrule 20.13(1)"c."

ITEM 4. Rescind the last paragraph of subrule 20.13(1)"e."

ITEM 5. Rescind the last paragraph of subrule 22.2(6)"l."

ITEM 6. Rescind subrule 22.12(4).

ARC 7196

UTILITIES DIVISION[199]

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.

The Iowa State Utilities Division (Board) hereby gives notice that on November 11, 1986, the Board issued an order in Docket No. RMU-86-22, In Re: Confidential Records, "Order Commencing Rule Making," pursuant to the authority of Iowa Code sections 476.2 and 17A.4 to consider the adoption of amendments to Utilities Division subrules 19.2(5), paragraph "k," 20.2(5), paragraph "j," 20.13(1), paragraph "c," 20.13(1), paragraph "e," 22.2(6), paragraph "l," and 22.12(4), Iowa Administrative Code. The Board adopted Utilities Division subrule 1.9(6), effective July 9, 1986, which establishes procedures applicable in all contexts for requesting confidential treatment of information filed with the Board. Therefore, the Board has found the portions of the above listed subrules which relate to requests for confidential treatment of information filed with the Board to be unnecessary. Further, the above listed subrules, if not amended, may be confusing, because more support for a request (an affidavit by a corporate officer with personal knowledge) is required under new subrule 1.9(6), than under the above listed subrules.

The proposed rules strike the unnecessary and less stringent paragraphs.

Under Iowa Code sections 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed amendments no later than December 23, 1986, by filing an original and ten (10) copies of the comments substantially complying with the form prescribed in Utilities Division subrule 2.2(2), Iowa Administrative Code. All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ARC 7195

UTILITIES DIVISION[199]

AMENDED NOTICE

Pursuant to Iowa Code sections 476.2, 476.6(11), and 476.6(15), the Iowa State Utilities Board gives notice that on November 14, 1986, the Board issued an order amending the original notice in Docket No. RMU-86-13, In Re: Purchased Gas Adjustments and Annual Review of Gas Procurement Practices. The "Order Commencing Rule Making" was issued on October 17, 1986, and notice was published in the November 5, 1986, Iowa Administrative Bulletin as **ARC 7115**. That notice is being amended to change the date of the oral proceeding and to amend certain errors in the original notice. The oral proceeding date is being changed from December 9 to December 16, 1986, beginning at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines.

The notice attached to the initial order also contained certain errors which should be corrected as follows (changes underlined):

1. Proposed subrule 19.10(3), paragraph "b," subparagraph (3), of the notice, should read: "3) The purchases C, D, and Z which will be necessary to meet requirements as determined in 19.10(3)"b"(1) and (2)."
2. Proposed subrule 19.10(5), paragraph "a" should refer to 19.10(3)"b"(1).
3. Proposed subrule 19.10(5), paragraph "b" should refer to 19.10(3)"b"(1).
4. Proposed subrule 19.10(6), paragraph "f" was omitted entirely from the notice. This proposed rule is identical to current rule 19.10(5)"c," and reads as follows:

f. The interest rate on refunds distributed under this subrule, compounded annually, shall be the commercial paper rate quoted in the "Money Rates" section of the Wall Street Journal on the day the refund obligation vests. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier to the date the refund is distributed to customers.

Administrative costs of refund processing shall not be deducted from refund amounts.

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:

June 1, 1985 - June 30, 1985	13.50%
July 1, 1985 - July 31, 1985	12.75%
August 1, 1985 - August 31, 1985	12.25%
September 1, 1985 - September 30, 1985	12.25%
October 1, 1985 - October 31, 1985	12.25%
November 1, 1985 - November 30, 1985	12.25%
December 1, 1985 - December 31, 1985	12.25%
January 1, 1986 - January 31, 1986	11.75%
February 1, 1986 - February 28, 1986	11.25%
March 1, 1986 - March 31, 1986	11.25%
April 1, 1986 - April 30, 1986	10.75%
May 1, 1986 - May 31, 1986	9.75%
June 1, 1986 - June 30, 1986	9.25%
July 1, 1986 - July 31, 1986	9.75%
August 1, 1986 - August 31, 1986	9.75%
September 1, 1986 - September 30, 1986	9.25%
October 1, 1986 - October 31, 1986	9.25%
November 1, 1986 - November 30, 1986	9.50%
December 1, 1986 - December 31, 1986	9.50%

ARC 7177

ALCOHOLIC BEVERAGES DIVISION[185]

Pursuant to the authority of 1986 Iowa Acts, House File 2493, section 24, the Iowa Alcoholic Beverages Division emergency adopts and implements rules revising Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code, to state how large an OWI notice must be, to state what size the print in the notice shall be, to require the content to substantially comply with new subrule 4.39(1), and to present the text of the OWI notice.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because the Division needs these rules to take effect upon filing to implement House File 2493 which became effective on July 1, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Division finds that the normal effective date of these rules thirty-five days after publication should be waived and these rules become effective upon filing on November 12, 1986, because they confer a benefit on the public by creating rules which implement Houe File 2493 which became effective on July 1, 1986.

These rules are also being published as a Notice of Intended Action, **ARC 7178**, to solicit public input.

These rules implement 1986 Iowa Acts, House File 2493, section 24.

These rules became effective November 12, 1986.

The following rules are adopted:

ITEM 1. Rule 185—4.39(123) is amended to read as follows:

185—4.39(123) Intoxication notice. State liquor stores and all liquor control licensees, beer permittees, and wine permittees shall post a permanent notice in a prominent location on the licensed premises and in the state liquor stores, which notice shall explain the laws and penalties imposed for operation of a motor vehicle while intoxicated. ~~The notice shall be of a size and on a form prescribed by the administrator of the division.~~ *The notice shall be at least nine inches by 12 inches (9 x 12); the print size in the notice shall not be less than eleven (11) point; and the content of the notice must substantially comply with subrule 4.39(1).* The notice shall be placed on a wall or door on the licensed premises and in the state liquor stores which shall be plainly visible to patrons or customers. The division may provide a copy of the notice to licensees and permittees who request it from the division.

ITEM 2. Add new subrule 4.39(1) to rule 185—4.39(123) to read as follows:

4.39(1) OWI notice.

OPERATION AND PENALTIES
FOR OPERATING
A MOTOR VEHICLE WHILE INTOXICATED
(Effective July 1, 1986)
License Revocation

OWI DEFINED: A person commits the offense of operating while intoxicated if the person operates a motor vehicle in either of the following conditions:

*while under the influence of alcoholic beverage or other drug;
or
*while having an alcoholic concentration of .10 or more.

Implied Consent: A person who operates a motor vehicle in Iowa under circumstances which give reasonable grounds to believe that the person was intoxicated is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine for the purpose of determining the alcoholic concentration or presence of drugs.

Refusal to Consent: If a person refuses to submit to chemical testing, no test shall be administered but the person's privilege to drive shall be revoked for:

*240 days if the person has not had a prior revocation within the previous six years under the state implied consent or drunk driving laws; or
*540 days if the person has had a prior revocation within the previous six years.

Failed Chemical Test: If a person consents to chemical testing and the test results indicate an alcohol concentration of .10 or more, the person's driving privileges shall be revoked for:

*180 days if the person has not had a prior revocation within the previous six years; or
*365 days if the person has had a prior revocation within the previous six years.

Accident: If an intoxicated driver causes a traffic accident which results in serious personal injury or death of another person, the driver's license shall be revoked for:

*one year where serious personal injury results; and
*six years where death results.

Violators under 19: Conviction for OWI while under the age of 19 shall result in the revocation of a person's driving privileges until the end of the revocation period and until the person reaches age 19.

Civil Fine: If a person's license is revoked for any of the above-mentioned reasons, the person will not be issued a new license until a civil fine of $100 is paid.

Criminal Penalties

In addition to the loss of driving privileges and civil fine, a person convicted of OWI shall be subject to the following criminal penalties:

1st Offense: Imprisonment up to one year (Mandatory minimum of 48 hours) and a $500-1000 fine.
2nd Offense: Imprisonment up to two years (Mandatory minimum of 7 days) and a $750-5000 fine.
3rd Offense: Imprisonment up to five years (Mandatory minimum of 30 days) and $750-7500 fine.

WE ENCOURGE YOU TO DESIGNATE A NONDRINKING DRIVER

This notice is posted in compliance with 1986 Iowa Acts, House File 2493 and Iowa Alcoholic Beverages Division rule 185—4.39(123), Iowa Administrative Code.

4.39(2) Reserved.

[Filed emergency 11/12/86, effective 11/12/86]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7209

ECONOMIC DEVELOPMENT, DEPARTMENT OF[261]

Pursuant to the authority of the 1986 Iowa Acts, Senate File 2175, sections 804 and 806, the Department of Economic Development(DED) rescinds 630—Chapter 23, "Community Development Block Grant Nonentitlement Program," Iowa Administrative Code, and adopts in lieu thereof the following new chapter. This program was previously administered by Office for Planning and Programming[630].

The new chapter makes changes recommended by the public and makes the program more responsive to the need for increased economic development activity in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin of October 8, 1986, as **ARC 7025**. A public hearing was held in Des Moines on October 28, 1986, to solicit public comments and suggestions on the proposed rules contained in the Notice of Intended Action. Suggestions from the public hearing, written testimony, and other public sources have been considered in this rule making.

The Notice of Intended Action listed six proposed changes to the rules. Each proposed change and public comment is summarized below:

1. Eliminate imminent threat program. The majority of public comment opposed this change. City officials felt that the imminent threat reserve fund was a necessary "safety net" for Iowa's communities. It was suggested that the amount of set-aside be changed if current funding levels were not fully utilized. Based on comments received, DED decided to retain the imminent threat program with an annual reserve of $500,000. If not used, the moneys would revert to the economic development set-aside fund.

2. Eliminate communitywide points for scoring or regular competitive CDBG applications. This change would revise the scoring methodology used in rating applications by eliminating 200 points based on "communitywide points." (Data used to determine scores included: poverty level, unemployment rate and city or county property tax rate). The project specific factors, totaling 700 points, would remain the same. Public comment was fairly evenly divided on this issue. DED decided to eliminate communitywide points based on the lack of consensus on the most appropriate data to be used in determining the communitywide scores.

3. Establish ten percent (10%) set-aside of CDBG for public facilities in support of economic development. Public opinion varied a great deal on this proposal. Some organizations felt that too great a portion of funds were being "set-aside" and thereby lessening local government discretion in determining their high priority projects by having to match projects with "set-aside" funds. Others supported the change citing the need for a concerted effort to bolster Iowa's sagging economy. After considering comments, DED decided to establish a ten percent (10%) set-aside for public facilities in support of economic development.

4. Establish a $100,000 cap on the amount of CDBG funds that can be received by cities under five hundred (500) population. The vast majority of comments received opposed this change, stating that major infrastructure projects could not be accomplished with such limited funds. DED will not adopt this proposed change. Grant ceilings will be the same as in the previous year.

5. Increase the Economic Development Set-Aside (EDSA) to twenty-five percent (25%) of available funds. Again, comments were split on this proposal. Those against the increase stated overall opposition to earmarking additional funds. Those supporting the proposition favored increased emphasis on improving the state's overall economic condition. This proposal was adopted.

6. Eliminate the population categories from the distribution of funds formula. This proposal would create a competition between all cities and counties with no differentiation as to size. Although the comments received were negative, DED felt that change would advance the programmatic goal to achieve a wide distribution of available funds.

7. Establish bonus points for all cities and counties. A number of comments were received opposing this change during the hearing process citing the fact that this would be a severe disadvantage to large cities in Iowa that have been funded over the past few years. The state has a strong interest in preserving fairness and equity in the program. Therefore, DED has decided to eliminate bonus points entirely, thereby basing application scoring on project specific factors contained in the ranking formula.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds the usual effective date of these rules, thirty-five days after publication, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator on November 14, 1986. The Department has found that these rules confer a benefit on the public in that they will allow timely and expedient distribution of federal funds to local governments. It allows local government to plan construction projects for the next spring construction season. If the rules were to be delayed, worthwhile projects may be postponed because of seasonal changes and the corresponding effect on construction.

These rules were adopted on November 11, 1986, by the Department of Economic Development Board.

These rules implement 1986 Iowa Acts, House File 2175, sections 804 and 806.

Rescind 630—Chapter 23 and adopt the following new chapter:

CHAPTER 23

COMMUNITY DEVELOPMENT BLOCK GRANT NONENTITLEMENT PROGRAM

261—23.1 (71GA,SF2175) 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:

1. Involve local officials in program decisions, including program design, administrative policies, and review;

2. Simplify the application procedures and administration of the program;

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

4. Ensure neutrality and fairness in the treatment of all applications submitted.

261—23.2(71GA,SF2175) 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 (1) eligible applicant requesting funds for one (1) 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(71GA,SF2175), the public facilities program, described in 23.9(2), and the interim financing program, described in 23.14 (71GA,SF2175).

"DED" means the Iowa department of economic development.

"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.

"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 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 department of cultural affairs, state historical society of Iowa.

"HUD" means the U.S. Department of Housing and Urban Development.

"Joint application" means an application submitted by more than one (1) eligible applicant to complete a single project for the benefit of all those applying.

"Local development corporation" means any entity meeting one (1) 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 Betterment 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, land, or buildings provided by public or private sources within the community which are 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 (80%) of the median 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 (2) or more major activities.

"Multiyear funding" means a project receiving a funding commitment from two (2) 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 for Management and Budget report entitled "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments."

"Program income" means program income as defined by the Iowa CDBG Management Guide.

"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 (1) 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 (1) program year's allocation.

261—23.3(71GA,SF2175) 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.

261—23.4(71GA,SF2175) 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 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 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 the 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. Provision 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 the unit, or received by the unit from the state in which it is located) during any part of the twelve (12)-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 the services, except that no more than fifteen percent (15%) 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 (10%) of the total contract amount and may not exceed ten percent (10%) of the CDBG 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 23.1(71GA,SF2175). 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 they 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. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in 23.7(71GA,SF2175), the public facilities set-aside as provided in 23.9(71GA,SF2175), or the interim financing program as provided for in 23.14(71GA,SF2175);

(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(71GA,SF2175), or the interim financing program as provided for in 23.14(71GA,SF2175);

u. Construction of housing assisted under Section 17 of the United States Housing Act of 1937; and

v. Reasonable administrative costs of overall program development, management, coordination, 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 potholes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended streetlight 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.

261—23.5(71GA,SF2175) Application requirements for the competitive program.

23.5(1) Restrictions on applicants.

a. No more than one (1) application per community will be considered per year under the competitive program.

b. Joint applications from two (2) 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 is limited to funding commitments from two (2) program years' allocations. Multiyear funding is also limited to single purpose applications for infrastructure improvements when it can be demonstrated that funds available to a community in one (1) year are not adequate to complete the project.

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 (12)-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 department of economic development will, to the extent funds are available, 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 Department of Economic Development, Division of Financial Assistance, 200 East Grand, Des Moines, Iowa 50309 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 (1) copy) shall be two (2) 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 DED in writing.

Review and ranking of general competitive applications will be performed by DED 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 (90) 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 will be funded, to the extent that competitive program funding is available. All successful applicants will be notified and invited to a conference with DED 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 criteria 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.

261—23.6(71GA,SF2175) 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 the 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 (1) of the following three (3) objectives:

(1) Primarily benefit low- and moderate-income persons. Fifty-one percent (51%) or more 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) Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, which are

of recent origin, or which recently became urgent; that the recipient is unable to finance the activity on its own; and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within eighteen (18) months prior to original application for CDBG funds.

e. Project funds may only be used for an eligible activity or activities;

f. Costs incurred on CDBG funded projects prior to written authorization from DED may not be eligible for reimbursement with CDBG funds;

g. Conduct a public meeting, after adequate prior notice, to furnish citizens information concerning the amount of grant funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted and to assist persons actually displaced. An acceptable method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3;

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 them;

i. Communities that have received a grant from the preceding year's competitive CDBG allocation must have drawn down at least twenty-five percent (25%) of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

Communities that have received a grant from the competitive CDBG allocation two (2) years preceding the current year must have drawn down at least eighty-five percent (85%) of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

Communities that have received a grant from the competitive CDBG allocation three (3) or more years preceding the current year must have drawn down one hundred percent (100%) of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

23.6(2) Rating factors.

a. The following rating system will be used to rank applications under the competitive program. The highest point total possible is seven hundred (700). Project specific information is obtained from data contained in applications. The project specific rating factors are:

(1) Magnitude of need identified by community, two hundred (200) points possible.

(2) Project impact - extent to which project addresses community need, two hundred (200) points possible;

(3) Percent of project funds benefiting low- and moderate-income families, two hundred (200) points possible; and

(4) Local effort, one hundred (100) points possible.

b. Ties in applications. Ties will be decided in favor of the community whose project benefits the largest number of low- and moderate-income persons.

c. Rating of multiyear and multipurpose applications. All applications will be rated on the factors noted in paragraph "a" 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 included in the application. The weighting will be based on the dollar amount of the CDBG funds and local effort for each project.

d. All scores 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 one hundred (100) points out of a possible four hundred (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 DED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, DED 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, DED 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.

23.6(4) Negotiation of grant awarded. DED reserves the right to negotiate the amount of the grant award, the scale of the project and alternative methods of completing the project.

261—23.7(71GA,SF2175) 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. Multiyear funding commitments will not be allowed under the economic development set-aside program.

c. A community may not apply on behalf of eligible applicants other than itself.

23.7(2) Application procedure. Applications for the economic development set-aside will be accepted by the department of economic development at any time and will be considered on a continuous basis. The department of economic development shall take action on complete applications within thirty (30) days of receipt. Action may include funding the application for all or part of the requested amount, denial of the application for funding, or requesting that additional information be supplied prior to making a final decision.

Review and ranking of applications will be performed by DED personnel. Applications must meet the minimum threshold requirements and receive a minimum score of two hundred fifty (250) points in order to be funded.

An original and one (1) copy of the application shall be submitted. Application forms and instructions will be available upon written request from the Department of Economic Development, 200 East Grand, Des Moines, Iowa 50309, 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 (including amount of funding requested, use of funds, and project schedule);

b. Project budget (including other public funds, private loans, and owner's equity); and

c. 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.

261—23.8(71GA,SF2175) 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 (51%) 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 (1) permanent job created or retained for every ten thousand dollars ($10,000) of CDBG funds awarded must be maintained;

c. The effective interest rate on the total loan package may be brought down to zero percent (0%) to the business requesting assistance;

d. Terms of loans must be consistent with terms generally accepted by conventional financial institutions for the type of property involved;

e. At least five percent (5%) 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. There must be evidence that the project is feasible and that the business requesting assistance can continue as a "going concern" in the foreseeable future;

h. A minimum of five (5) jobs must be created or retained as a result of the proposed activity;

i. 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;

j. No significant negative land use or environmental impacts will occur as a result of the project;

k. There must be evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel;

l. There must be acceptable past performance in the administration of community development block grant funds, where applicable;

m. Project costs may not be incurred without written authorization from DED;

n. The applicant must conduct a public meeting, after adequate prior notice, to furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with these funds and to assist persons actually displaced as a result of these activities. An acceptable method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

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 four hundred (400).

(1) Number of jobs per CDBG funds requested, one hundred (100) points possible;

(2) Percent of funds other than CDBG funds in the project (e.g. private or public loans) one hundred (100) points possible; and

(3) 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, two hundred (200) points.

In addition, priority will be given to projects that will create manufacturing jobs and projects that add value to Iowa resources. Refinancing or restructuring of existing loans, and projects involving a single retail establishment will be considered low priorities.

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.

d. Each activity must receive a score of at least fifty (50) points out of a possible two hundred (200) points for the "need and impact" rating criterion in order to receive CDBG funding.

23.8(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 DED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, DED will have the discretion of rejecting the application or rerating it based on correct information.

23.8(4) Negotiations of funds awarded. The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. DED reserves the right to negotiate the effective interest rate, term, and other conditions of the loan prior to grant award.

261—23.9(71GA,SF2175) Application requirements for the public facilities set-aside program.

23.9(1) Purpose. The purpose of the public facilities set-aside program is to provide grants and loans to political subdivisions to aid in economic development that will create or retain jobs.

23.9(2) Application procedure. Applications for the public facilities set-aside will be accepted by the department of economic development at any time and will be considered on a continuous basis. The department of economic development shall take action on a complete application within thirty (30) days of receipt. Action may include funding the application for all or part of the requested amount, denial of the application or requesting that additional information be supplied prior to making a final decision.

Review and ranking of applications will be performed by DED personnel. Applications must meet minimum threshold requirements and receive a minimum of two hundred fifty (250) points to be funded.

An original and one (1) copy of the application shall be submitted. Application forms and instructions are available upon written request from the Department of Economic Development, 200 East Grand, Des Moines, Iowa 50309 or by calling (515) 281-3982.

23.9(3) Eligible projects. Projects eligible for funding under the public facilities set-aside program include, but are not limited to, the following:

a. Sanitary sewer systems;
b. Water systems;
c. Streets and roads;
d. Storm sewers;
e. Rail; and
f. Airport facilities.

23.9(4) Contents of application. Each application must address each of the threshold criteria, and demonstrate that each criterion has been satisfied.

a. Project description (including amount of funding requested, use of funds,and project schedule);

b. Project budget (including other public funds, private loans, and business entity commitment); and

c. Certifications. Applicants under the public facilities 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.

23.9(5) Selection criteria for public facilities set-aside program.

a. Threshold criteria. All applicants for public facilities set-aside funds must satisfy the following minimum requirements to be eligible for funding:

1. At least fifty-one percent (51%) of the permanent jobs created or retained by the proposed project will be available to low- and moderate-income persons;

2. A minimum ratio of one (1) permanent job created or retained for every ten thousand dollars ($10,000) of CDBG funds awarded must be maintained;

3. Terms of loans must be consistent with terms generally accepted by conventional financial institutions for the type of property involved;

4. There must be evidence that the CDBG funds requested are necessary to make the proposed project feasible;

5. There must be evidence that the project is feasible and that the business requesting assistance can continue as a "going concern" in the foreseeable future;

6. 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;

7. No significant negative land use or environmental impacts will occur as a result of the project;

8. There must be evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel;

9. There must be acceptable past performance in the administration of community development block grant funds, where applicable;

10. Project costs may not be incurred without written authorization from DED to incur costs;

11. The applicant must conduct a public meeting, after adequate prior notice, to furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with these funds and to assist persons actually displaced as a result of these activities. An acceptable method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

23.9(6) Rating factors.

a. The following rating system will be used to rank applications under the public facilities set-aside program. The highest point total possible is four hundred (400).

(1) Number of jobs per CDBG funds requested, one hundred (100) points possible;

(2) Percent of funds other than CDBG funds in the project (e.g. private or public loans) fifty (50) points possible;

(3) 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, one hundred (100) points possible;

(4) Local government financial need. Local government must demonstrate the need for financial assistance for the public facilities project. Factors such as bonding capacity, tax capacity, and tax effort will be considered, one hundred (100) points possible; and

(5) Local match. Local governments must contribute thirty-three percent (33%) of the total project cost to meet minimum threshold requirements. Points will be awarded for contributions above the required minimum, fifty (50) points possible.

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.

d. Each activity must receive a score of at least twenty-five (25) points out of a possible one hundred (100) points for the "need and impact" rating criterion in order to receive CDBG funding.

23.9(7) 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 DED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, DED will have the discretion of rejecting the application or rerating it based on correct information.

23.9(8) Negotiations of funds awarded. The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. DED reserves the right to negotiate the effective interest rate, term, and other conditions of the loan or grant prior to award.

261—23.10(71GA,SF2175) Funding allocation.

23.10(1) Funds for state administration. Up to two percent (2%) of total state program funds may be used for state administration.

23.10(2) Funds reserved for the imminent threat program. Up to $500,000 may be used each year to fund projects that address an imminent threat to public health, safety or welfare which necessitates immediate corrective action. If this fund is not fully allocated in a program year, the excess will be reallocated to the economic development set-aside fund.

23.10(3) Funds reserved for public facilities financing program. Up to ten percent (10%) of total program funds will be reserved each year for funding infrastructure projects in support of economic development. If this fund is not fully allocated in any year, the excess will be reallocated to the general competitive program for the following year.

23.10(4) Funds reserved for economic development set-aside. Up to twenty-five percent (25%) of total program funds will be reserved each year for the economic development set-aside program. If this fund is not fully allocated in any year, the excess will be reallocated to the economic development set-aside program for the following program year.

23.10(5) Distribution of competitive funds. The funds remaining after deducting those used for state administration, the public facilities fund, imminent threat fund, and the economic development set-aside will be open to all eligible applicants on a competitive basis. There is no distinction made based on population.

Competitive grant allocation in this category will be reduced by the amount of DED multiyear commitments.

23.10(6) Use of recaptured funds. Funds recaptured, for any reason, by DED shall be reallocated to the general nonentitlement program for the following program year.

23.10(7) 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 grantees may receive more than one thousand dollars ($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.

b. Economic development set-aside. The maximum grant for individual applications from any city or county is five hundred thousand dollars ($500,000) per application.

261—23.11(71GA,SF2175) Administration.

23.11(1) Contracts. Upon selection of a project(s) for funding, the department of economic development 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 department of economic development 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.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of the requirements.

23.11(2) Financial management standards.

a. All recipients shall comply with Attachments N and O of OMB Circular No. A-102, "Uniform Administrative Requirements For Grant-in-Aid To State And Local Governments." Any clarifications or modifications of these standards 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 procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor.

Grantees which receive more than one hundred thousand dollars ($100,000) in federal financial assistance (including a CDBG grant) in any fiscal year must comply with the provisions of the Single Audit Act of 1984 (PL 98-502) for that fiscal year. In addition, grantees receiving between twenty-five thousand dollars ($25,000) to one hundred thousand dollars ($100,000) in assistance may choose to comply with the Single Audit Act. In such cases, the local government must have an annual audit of all its financial statements. The Act should be consulted for additional compliance requirements.

Grantees which determine that they are not required to comply with the Single Audit Act of 1984 and those who choose not to comply with it shall have audits prepared in accordance with CDBG requirements and state laws and regulations. All audits shall commence within sixty (60) days of the CDBG program's contract expiration date, and be issued within one hundred fifty (150) days of the contract expiration date, unless the grantee conducts annual audits on a fiscal year basis.

Variations of these time requirements shall only be allowed with prior approval from DED. Copies of the audit report shall be transmitted to DED and to other agencies as required.

d. Program income.

(1) Units of general local government shall be required to return to the federal government interest (except for interest described in 23.11(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 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 23.11(2)"d"(5)"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 grant closeout from the disposition of real property acquired with grant funds under this program shall be subject to the program income requirements of 23.11(2)"d"(5)"1" above, provided that where the income may be treated as miscellaneous revenue pursuant to 23.11(2)"d"(5)"1," above, it shall be used by the recipient for community development activities eligible pursuant to 23.4(3) 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.

23.11(3) Requests for funds. Grant recipients shall submit requests for funds in the manner and on forms prescribed by DED.

23.11(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 (3) years after that person has received final payment;

b. Records pertaining to each real property acquisition shall be retained for three (3) years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.11(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 department of economic development 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.

23.11(5) Performance reports and reviews. Grantees shall submit grantee performance reports to DED 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 certain other program requirements.

DED 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, DED may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.12(3).

23.11(6) Grant closeouts. Upon completion of project activities, recipients will initiate grant closeout in accordance with procedures specified in the Iowa CDBG Management Guide.

23.11(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.

261—23.12(71GA,SF2175) Miscellaneous.

23.12(1) Multiyear grants. Some communities receive funding commitments from DED from more than one (1) 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. DED shall assess grantee performance.

23.12(2) Amendments to contracts. Any substantive change to a funded CDBG program will be considered a contract amendment. Changes would include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. The amendment must be requested in writing, according to guidelines established in the Iowa CDBG Management Guide. No amendment will be valid until approved in writing by DED. The amended program must rate at least as highly on the selection criteria point system as the original application created.

DED will not approve the addition of a new activity which is unrelated to the original contract activities, unless DED is satisfied that all original activities will also be completed per the contract. DED may allow up to ten thousand dollars ($10,000) of the original CDBG funds to be utilized for a new activity. Amendments are not subject to rerating; however, they must meet the threshold requirements listed in 23.6(1).

Amendments involving the replacement of one (1) activity with another will not be allowed for projects funded under the economic development set-aside program.

23.12(3) Remedies for noncompliance. At any time before project closeout, DED may, for cause, find that a community is not in compliance with its requirements under this program. At DED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to DED. Reasons for a finding of noncompliance include, but are not limited to: the recipient's 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.

23.12(4) 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.

23.12(5) Waivers. When the governor of the state of Iowa has determined that sufficient cause for waiver exists, the governor may waive any requirement under these rules not required by law. A waiver may be applied to one (1) or more eligible applicants under this program. Waivers under this subrule will become effective only upon the personal authorization of the governor.

23.12(6) Forms. The following forms will be used by the department of economic development in the administration of the block grant program:

a. Grant application forms.

(1) Application form for the CDBG Competitive Program (Form 206-0027).

(2) Housing Rehabilitation Application Supplement (Form 206-0028).

(3) Economic Development Set-Aside Application Form (Form 206-0140).

(4) Notification of Intent Form (Form 206-0050).

b. Grant administration forms.

(1) Status of Federal Funds/Request for Funds (Form 206-0035).

(2) Grantee Program Schedule (Form 206-0037).

(3) Multiyear Activity Chart (Form 206-0039).

(4) Grantee Performance Report - Activity Status (Form 206-0058).

(5) Grantee Performance Report - Financial (Form 206-0059).

261—23.13(71GA,SF2175) Imminent threat contingency fund. Up to five hundred thousand dollars ($500,000) of 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 Administrator, Division of Financial Assistance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. 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, DED will make a determination as to whether the community and the project are eligible for funding. This determination will be made by DED, after consultation with appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

1. The proposed project must be an eligible project;
2. An immediate threat must exist to health, safety, or community welfare;
3. The threat must be the result of unforeseeable and unavoidable circumstances or events;
4. The threat must require immediate action;
5. No known alternative project or action would be more feasible than the proposed project;
6. 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. DED staff will check into this with the office of disaster services, and other public agenices, as appropriate.

If DED 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, DED 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.

261—23.14(71GA,SF2175) CDBG interim financing program.

23.14(1) Objective. The objective of the CDBG interim financing (or short-term grant) program is to benefit low- and moderate-income persons living within eligible Iowa communities by providing short-term or interim financing for the implementation of projects which create or retain employment opportunities, which prevent or eliminate blight, or which accomplish other federal and state community development objectives.

23.14(2) Eligibility. All nonentitlement cities and all counties in the state of Iowa are eligible to apply for and receive assistance through the CDBG short-term grant program.

23.14(3) Eligible activities. Funds provided through this program may be used for short-term assistance, interim financing, or construction financing for the purchase, construction, rehabilitation, or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances, or other projects, undertaken by a for-profit organization or business or by a nonprofit organization, which will create permanent jobs or retain jobs that would otherwise be lost.

23.14(4) Application procedure.

a. Each year the department of economic development shall announce the expected availability of funds for the CDBG short-term grant program.

b. The announcement will include details as to the amount of funds available and other information which may be required or determined to be necessary.

c. Applications may be submitted at any time after the announcement of availability. Applications shall be processed, reviewed, and considered on a first-come-first-served basis. Funding decisions will be made by DED within thirty (30) days of DED's receipt of a complete application and to the extent that funds are available.

d. Applications shall be made in a form and with contents as prescribed by the department of economic development.

e. Applications may be submitted only by eligible communities as described in subrule 23.14(2).

f. Applications received by DED which are incomplete or require additional information, investigation, or extended negotiation may lose funding priority.

23.14(5) Selection criteria.

a. Threshold criteria. All applicants for CDBG short-term grant program funds must satisfy the following minimum requirements to be eligible for funding:

(1) A minimum of five (5) jobs must be created or retained as a result of the proposed activity.

(2) There must be a minimum ratio of one (1) permanent job created or retained for every twenty-five thousand dollars ($25,000) of CDBG funds awarded.

(3) There must be evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel.

(4) There must be acceptable previous performance in the administration of state or federal programs such as the community development block grant, where applicable.

(5) The applicant must show the 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.

(6) Project must address at least one (1) of the following three (3) objectives:

1. Primarily benefit low- and moderate-income persons. Fifty-one percent (51%) or more 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. Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within eighteen (18) months prior to original application for CDBG funds.

(7) Project funds may only be used for an eligible activity or activities.

(8) Project costs may not be incurred prior to written authorization from DED.

(9) The applicants must conduct a public meeting to furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities. One (1) method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

(10) There must be 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.

(11) The project must provide that at least fifty-one percent (51%) of the permanent jobs created or retained by the proposed project will be available to low- and moderate-income persons.

(12) There must be evidence that the funds requested are necessary to make the proposed project feasible.

(13) No significant negative land use or environmental impacts will occur as a result of the proposed project.

(14) There must be evidence that the proposed project will be completed within fifteen (15) months of the date of the grant award.

(15) There must be evidence of an irrevocable letter of credit, or equivalent security instrument, from a AA or better rated lending institution, assignable to DED, in an amount equal to the CDBG short-term grant funds requested plus interest if applicable.

(16) There must be evidence of the commitment of permanent financing for the project.

(17) Applicant must provide an assurance that any program income earned or received as a result of the project shall be returned to DED on or before the end date of the grant contract.

b. Selection criteria. Applications will be evaluated on the basis of the following criteria:

(1) Timeliness of the project, including readiness to proceed and proposed term of the interim financing.

(2) The cost in CDBG short-term grant funds per job created or retained.

(3) The amount of interest income returned to DED as a result of the project.

(4) The need for the project.

(5) The impact of the project.

23.14(6) Negotiation of funds awarded. The amount of CDBG short-term funds awarded shall be the minimum necessary to make the proposal feasible. DED reserves the right to negotiate the terms and conditions prior to grant award.

23.14(7) Funding allocation.

a. An amount not to exceed $7.5 million shall be made available for grants under the CDBG short-term grant program.

b. DED reserves the right to award grants totaling a lesser amount than $7.5 million should overall CDBG funding be reduced or should the CDBG competitive program grantee's use of funds exceed forecasts.

23.14(8) Program income. All program income earned and received under the CDBG short-term grant program and as a result of the funded projects shall be returned to DED on or before grant closeout.

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ARC 7190

ENVIRONMENTAL PROTECTION COMMISSION[567]

Pursuant to the authority of 1986 Iowa Acts, Senate File 2175, section 1806 and Iowa Code section 455B.105 as amended by 1986 Iowa Acts, Senate File 2175, section 1899, the Environmental Protection Commission emergency adopts rules to implement, in an orderly manner, the provisions of 1986 Iowa Acts, Senate File 2175 and for

the effective administration of the Department of Natural Resources. The Department was created effective July 1, 1986, by 1986 Iowa Acts, Senate File 2175,which consolidated the activities of the Department of Water, Air and Waste Management (DWAWM), the Conservation Commission (CC), the Iowa Geological Survey (IGS) and the Energy Policy Council (EPC). The Environmental Protection Commission was created pursuant to 1986 Iowa Acts, Senate File 2175, section 1806 and is authorized to establish policy for the Department and adopt rules, pursuant to Iowa Code chapter 17A, necessary to provide for the effective administration of Iowa Code chapter 455B, 455C or 469.

This action pertains only to the transfer and renumbering of existing substantive rules Chapters 8 to 150, previously adopted by the Water, Air and Waste Management Commission. Chapters 1 to 7 will be amended or transferred by separate rule-making actions.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation is unnecessary and impracticable since there are few substantive changes from existing rules and it is beneficial to the Department and the public to have a coherent, unified set of rules for the new Department reflecting its new organization and programs effective immediately. The substantive changes which were adopted reflect statutory change in Senate File 2175 over which the Department has no discretion.

It is the intent of this particular filing to simply transfer existing substantive and procedural rules with a *minimum of change. The full text* of all rules being transferred verbatim or very minor word changes such as changing "executive director" to "director" are not set forth in full because this is unnecessary and impracticable. Instead, general directions to the Code Editor are provided in Items 1, 2, 18, 56, and 76. Copies of existing rules can be obtained from the Department for the cost of reproduction and mailing.

The Commission is also proposing to amend specific provisions of the rules to correct errors in cross-reference, grammar, statutory definitions, form numbers, references affected by departmental reorganization, and to conform to statutory changes. A description of the specific changes is provided.

Items 3, 4, 5, 7, 20, 22, 27, 36, 49, 55, 63, 64, 65, 71, 73, 76, 78, 80, and 81 amend rules of the Commission which refer to form names and numbers. Forms will no longer be referred to with the prefix "WAWM."

Items 6, 20, 28, 36, 48, 63, 64, 65, and 73 relate to amendments to rules referring to the Department's Record Center. As a result of the reorganization, the responsibility for supplying Department documents such as forms has been transferred from the Records Center to various administrative support stations. These stations are described within the rules to provide access to the information available to the public which is necessary to comply with the Department's requirements.

A number of improper cross-references within the rules were discovered and are corrected in Items 8, 9, 10, 11, 12, 13, 21, 23, 24, 25, 39, 40, 42, and 78. Also, references to gender made within some rules have been eliminated by amendments to those rules which are described in Items 15, 16, 17, 41, 66, and 79.

Although in Items 1 and 2 references to various agency names or personnel have been substituted with the names given as a result of the reorganization, specific changes of this sort are made in Items 18, 34, 37, 43, 44, 45, 47, 50, 51, 52, 53, 56, and 74. These items pertain to the names of divisions or sections within agencies which are specified within the rules and which have been renamed.

Item 14 pertains to the clarification of subrule 23.4(12). The commission, in 1978, amended the first unnumbered paragraph of subrule 23.4(12). The original and amended paragraphs continue to appear in the rules although one version is no longer in effect. Confusion is prevented by eliminating the paragraph no longer in effect.

Item 19 relates to the registration of well construction or reconstruction contractors. The department is registering these contractors for either one (1) or five (5) years. The rule provides for a registration period of one (1) to five (5) years. This error is corrected.

Item 26 corrects a grammatical error found in rule 49.11(455B), to make it clear that wells or pump installations are to undergo disinfection.

Items 29 to 35 pertain to Chapters 50, 51, and 52 developed pursuant to the Department's authority to allocate the withdrawal, diversion, and storage of water within the state of Iowa. The rules describe and mandate the relationship between the Department and other state agencies, particularly the Iowa Geological Survey. The merger of the Department of Water, Air and Waste Management and Iowa Geological Survey, both now a part of the Department of Natural Resources, requires that resulting changes in the interrelationship between the two former departments be reflected in Chapter 52. For this reason references to the Iowa Geological Survey are amended to read the "geological survey bureau of the department."

Item 38 amends subrule 61.3(5), paragraph "e," by removing from beneath the lake name, "Floyd," a line.

Item 54 amends rule 900—73.1(109,455B,469) by renumbering subrule 72.1(2) as 73.1(2).

Items 57 to 62 relate to amendments to Chapter 81 as it pertains to the certification of operators of wastewater treatment plants, water treatment plants, and water distribution systems. Prior to the passage of Senate File 2175, a statutorily created seven-member board of certification appointed by the governor existed which was responsible for examining candidates for certification and for suspending or revoking certificates. This board was eliminated by Senate File 2175 and the board's responsibilities were transferred to the director of the Department. Chapter 81 which, in part, pertains to the process of certification and the responsibilities of the board, is amended to conform to the amendments to Iowa Code sections 455B.212 to 455B.221 passed by the legislature as Senate File 2175.

Items 67 to 70 pertain to changes in Chapter 107, "Beverage Container Deposits" which are made necessary by amendments to Iowa Code chapter 455C. This includes clarification of the applicability of 455C, Item 67, and the amendment of definitions "alcoholic liquor" or "intoxicating liquor," "beer" and "alcoholic beverage," Items 68, 69, and 70, respectively.

Item 72 pertains to the definition of "solid waste." The definition is amended to conform to the statutory definition.

Finally, Item 75 relates to the submission of written reports to the Department following the existence of a hazardous condition. Subrule 131.2(2) is amended to allow 30 days to submit the report as is provided by Iowa Code section 455B.386.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these

rules, thirty-five days after publication, should be waived and the rules be made effective on the date of publication, December 3, 1986, because benefits are conferred upon the public by having a coherent, unified set of regulations which implement the important public welfare programs of the Department.

The Commission adopted these rules at its regular meeting on November 13, 1986. These rules implement Iowa Code chapters 258A, 358A, 414, 455B, 455C and 469.

ITEM 1. Transfer, verbatim, as rules of the environmental protection commission of the department of natural resources, chapters 9, 10, 24, 25, 26, 27, 28, 29, 42, 51, 52, 53, 54, 65, 69, 71, 72, 74, 75, 76, 91, 101, 102, 103, 104, 105, 106, 107, 108, 121, 132, 141, and 150 of the existing rules of the department of water, air and waste management. Wherever the words "executive director" appear, substitute the word "director". Wherever the words "water, air and waste management", "water quality commission", "board of certification", "board", "natural resources council", "Iowa geological survey", "conservation commission", "WAWM", "IGS", "energy policy council" or "EPC" appear, substitute the word "department". Wherever the words "water, air and waste management commission" appear, substitute the words "environmental protection commission". Wherever the words "historical department" appear, substitute the words "historical division of the department of cultural affairs". Wherever the words "bureau of labor" appear, substitute the words "labor division of the department of employment services". Wherever the term "development commission" appears, substitute the words "department of economic development". Wherever the words "soil conservation" appear, substitute the words "soil conservation division, department of agriculture and land stewardship". Wherever the words "department of revenue" appear, substitute the words "department of revenue and finance". Wherever the words "office for planning and programming" appear, substitute the words "department of management", unless otherwise specified. Wherever the words "Iowa beer and liquor control department" appear, substitute the words "alcoholic beverages division of the department of commerce". Wherever the words "regional office" appear, substitute the words "field office". These general directions apply unless otherwise specified in particular Items.

ITEM 2. Existing rules chapters 8, 20, 21, 22, 23, 37, 40, 41, 49, 50, 60, 61, 62, 63, 64, 70, 73, 81, 90, 100, 109, 120, 131, 135, 140, 143, and 149 are modified in other items in this notice but are transferred in large part to environmental protection commission of the department of natural resources. Wherever the words "executive director" appear, substitute the word "director". Wherever the words "water, air and waste management", "water quality commission", "board of certification", "board", "natural resources council", "Iowa geological survey", "conservation commission", "WAWM", "IGS", "energy policy council" or "EPC" appear, substitute the word "department". Wherever the words "water, air and waste management commission" appear, substitute the words "environmental protection commission". Wherever the words "historical department" or "Iowa historical department" appear, substitute the words "historical division of the department of cultural affairs". Wherever the words "bureau of labor" appear, substitute the words "labor division of the department of employment services". Wherever the term "development commission" appears, substitute the words "department of economic development". Wherever the words "soil conservation" appear, substitute the words "soil conservation division, department of agriculture and land stewardship". Wherever the words "department of revenue" appear, substitute the words "department of revenue and finance". Wherever the words "office for planning and programming" appear, substitute the words "department of management". Wherever the words "Iowa beer and liquor control department" appear, substitute the words "alcoholic beverages division of the department of commerce". Wherever the words "regional office" appear, substitute the words "field office". Wherever the words "Iowa state conservation commission" appear, substitute the words "fish and wildlife division of the department". These general directions apply unless otherwise specified in particular Items.

ITEM 3. Amend rule 8.2(455B) to read as follows:

567—8.2(427,17A) Form. A complete Form ~~54-064~~ *PR-01675,* which is available through the local county assessor, the department of revenue *and finance,* or this department, must be submitted in order to request certification under this chapter. In completing this form, the applicant may adopt by reference any pertinent information contained in an application for a permit submitted to the department.

ITEM 4. Amend rule 9.2(455B) to read as follows:

567—9.2(455B,17A) Forms. The following forms are to be used by local agencies implementing this authority:

~~WAWM~~ *Form* 1 (reserved) *(542-1001)*

~~WAWM~~ *Form* 2 (reserved) *(542-1002)*

~~WAWM~~ *Form* 3 ~~r~~*R*eview checklist for water main extensions *(542-1003)*

~~WAWM~~ *Form* 4 ~~r~~*R*eview checklist for sewer extensions *(542-1004)*

~~WAWM~~ *Form* 5 ~~p~~*P*ermitting authority quarterly report *(542-1005)*

ITEM 5. Amend subrules 9.4(5) and 9.4(6) to read as follows:

9.4(5) The local public works department shall use the same forms (~~WAWM~~ *Form* 3 and ~~WAWM~~ *Form* 4) used by the department in reviewing plans, and a copy of the applicable "review checklist" shall be submitted to the department with the permit copy, upon issuance of each permit.

9.4(6) The local public works department shall submit a complete quarterly report (~~WAWM~~ *Form* 5) by the fifteenth day of the month following each quarter of the calendar year.

ITEM 6. Amend the first unnumbered paragraph of rule 20.3(455B) to read as follows:

567—20.3(455B) Air quality forms generally. The following forms are used by the public to apply for various departmental approvals and to report on activities related to the air programs of the department. All forms may be obtained from the central office:

~~Records Center~~ *Administrative Support Station—Environmental Protection Division*
Iowa Department *of* ~~Water, Air and Waste Management~~ *Natural Resources*
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

ITEM 7. Amend subrules 20.3(1), (2), and (3) to read as follows:

20.3(1) Application for a permit to install or alter equipment or control equipment. All applications for a permit to install or alter equipment or control equipment pursuant to 22.1(455B) shall be made in accordance with the instructions for completion of application ~~form (WAWM)~~ *Form 6, "Application and Permit to Install or Alter Equipment or Control Equipment" (542-3190).* Applications submitted which are not fully or properly completed will not be reviewed until such time as a complete submission is made. A permit to install or alter equipment or control equipment will be denied when the application does not meet all requirements for issuance of such permit.

~~This request form is a three-page form in triplicate requiring the party requesting certification to specify: The date on which construction of the property for which certification is sought was completed; the name and address of the taxpayer; the location of property; a legal description of the land upon which the property is located; the type of property; whether or not a permit was obtained, and if not, why not; and descriptive information concerning the use and function of the property.~~

20.3(2) Application for variance from open burning rules. All applications for variance from open burning rules pursuant to 22.2(455B) shall be made in accordance with the instructions for completion of application Form ~~WAWM~~7, *"Application for Variance from Open Burning Rules" (542-3204).*

20.3(3) Air pollution preplanned abatement strategy forms. The submission of standby plans for the reduction of emissions of air contaminants during the periods of an air pollution episode, as requested by the ~~executive~~ director pursuant to 22.3(455B) shall be made in accordance with the instructions for completion of application forms ~~WAWM8-1 (alert level), WAWM8-2 (warning level), and WAWM8-3 (emergency level)~~ *provided by the department.*

Further amend subrule 20.3(4) by striking paragraphs "a" through "d" and by amending the first unnumbered paragraphs as follows:

20.3(4) Air contaminant emissions survey forms. The submission of emissions information pursuant to 22.2(3) shall be made in accordance with instructions for completion of survey forms ~~described in paragraphs "a", "b", "c", or "d"~~ *provided by the department.* ~~Form WAWM9 is to be filled out simultaneously with the appropriate form described in paragraph "b", "c", or "d".~~

Further amend subrule 20.3(5) to read as follows:

20.3(5) Notification of corrective action in response to notice of vehicle emission violation ~~form WAWM10~~. *"Vehicle Emission Violation"* Form ~~WAWM~~10 is a postcard informing the department, in response to a notice of vehicle emission violation by a gasoline-powered or diesel-powered vehicle, pursuant to 23.3(2)"d"(2) and 23.3(2)"d"(3), that corrective action has been taken. It requests that the recipient specify what repairs were made to eliminate further violation of vehicle emission rules.

ITEM 8. Amend the first unlettered paragraph of subrule **21.3(1)** by substituting for the words "chapter 4" the words "chapter 23" where it appears.

ITEM 9. Amend subrule 22.3(2) to read as follows:

22.3(2) Anaerobic lagoons. A construction permit for an anaerobic lagoon shall be issued when the ~~executive~~ director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with ~~the standard specified in subrule 23.5(1) and~~ the criteria in subrule 23.5(3*1*) or 23.5(4*2*).

ITEM 10. Amend subrule **22.5(4)**, paragraph "a," by substituting for '22.5(5)"b"', '22.5(4)"b"' where it appears in the fourth sentence.

ITEM 11. Amend subrule 23.2(2) to read as follows:

23.2(2) Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 22*1*.2(1).

ITEM 12. Amend the first paragraph of subrule **23.3(2)**, paragraph "a," to read as follows:

a. Process weight rate. The emission of particulate matter from any process shall not exceed the amount determined from Table I, except as provided in 22*21*.2(455B), 23.1(455B), 23.4(455B) and chapter 24. If the ~~executive~~ director determines that a process complying with the emission rates specified in Table I is causing or will cause air pollution in a specific area of the state, an emission standard of 0.1 grain per standard cubic foot of exhaust gas may be imposed.

ITEM 13. Amend subrule **23.3(3)**, paragraph "a," subparagraph (5) to read as follows:

(5) If a state of Iowa ambient air quality standard for sulfur dioxide specified in chapter ~~10~~ *28* of these rules is exceeded as demonstrated...

ITEM 14. Replace the first unnumbered paragraph of subrule **23.4(12)** with subrule 23.4(12)*.

ITEM 15. Amend subrule 25.1(7) as follows:

25.1(7) Tests by owner. The owner of new or existing equipment or ~~his~~ *the owner's* authorized agent shall notify...

ITEM 16. Amend subrule **26.4(1)**, paragraph "d," as follows:

d. Special conditions. When the ~~executive~~ director determines that a specified episode level has been reached at one or more monitoring sites solely because of emissions from a limited number of sources, ~~he~~ *the director* shall specify the persons...

ITEM 17. Amend subrule 29.1(2) as follows:

29.1(2) Procedures. For stationary sources, the qualified observer stands at a distance from the base of the stack necessary to obtain a clear view of the appropriate portion of the plume, with the sun to ~~his~~ *the observer's* back...

ITEM 18. Wherever the words "Iowa Geological Survey" appear in **567—Chapter 37**, substitute the words "Geological Survey Bureau, Department of Natural Resources.".

ITEM 19. Amend the last sentence of subrule **37.4(2)** to read as follows:

...A contractor may register at a period of one *(1)* ~~to~~ *or* five *(5)* years.

ITEM 20. Amend rule 40.3(17A,455B) to read as follows:

567—40.3(17A,455B) Forms. The following forms are used by the public to apply for department approvals and to report on activities related to the public water supply program of the department. All forms may be obtained from the ~~Central Office, Records Center~~, *Environmental Protection Division, Administrative Support Station,* Iowa Department of ~~Water, Air and Waste Management~~ *Natural Resources,* Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0032. Properly completed application forms should be submitted to the ~~Water Permit Branch, Program Operations Division,~~

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Water Supply Section, Environmental Protection Division. Reporting forms should be submitted to the appropriate field office (see rule 1.4(455B)).

40.3(1) Construction permit application forms. ~~WAWM12~~ Schedules "1" through "16d" are required.

"1" — General Information	*542-3178*
"1a" — Fee Schedule	*542-3179*
"1b" — Certification of Project Design	*542-3174*
"2a" — Water Mains, General	*542-3030*
"2b" — Water Mains, Specifications	*542-3031*
"3a" — Water System, Preliminary Data	*542-3032*
"3b" — Water Quality Data	*542-3029*
"3c" — Surface Water Quality Data	*542-3028*
"4" — Site Selection	*542-3078*
"5a" — Well Construction	*542-1005*
"5b" — Well Appurtenances	*542-3026*
"5c" — Well Profile	*542-1006*
"5d" — Surface Water Supply	*542-3139*
"6a" — Distribution Water Storage Facilities	*542-3140*
"6b" — Distribution Pumping Station	*542-3141*
"7" — Schematic Flow Diagram	*542-3142*
"8" — Aeration	*542-3143*
"9" — Clarification/Sedimentation	*542-3144*
"10" — Suspended Solids Contact	*542-3145*
"11" — Cation Exchange Softening	*542-3146*
"12" — Filters	*542-3147*
"13a" — Chemical Addition	*542-3241*
"13b" — Dry Chemical Addition	*542-3130*
"13c" — Gas Chlorination	*542-3131*
"13d" — Fluoridation	*542-3132*
"13e" — Sampling and Tests	*542-3133*
"14" — Pumping Station	*542-3134*
"15" — Process Water Storage Facilities	*542-3135*
"16a" — Wastewater, General	*542-3136*
"16b" — Waste Treatment Ponds	*542-3137*
"16c" — Filtration and Mechanical	*542-3138*
"16d" — Discharge to Sewer	*542-3103*

40.3(2) Operation permit application forms.

a. ~~WAWM~~ *Form* 13-1—community

b. ~~WAWM~~ *Form* 13-2—noncommunity

40.3(3) Public water supply reporting forms.

a. ~~WAWM~~ *Form* 14—plant operations *542-3104*

b. ~~WAWM~~ *Form* 15—analyses by certified laboratories

(1) Individual bacterial analysis reporting—
~~WAWM~~ *Form* 15-1a *542-3195*

(2) Summary bacterial analysis reporting—
~~WAWM~~ *Form* 15-1b *542-3196*

(3) Chemical analysis reporting—
~~WAWM~~ *Form* 15-2 *542-3166*

(4) Corrosivity analysis reporting—
~~WAWM~~ *Form* 15-3 *542-3193*

ITEM 21. Amend the first unnumbered paragraph of subrule **40.4(1)** by changing the internal reference from 41.12(4) to 41.12(3).

ITEM 22. Amend subrule **40.4(4)** by striking the reference to Form WAWM 12.

ITEM 23. Amend the first paragraph of subrule **41.4(2)**, paragraph "c," subparagraph (2) to read as follows:

(2) Noncommunity systems, upon approval by the department, may be permitted to reduce their sampling frequency if they can demonstrate that no risk to health will result and they are maintaining a continuous chlorine residual as specified in 41.~~13~~*14*(2)"a."

ITEM 24. Amend the first paragraph of subrule **41.4(5)**, paragraph "f," to read as follows:

f. Before a community water system makes any modifications to its existing treatment process for the purposes of achieving compliance with 41.3(2)"ec," such system must submit and obtain department approval of a plan setting forth its proposed modification and any safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification.

ITEM 25. Amend subrule 49.6(2) to read as follows:

49.6(2) Minimum protective depth of wells. All wells shall be watertight to such depths as is necessary to exclude pollution. Ordinarily, the top ten *(10)* feet of soil will be subject to intermittent contamination; and, in some cases, this zone may extend to even greater depths. Under no circumstances shall water be derived from a depth of less than twenty *(20)* feet unless a variance is granted in accordance with rule 49.4(~~135~~*455B*).

ITEM 26. Amend rule 49.11(455B) to read as follows:

567—49.11(455B) Water analysis. The contractor or owner of new, repaired or reconditioned well or pump installations, upon ~~being~~ properly ~~disinfected~~ *disinfecting the well or pump installations*, as outlined in rule 49.10~~(135)~~*(455B)*, shall submit a water specimen to the university hygienic laboratory at Iowa City (previously known as the state hygienic laboratory) or to another approved laboratory for bacterial and nitrate analysis. Information regarding the procurement of water specimen, bottles, fees, etc., can be obtained from local boards of health, the department ~~of water, air and waste management~~ or the university hygienic laboratory.

ITEM 27. Amend rule 50.3(17A,455B) to read as follows:

567—50.3(17A,455B) Forms for withdrawal, diversion or storage of water.

50.3(1) Application forms. The following application forms are currently in use:

Form ~~WAWM~~16: Application for Permit to Divert, Store, or Withdraw Water for Beneficial Use. *1/84* ~~7/83.~~ *542-3105*

Form ~~WAWM~~17: Application for Permit to Use Water for Irrigation. *1/84* ~~7/83.~~ *542-3106*

Form ~~WAWM~~18: Application for Permit to Store Water for Beneficial Use. 7/83. *542-3109*

Form ~~WAWM~~19: Application for Permit to Divert or Withdraw Water for Production and Processing of Sand, Gravel, or Rock Materials. *1/84* ~~7/83.~~ *542-3110*

Form ~~WAWM~~20: ~~Application for~~ *Registration of* Minor Nonrecurring Use of Water. *7/84* ~~7/83.~~ *542-3112*

50.3(2) Supplementary information forms. The following forms are used to obtain additional information to supplement various types of applications:

Form ~~WAWM~~16-1: Supplement to Application for Permit to Divert, Store, or Withdraw Water for Beneficial Use. 6/85. *542-3262*

Form ~~WAWM~~17-1: Supplement to Application for Permit to Use Water for Irrigation Use from Reservoirs. 7/83. *542-1007*

Form ~~WAWM~~17-2: Supplement to Application for Permit to Use Water for Irrigation Use from Wells. 7/83. *542-3107*

Form ~~WAWM~~17-3: Supplement to Application for Permit to Use Water for Irrigation Use from Streams. 7/83. *542-3108*

Form ~~WAWM~~19-1: Supplemental Data for Application for Permit to Divert or Withdraw Water for Production and Processing of Sand, Gravel, or Rock Materials. 7/83. *542-3111*

Form ~~WAWM~~21: Survey of Land Owners and Occupants. 7/83. *542-3113*

Form ~~WAWM~~22: Well Inventory Form. 7/83. *542-3114*

Form ~~WAWM~~122: Water Well Inspection Report. 3/86.

50.3(3) Reporting forms. The following forms are for reporting permitted activities:

Form ~~WAWM~~23: Report of Water Use by all Regulated Users Except Irrigators and Producers of Sand, Gravel, or Rock Aggregate. 7/83. *542-3115*

Form ~~WAWM~~24: Report of Water Use for Irrigation. *12/83* ~~*7/83.*~~ *542-3116*

Form ~~WAWM~~25: Report of Water Use for Aggregate Production or Mining. 7/83. *542-3117*

Form ~~WAWM~~26: Water Permit Validation Form. 7/83. *542-1008*

Form ~~WAWM~~27: Water Level Measurement Report Form. 7/83. *542-1009*

ITEM 28. Amend subrule **50.4(1)**, paragraph "c," to read as follows:

c. Where to submit application. An application must be mailed or delivered to the ~~water permit branch, program operations division, department of water, air and waste management~~ *Water Supply Section, Environmental Protection Division, Department of Natural Resources,* East 9th and Grand, Des Moines, Iowa 50319.

ITEM 29. Amend subrule **50.5(2)** by striking the last sentence.

ITEM 30. Amend subrule **50.6(1)**, paragraph "a," subparagraph (1) as follows:

(1) Test drilling. In cases where test drilling is needed for geological information relevant to the application, the applicant is responsible for employing a driller who will collect, bag, and properly label cutting samples at each five *(5)*-foot interval and at each apparent change in geological formation from a test hole or production well hole at least the approximate depth of the proposed production well. The cutting samples must be saved for collection by the department ~~or the Iowa geological survey~~ in sample bags provided by the ~~Iowa~~ geological survey *bureau of the department.* The samples shall be accompanied by a driller's log showing the location and total depth of the hole and a description of the materials encountered at successive intervals.

ITEM 31. Amend the first sentence of subrule 51.6(3) to read as follows:

51.6(3) Test pumping. The department may authorize by registration test pumping of sources of water to determine adequacy of the source and affects of such withdrawals and may require applicant to acquire technical assistance of the ~~Iowa~~ *G*geological *S*survey *bureau of the department* or other appropriate sources of such assistance so as to maintain supervision of the testing as deemed necessary by the department.

Further amend subrule 51.6(6) to read as follows:

51.6(6) Research contracts. The withdrawal of water for research purposes by the ~~Iowa~~ *G*geological *S*survey ~~(IGS)~~ *bureau of the department (GSB)* through its agents, employees, or contractees may be authorized by registration in aquifers approved by the department and under such conditions as the department may set. Such registration shall be for periods of up to one *(1)* year and may be reregistered at the discretion of the department ~~upon request by the IGS~~ should the research require more than one *(1)* year to complete. The withdrawal of water pursuant to such registration shall be conducted under the direct supervision of the ~~IGS~~ *GSB* and its employees and according to a schedule adopted by or approved by ~~IGS~~ *GSB.* The ~~IGS~~ *GSB* shall contract with each individual who is cooperating in the research. Such contract shall delineate the responsibilities of each party to the research. A copy of each such contract shall be filed ~~by IGS~~ with the department. The violation of any provision of said contract by any party thereto shall be grounds for the department to revoke the registration of that contractee. If withdrawal of water pursuant to this registration results in serious adverse effects on the aquifer or on any other water user, the department shall revoke the registration as it applies to the particular research site causing such serious adverse effect.

ITEM 32. Amend subrule **52.4(3)**, paragraph "c," and subrule **52.4(4)**, paragraphs "b," and "c," by substituting for the words "Iowa Geological Survey" the words "geological survey bureau" where they appear.

ITEM 33. Amend subrule **52.6(4)** by substituting for the words "Iowa Geological Survey" the words "geological survey bureau" where they appear.

ITEM 34. Amend the first unnumbered paragraph of subrule 52.20(4) to read as follows:

52.20(4) Criteria for renewal of water storage permits. In addition to considering the criteria in subrule 52.9(1), the department shall review its most recent ~~INRC~~ dam safety inspection report as part of the review of an application for renewal of a water storage permit and shall consider the following additional factors:

ITEM 35. Amend the first unnumbered paragraph of rule 53.2(455B) to read as follows:

567—53.2(455B) Designation of protected sources. The department, after consultation with the ~~Iowa~~ geological survey *bureau of the department* and other authorities, may designate a surface water or groundwater source within a defined geographical area as a protected source.

ITEM 36. Amend rule 60.3(455B,17A) to read as follows:

567—60.3(455B,17A) Forms. The following forms are used by the public to apply for departmental approvals and to report on activities related to the wastewater programs of the department. All forms may be obtained from the ~~central office, Records Center, Iowa Department of Water, Air and Waste Management~~ *Environmental Protection Division, Administrative Support Station, Iowa Department of Natural Resources,* Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0032. Properly completed application forms should be submitted in accordance with the instructions, to the wastewater permits ~~branch program operations~~ *section, environmental protection* division. Reporting forms should be submitted to the appropriate field office (see rule 1.4(455B)).

60.3(1) Construction permit application forms.

a. ~~WAWM~~ *Schedules* 28 — ~~Schedules~~ "A" to "S".

"A" — General Information	*542-3129*
"B" — Collection System	*542-3095*
"C" — Lateral Sewer System	*542-3096*
"D" — Trunk and Interceptor Sewer	*542-3097*

"E" — Pump Station *542-3098*
"F" — Treatment Project Site Selection *542-3099*
"G" — Treatment Project Design Data *542-3106*
"H1" — Schematic Flow Diagram *542-3101*
"H2" — Treatment Process Removal Efficiency *542-3102*
"H3" — Mechanical Plant Reliability *542-3239*
"I" — Screening, Grit Removal and Flow Measurement *542-3089*
"J" — Septic Tank System *542-3090*
"K1" — Controlled Discharge Pond *542-3091*
"K2" — Aerated Pond *542-3092*
"K3" — Anaerobic Lagoon *542-3093*
"L" — Settling Tanks *542-3094*
"M" — Fixed Film Reactor—Stationary Media *542-3081*
"N" — Rotating Biological Contactor *542-3082*
"O" — Aeration Tanks or Basins *542-3083*
"P" — Gas Chlorination *542-3084*
"Q" — Sludge Dewatering and Disposal *542-3085*
"R1" — Sludge Dewatering and Disposal *542-3086*
"R2A" — Low Rate Land Application of Sludge (Part I) *542-3087*
"R2B" — Low Rate Land Application of Sludge (Part II) *542-3088*
"S" — Land Application of Wastewater (To be developed)
b. ~~WAWM~~ *Form* 29 — Sewage Treatment Agreement *542-3219*

60.3(2) Operation permit application forms.
a. ~~WAWM~~ *Form* 30 — public or private domestic sewerage systems *542-3220*
b. ~~WAWM~~ *Form* 31 — treatment agreement *542-3221*
c. ~~WAWM~~ *Form* 32 — industrial, manufacturing or commercial systems *542-3228*
d. ~~WAWM~~ *Form* 33 — confinement animal feeding operations *542-3224*
e. ~~WAWM~~ *Form* 34 — open feedlots *542-3225*

60.3(3) Wastewater monitoring report forms.
a. ~~WAWM~~ *Form* 35-1 — general/monthly *542-3226*
b. ~~WAWM~~ *Form* 35-2 — general/quarterly *542-3227*
c. ~~WAWM~~ *Form* 35-3 — commercial/industrial contributor/monthly *542-3228*
d. ~~WAWM~~ *Form* 35-4 — general/monthly *542-3229*
e. ~~WAWM~~ *Form* 35-5 — waste stabilization lagoons *542-3230*
f. ~~WAWM~~ *Form* 35-6 — trickling filter *542-3231*
g. ~~WAWM~~ *Form* 35-7 — activated sludge/contact stabilization *542-3232*
h. ~~WAWM~~ *Form* 35-8 — commercial/industrial contributor/quarterly *542-3233*

ITEM 37. Amend subrule **60.4(1)**, paragraph "a," by striking the reference "WAWM" where it appears.

ITEM 38. Amend subrule **61.3(5)**, paragraph "e," "Lakes" by striking the underlining of the lake name, Floyd.

ITEM 39. Amend subrule **62.3(2)**, paragraph "d," subparagraph (3) to read as follows:

(3) The less concentrated influent wastewater is not the result of excessive infiltration/inflow (I/I). A system is considered to have nonexcessive I/I when an average wet weather influent flow (as defined in the department's design standards 567—64.2*(9)*"b." Chapter 14.4.5.1.b) comprised of domestic wastewater plus infiltration plus inflow equals less than 275 gallons per day per capita.

ITEM 40. Amend rule 63.7(455B) to read as follows:

567—63.7(455B) Frequency of submitting records of operation. Except as provided in *subrule* 63.1*(2)*~~(455B)~~, records of operation required by these rules shall be submitted at monthly intervals. The department may vary the interval at which records of operation shall be submitted in certain cases. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the person concerned.

ITEM 41. Amend subrule 64.2(6) as follows:

64.2(6) The construction permit shall expire if construction thereunder is not commenced within one *(1)* year of the date of issuance thereof. The ~~executive~~ director may grant an extension of time to commence construction if ~~he finds~~ it is necessary or justified, upon showing of such necessity of justification *to the director*.

ITEM 42. Amend subrule **64.3(1)**, paragraph "g," to read as follows:

g. Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part ~~1510~~ *300* (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR subsection 153.10(e) (Pollution by Oil and Hazardous Substances).

ITEM 43. Amend subrule **64.5(4)**, paragraph "a," last sentence, as follows:

...Should the ~~executive~~ director fail to incorporate any written recommendation thus received, ~~he~~ *the director* shall provide to the affected state or states and to the regional administrator a written explanation of ~~his~~ *the* reasons for failing to accept any written recommendation.

ITEM 44. Amend subrule **64.5(4)**, subparagraph (1) of paragraph "b," as follows:

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: Notice to the district engineer of minor discharges; waiver by the district engineer of ~~his~~ *the* right to receive fact sheets...

ITEM 45. Amend subrule **64.6(3)**, last sentence, as follows:

...The ~~executive~~ director may, ~~in his discretion,~~ in addition to the specification of daily quantitative limitations by weight, specify other limitations such as average or maximum concentration limits, for the level of pollutants authorized in the discharge.

ITEM 46. Amend subrule **64.6(5)**, paragraph "c," as follows:

c. That the permittee shall permit the ~~executive~~ director or the ~~executive~~ director's authorized representative upon the presentation of ~~his or her~~ credentials:

ITEM 47. Amend the Guidelines of Iowa Water Quality Commission on Land Disposal of Animal Wastes, addendum to **567—Chapter 65**, page 2, fourth full paragraph, as follows:

In determining waste application rates which will comply with the above recommendations, a producer should know the chemical composition of the wastes, the soil fertility level, and the nutrient requirements of ~~his~~ *the producer's* crop production system. Several sources of this information are available.

Further amend the addendum to 567—Chapter 65 by striking "Iowa Water Quality Commission" where it appears in the Guideline.

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

ITEM 48. Amend subrule **70.4(1)**, paragraph "a," to read as follows:

a. Where to submit application. An application must be mailed or delivered to the ~~flood plain branch, program operations division, department of water, air and waste management~~ *Flood Plain Management Section Environmental Protection Division, Administrative Support Station, Iowa Department of Natural Resources, Henry A. Wallace Building, 900* East ~~9th and~~ Grand, Des Moines, Iowa 50319.

ITEM 49. Amend rule 70.3(17A,109,455B,469) to read as follows:

567—70.3(17A,109,455B,469) Forms. The following forms are currently in use for flood plain projects.

Form ~~WAWM~~36: Application for Approval of Construction in or on any Floodway or Flood Plain. 8/85. *542-3234*

Form ~~WAWM~~37: Notification of Completion of Construction. 7/83. *542-3017*

Form ~~WAWM~~38: Temporary Stream Crossing for Highway Construction. 7/83. *542-1011*

ITEM 50. Amend subrule **70.5(3)**, paragraph "c," to read as follows:

c. Solicitation of expert comments on environmental effects. For channel changes or other development which may cause significant adverse effects on the wise use and protection of water resources, water quality, fish, wildlife and recreational facilities or uses, the department shall request comments from the ~~Iowa conservation commission liaison~~ *fish and wildlife division of the department* or other knowledgeable sources.

ITEM 51. Amend subrule 71.10(2) to read as follows:

71.10(2) Exempted nonfloating boat docks. Recreational nonfloating type boat docks located on the Mississippi and Missouri rivers, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs shall not require department approval, *other than* ~~provided~~ a permit ~~is~~ obtained from the ~~Iowa Conservation Commission~~ *parks, recreation and preserves division of the department.*

ITEM 52. Amend subrule **72.51(4)**, paragraph "c," to read as follows:

c. Interested agency notification. Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the ~~Iowa conservation commission~~ *fish and wildlife division of the department,* the ~~department of~~ soil conservation, *division of the department of agriculture and land stewardship,* the department of agriculture *and land stewardship,* and the ~~Iowa~~ geological survey *bureau of the department.*

ITEM 53. Amend subrule **72.51(5)**, paragraph "c," to read as follows:

c. Interagency coordination. Invite the ~~Iowa conservation commission~~ *fish and wildlife division of the department,* the ~~Iowa~~ geological survey *bureau,* and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency's water resource programs.

ITEM 54. Amend rule 73.1(109,455B,469) by renumbering subrule 72.1(2) as **73.1(2)**.

ITEM 55. Amend subrule **73.1(2)**, paragraph "a," subparagraph (2) to read as follows:

(2) Where operating plan is not related to proposed construction. If an operating plan is required because of a change in use of a dam and is not related to proposed structural modification of the dam, the proposed operating plan should be submitted to the department in writing together with department application form ~~WAWM~~ 36, *described in rule 567—70.3(455B).* The applicant should indicate on form ~~WAWM~~ 36 that structural modification of the dam is not proposed.

ITEM 56. Amend subrule **75.7(1)** by substituting the words "department" for "chief of flood plain branch program operations divisions" where it appears.

ITEM 57. Amend subrule 81.2(9) to read as follows:

81.2(9) Compliance plan. When the ~~board of certification~~ *director* allows the owner of a facility required to have a certified operator time to obtain an operator, the owner must submit a compliance plan indicating what action will be taken to obtain a certified operator. The plan must be on a form ~~(WAWM)~~52 *"Compliance Plan 542-3120"*, provided by the department and must be submitted within thirty *(30)* days of the facility owner's receipt of a notice of violation.

ITEM 58. Amend subrule 81.8(1) to read as follows:

81.8(1) All persons wishing to take the examination required to become a certified operator of a wastewater or water treatment plant or a water distribution system shall complete ~~an application for examination~~ *the "Operator Certification Examination Application" form* ~~WAWM~~ 48, *(542-3118).* A listing of dates and locations of examinations is available from the central office upon request. The application form requires the applicant to indicate educational background, training and past experience in water or wastewater operation. The completed application and the application fee shall be sent to the ~~board of certification~~ *director* and addressed to the central office in Des Moines. Application for examination must be received by the department at least thirty *(30)* days prior to the date of examination.

Further amend the remainder of subrules **81.8(2)**, **81.8(8)**, and **81.8(9)** by substituting the word "director" for the word "board" where it appears.

Further amend subrule **81.8(9)** by striking the words "or members of the board" in the second sentence of that subrule.

ITEM 59. Amend subrule 81.9(2) to read as follows:

81.9(2) Application for certification must be received by the department within thirty *(30)* days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on *a* form ~~WAWM 49~~ provided by the department and shall be accompanied by the certification fee.

Further amend subrules 81.9(4) through 81.9(7) as follows:

81.9(4) For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the ~~board~~ *department,* certification in an appropriate classification and grade, without examination, will be recommended ~~by the board to the executive director~~.

81.9(5) For applicants who have been certified under voluntary certification programs in other states, certification in an appropriate class will be considered ~~for recommendation by the board to the executive director~~. The applicant must have successfully completed an examination generally equivalent to the Iowa examination and must meet the education and experience qualifications established by the ~~executive~~ director. The ~~board~~ *director* may ~~at its discretion~~ require the applicant to successfully complete the Iowa examination.

81.9(6) Applicants who seek Iowa certification pursuant to subrule 81.9(4) or 81.9(5) shall submit an application for examination accompanied by a letter requesting certification pursuant to those subrules. Application of certification pursuant to those subrules shall be received by the ~~executive~~ director in accordance with 81.9(2) and 81.9(3).

81.9(7) Upon written request by an operator the ~~board may recommend to the executive~~ director *may determine* that the further education requirements be waived where a plant grade has been increased and the operator has been in direct responsible charge of the existing plant. An operator successfully completing the examination will be restricted to that plant or system until the education requirements are met.

ITEM 60. Amend the first sentence of subrule 81.10(2) to read as follows:

81.10(2) Currently certified operators will be mailed an application for renewal ~~(WAWM50)~~ prior to the expiration date of their certificates.

ITEM 61. Amend subrule 81.10(9) to read as follows:

81.10(9) The ~~board~~ *director* may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three *(3)* months within which to fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made prior to March 31 of each biennium.

ITEM 62. Amend subrule 81.13(3) to read as follows:

81.13(3) Procedure.

a. The ~~executive~~ director shall initiate disciplinary action. The ~~board~~ *commission* may direct that the ~~executive~~ director investigate any alleged factual situation that may be grounds for disciplinary action under 81.13(1), and report the results of the investigation to the ~~board~~ *commission.*

b. A disciplinary action may be prosecuted by the ~~executive~~ director.

c. Written notice by certified mail shall be given to an operator against whom disciplinary action is being considered, at least twenty *(20)* days in advance, that an informal hearing before the ~~board~~ *commission* at a specified date, time, and place has been scheduled for ~~his or her~~ *the operator*, at which the ~~board~~ *commission* will determine whether a formal hearing is warranted or whether informal resolution can be reached. The operator may present any relevant facts and indicate ~~his or her~~ *the operator's* position in the matter.

d. An operator who receives notice of informal hearing shall communicate verbally or in writing or in person with the ~~executive~~ director and efforts shall be made to clarify the respective positions of the operator and ~~executive~~ director. The staff may then come with a recommendation to the ~~board~~ *commission* at the informal hearing concerning disciplinary sanction.

e. Failure to attend the informal hearing or otherwise communicate facts and position relevant to the matter by the scheduled date will be considered by the ~~board~~ *commission* ~~in its determination~~ *when determining* whether a formal hearing is warranted.

f. If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the ~~board~~ *commission* concurs, a written stipulation and settlement between the ~~board~~ *department* and the operator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

g. If the ~~board~~ *commission* determines that no disciplinary action is warranted on the facts asserted, ~~that decision shall be reflected in the board minutes and~~ the operator shall be notified of the decision in writing.

h. If the ~~board~~ *commission* determines that a formal hearing is warranted to determine the appropriateness of any disciplinary sanction specified in 81.13(2), ~~it~~ *the director* shall ~~direct the department to~~ initiate formal hearing procedures. Notice and formal hearing shall be in accordance with chapter ~~55~~ *7* of the rules of the department related to contested and certain other cases pertaining to operator discipline.

ITEM 63. Amend the first unnumbered paragraph of rule 90.3(455B,17A) to read as follows:

567—90.3(455B,17A) Forms. The following forms are used to apply for construction grants assistance and to provide required documentation in the grant process. All forms may be obtained from ~~Records Center, Department of Water, Air and Waste Management~~ *Environmental Protection Division, Administrative Support Station, Department of Natural Resources,* Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. Properly completed forms and all correspondence should be directed to *the* Construction Grants ~~Administration, Program Operations Division~~ *Section,* at the above address. Grant applications shall also comply with applicable requirements of Chapters 60 and 64, Iowa Administrative Code.

Further amend subrule 90.3(3) to read as follows:

90.3(3) State grant forms.

a. ~~WAWM~~ *Form* 39 — state grant agreement

b. ~~WAWM~~ *Form* 40 — state grant amendment

c. ~~WAWM~~ *Form* 41 — state resolution of governing body

d. CP-C3827 voucher claim

e. ~~WAWM~~ *Form* 42 — final cost record

ITEM 64. Amend subrule **100.3(1)**, paragraphs "a" and "b," to read as follows:

a. A properly completed application shall consist of the application form with all blanks filled in by the applicant, all signatures, and all documents and information required by the solid waste disposal rules. Application forms may be obtained from:

~~Records Center~~ *Administrative Support Station, Environmental Protection Division*
Iowa Department of ~~Water, Air and Waste Management~~ *Natural Resources*
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

Properly completed forms should be submitted in accordance with the instructions on the form. Where not specified in the instructions, forms should be submitted to the ~~Program~~ ~~Operations~~ ~~Division~~ *Solid Waste Section.*

b. Application for the following permits or renewals shall be made in triplicate on the forms indicated:

(1) A sanitary disposal project permit pursuant to Iowa Code section 455B.305—Form ~~WAWM~~43. *542-3199*

(2) A temporary permit pursuant to Iowa Code subsection 455B.307(1)—Form ~~WAWM~~44. *542-1012*

(3) A renewal of a sanitary disposal project permit pursuant to subrule ~~27.2(1)~~ *102.2(1)*—Form ~~WAWM~~45. *542-3208*

ITEM 65. Amend the first unnumbered paragraph of subrule 100.3(2) and paragraph 100.3(2)"a" to read as follows:

100.3(2) Industrial sludge and toxic and hazardous waste disposal instructions. Requests for special waste authorizations instructions for the disposal of hazardous or toxic waste, as required by ~~103.14(2)~~ *102.14(2)* shall be submitted to:

~~Records~~ ~~Center~~ *Administrative Support Station,*
Environmental Protection Division
Iowa Department of ~~Water,~~ ~~Air~~ ~~and~~ ~~Waste~~ ~~Management~~ *Natural Resources*
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

a. Requests shall be made by submitting Form ~~WAWM~~46 *(542-3216) "Request for Special Waste Authorization"* accompanied by supporting data as deemed necessary by the department. In case of emergency, instructions may be obtained by telephone by calling 515/281-8692. In those limited circumstances when the waste is unused commercial product in the original container which has attached legible labels and there is a reasonable certainty that the label accurately represents the contents of the container the owner of this waste need only submit a Waste Disposal of Commercial Products Only Form, Form ~~WAWM~~47. *(542-3148).*

ITEM 66. Amend subrule **103.6(1)**, paragraph "b," subparagraph (10), second paragraph, as follows:

The collection and preservation of samples shall be done by the highest grade operator at the plant producing the sludge, or ~~his~~ *the operator's* designee. This shall be done in a manner and frequency approved by the ~~executive~~ director and intended to assure that the sampling results as representative of the sludge being disposed.

ITEM 67. Amend the first unnumbered paragraph of rule 107.1(455C) to read as follows:

567—107.1(455C) Scope. This chapter is intended to implement the provisions of *Iowa Code* chapter 455C~~, The Code~~. The Act requires that ~~on or after May 1, 1979,~~ every alcoholic liquor container, ~~and that on or after July 1, 1979,~~ ~~every~~ beer, mineral water, soda water or carbonated soft drink container sold in Iowa for the consumption off the premises of the dealer be subject to a deposit of five cents *(5¢)* or more. Such container must have indicated on it that the container is subject to a minimum refund of five cents *(5¢)* or must be exempt from the requirement of having a refund value indicated on it. An empty container on which a deposit was made may be returned to any dealer in the state who sells the kind, brand, and size of container or may be returned to a redemption center. The dealer or redemption center must accept the empty container and refund the deposit.

ITEM 68. Amend rule **107.2(455C)** by striking the subrule numbers and by striking the first unnumbered paragraph of the definition of "alcoholic liquor" and inserting in lieu thereof the following:

"Alcoholic liquor" or "intoxicating liquor" means the varieties of liquor defined hereunder in paragraphs 1 and 2 which contain more than five percent (5%) of alcohol by weight, beverages made as described in the definition of "beer" which beverages contain more than five percent (5%) of alcohol by weight but which are not wine as defined in this rule, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in the definition of "wine" containing more than seventeen percent (17%) alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes.

ITEM 69. Amend rule **107.2(455C)** by striking the definition of "beer" and inserting in lieu thereof the following:

"Beer" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent (0.5%) of alcohol by volume but not more than five percent (5%) of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.

ITEM 70. Amend rule **107.2(455C)** by adding in alphabetical sequence the following definition:

"Alcoholic beverage" means any beverage containing more than one-half of one percent (0.5%) of alcohol by volume including alcoholic liquor, wine, and beer.

ITEM 71. Amend subrule 109.5(1) to read as follows:

109.5(1) Form. Any person to whom this chapter applies shall file a completed ~~WAWM~~ Form *98 supplied by the department* as specified in subrule 109.5(2).

ITEM 72. Amend the fourth unnumbered paragraph of rule **567—120.2(455B)**, "Solid Waste" to read as follows:

"Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semi-solid materials, ~~not~~ including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. Nothing herein shall be construed as prohibiting the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation, or grading at places other than a sanitary disposal.

ITEM 73. Amend subrules 120.3(1) and 120.3(2) to read as follows:

120.3(1) A properly completed application shall consist of the application form with all blanks filled in by the applicant, all signatures, and all documents and information required by the land application rules. Application forms may be obtained from:

~~Records~~ ~~Center~~ *Administrative Support Station,*
Environmental Protection Division
Iowa Department of ~~Water,~~ ~~Air~~ ~~and~~ ~~Waste~~ ~~Management~~ *Natural Resources*
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

Properly completed forms should be submitted in accordance with the instructions for the form. Where not specified in the instructions, forms should be submitted to the Program Operations Division.

120.3(2) Application for a land application permit shall be made on Form ~~WAWM~~43, "Application for a Sanitary Disposal Project Permit."

ITEM 74. Amend rule **567—131.2(455B)** by substituting for the words "office of disaster services" the words "disaster services division, department of public defense" where it appears.

ITEM 75. Amend the first unnumbered paragraph of subrule 131.2(2) to read as follows:

131.2(2) Written report. The written report of such a hazardous condition should be submitted to the department within ~~five~~ *thirty (30)* days and contain the following information:

ITEM 76. Amend rule **567—135.3(455B)** by substituting for the words "WAWM Form 148" or "Form 148" (542-3266) the words "the notification form provided by the department" where it appears.

ITEM 77. Amend rule 140.5(455B) to read as follows:

567—140.5(455B) Application for permits and renewals by existing hazardous waste facilities. Any person who owns or operates a facility that treats, stores, or disposes of a hazardous waste existing on the effective date of the rule listing the waste shall obtain a permit for the facility within six *(6)* months of the effective date of the rule. Such a person is considered to have a permit until such time as a final administrative determination is made if the person has given the notification described in rule 141.*2*12(455B) and has submitted a Part A application; federal EPA Forms 3510-1 and 3510-3. Such a person shall submit, upon request of the department or voluntarily at any time, a Part B application. The submission to the department of the information provided for in subrule 141.12(3) and 141.12(4) constitutes a Part B application.

ITEM 78. Amend rules 140.6 and 140.7(455B) to read as follows:

567—140.6(455B) Form for the hazardous waste program—transportation, treatment, and disposal fees. Any generator or the owner or operator of a hazardous waste treatment or disposal facility who transports, treats, or disposes of hazardous waste is subject to the fees specified in rule 149.4(455B). Such a person must also complete and submit to the department ~~WAWM~~ Form 179 *(542-3267), "*~~h~~*H*azardous waste ~~p~~*P*rogram—~~t~~*T*ransportation, ~~t~~*T*reatment and ~~d~~*D*isposal ~~f~~*F*ees*" which is provided by the department.*

567—140.7(455B) Form for the analysis and notification requirements for recycled oil. Any supplier or applicator who sells or uses recycled oil for road oiling, dust suppression, or weed control is subject to analysis and notification requirements specified in chapter 143. Such a person must also complete and submit ~~to the department~~ ~~WAWM~~ Form 180 *which is provided by the department.*

ITEM 79. Amend subrule **141.13(15)**, introductory paragraph, fourth sentence, as follows:

. . . The ~~executive~~ director may also hold a public hearing at ~~his~~ *the director's* discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision.

ITEM 80. Amend rule **567—143.4(455B)** by substituting for the words "WAWM Form 180" the words "Form 180, the notification form provided by the department" where they appear.

ITEM 81. Amend subrule 149.5(1) to read as follows:

149.5(1) Form. Any person to whom this chapter applies must file a completed ~~WAWM~~ Form 179 *"Hazardous Waste Program—Transportation, Treatment and Disposal Fees" which is provided by the department* as specified in rule 140.6(455B).

ITEM 82. Amend the definition of "Interested agency" in rule **150.2(455B)** as follows:

"Interested agency" means the ~~Iowa geological survey~~ *geological survey bureau of the department,* the state archaeologist, ~~the office for planning and programming~~ *the department of management,* Iowa department of transportation, ~~Iowa development commission~~ *the department of economic development,* and any other agency that notifies the department pursuant to subrule 150.6(1) that it is interested in a particular application but is not a regulatory agency.

[Filed emergency 11/14/86, effective 12/3/86]

[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see Supplement, 12/3/86.

ARC 7184

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on November 12, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on October 8, 1986, as **ARC 7009**.

Under current policy, Iowa counts unearned income-in-kind in determining eligibility and benefits except in shared living arrangements where the client lives with another family or person and expenses are shared. States are not required to count unearned income-in-kind under federal law and regulations.

This amendment exempts unearned income-in-kind when determining eligibility and benefits for the Aid-to-Dependent-Children (ADC) program.

Iowa has chosen to change its policy because the change will benefit clients and because the current policy is error prone. Workers will no longer be required to verify and compute unearned income-in-kind. Therefore, this change will aid in reducing Iowa's error rate.

Eight states which determine need and payment in a manner similar to Iowa were contacted. Seven of the eight states do not count unearned income-in-kind.

Since the time this change was placed under Notice, Iowa has received a federal interpretation stating that unearned income-in-kind must be treated the same in all situations. It is not permissible for a state to reduce

the ADC grant only when the in-kind income comes from someone living outside the ADC household and not do so for shared living arrangements. This amendment will also resolve this issue, since it will result in all unearned income-in-kind cases being treated in the same manner.

Although it is estimated this change will cost the state approximately $37,000 per year in increased ADC grants, the cost should be more than offset through the avoidance of fiscal sanctions.

These rules are identical to those placed under Notice of Intended Action.

The Department of Human Services finds these rules confer a benefit on the public by disregarding as income contributions made as vendor payments. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These rules are intended to implement Iowa Code section 239.5.

These rules became effective December 1, 1986.

ITEM 1. Amend subrule **41.5(6)**, paragraph "c," as follows:

c. ~~In those instances where~~ *When* the agency or organization is capable of meeting only a portion of the alien's needs, any income made ~~directly~~ available to the alien shall be treated as unearned income in accordance with subrule 41.7(1). ~~Any vendor payments made by the sponsor for the alien's basic or special needs, shall be treated as unearned income in kind in accordance with subrule 41.7(1)"b."~~

ITEM 2. Amend subrule **41.6(8)**, paragraph "b," as follows:

b. When the local office questions whether the funds in a trust or conservatorship are available, the local office shall refer the trust or conservatorship to central office. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income. ~~Funds paid by the trustee or conservator to a third party for basic or special needs shall be considered unearned income in kind in accordance with subrule 41.7(1)"b."~~

ITEM 3. Amend subrule 41.7(1) as follows:

Amend the introductory paragraph as follows:

41.7(1) Unearned income. Unearned income is any income in cash ~~or in kind~~ that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (federal insurance contribution Act, state and federal income taxes). Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

Rescind and reserve paragraph "b."

ITEM 4. Amend subrule **41.7(6)** by adding the following new paragraph:

o. Unearned income-in-kind.

ITEM 5. Amend subrule **41.7(7)**, paragraph "i," as follows:

i. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency ~~unless the cost of shelter is furnished in full.~~

[Filed emergency after Notice 11/14/86, effective 12/1/86]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7185

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 42, "Unemployed Parent," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule on November 12, 1986. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6969**.

A person who receives Iowa Job Insurance benefits (JIB) must make two job-seeking contacts per week and document those contacts to the Department of Employment Services (DES). Similarly, a qualifying parent under the Aid to Dependent Children—Unemployed Parent program (ADC-UP) must make eight job-seeking contacts per month and document those contacts to the local Department of Human Services office. A person receiving both ADC-UP and JIB can use the same job-seeking contacts to maintain eligibility for both programs. In addition, both DES and the local Department office are monitoring the person's job search.

Currently, Department policy requires the Income Maintenance Worker (IMW) to contact the ADC-UP qualifying parent at least once a month to ensure compliance with the active job search requirement. This contact is generally accomplished by requiring the qualifying parent to complete a job search documentation form.

Since this simply duplicates DES actions if the qualifying parent is receiving Iowa JIB, this amendment will waive the contact by the IMW in those cases. If the qualifying parent fails to do a job search, JIB will be terminated and DES will notify the local office so that ADC-UP will also be terminated.

This rule is identical to that published under Notice of Intended Action.

The Department of Human Services finds this rule confers a benefit on the public by removing an unnecessary reporting requirement. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

This rule is intended to implement Iowa Code section 239.2.

This rule became effective December 1, 1986.

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

Amend rule 498—42.7(239) as follows:

498—42.7(239) ~~**Review and redetermination requirements**~~ ***Income maintenance worker contact to ensure active search for employment or training.*** The income maintenance worker is responsible for a minimum of one contact per month ~~subsequent to approval~~ to determine whether the requirement of an active search for employment or training is being met by the qualifying parent. ~~Eligibility shall be completely reviewed at least once every three months.~~ *Exception: Contacts and documentation are not required for any month in which the qualifying parent received Iowa job insurance benefits.*

[Filed emergency after Notice 9/26/86, effective 9/26/86]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7156

PERSONNEL DEPARTMENT[581]

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Department of Personnel hereby emergency adopts and implements amendments to Chapter 12, "Grievances and Appeals," appearing in the Iowa Administrative Code.

This amendment is needed so that employees will continue to have appeal rights when they allege that a proposed reduction in force should instead be a disciplinary action or reclassification with resultant appeal rights.

This rule is in our current rules, but when Chapter 12 was filed as **ARC 6851** it was inadvertently omitted.

This rule will continue to allow an employee the right to file an appeal when they feel a reduction in force was used to circumvent their other rights to an appeal.

In compliance with Iowa Code section 17A.4(2) the Department finds that public notice and participation would be unnecessary since the rule is currently in effect and was intended to continue that way, is noncontroversial, and was simply overlooked in the August 13, 1986, Iowa Administrative Bulletin.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective on December 10, 1986, to coincide with the effective date of the rules adopted and published in the November 5, 1986, Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code section 19A.9.

The following amendments are adopted.

Amend 12.2(19A) by adding the following new subrule and renumber 12.2(7) as 12.2(8).

12.2(7) Appeal of reduction in force. An employee who is to be or has been laid off or who has changed classes in lieu of layoff, and who alleges that the reduction in force was used to circumvent the rights of appeal provided for in subrule 12.2(6) or subrule 12.2(1) paragraph "b," may appeal to the director within thirty (30) calendar days following receipt of the notice of reduction in force to the employee from the appointing authority.

[Filed emergency 11/7/86, effective 12/10/86]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7206

CONSERVATION COMMISSION[290]

Pursuant to the authority of 1986 Iowa Acts, Senate File 2175, section 1805, the Natural Resource Commission, at their regular meeting on November 13, 1986, adopted the following amendments to Chapter 20, "Trotlines," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6950**.

This rule establishes areas open to trotlines.

There are no changes from the Notice of Intended Action.

This rule is intended to implement Iowa Code section 109.74.

This rule will become effective January 7, 1987.

Rule 290—20.1(109) is amended to read as follows:

290—20.1(109) Trotlines where permitted. It shall be lawful to use trotlines or throw lines in all rivers and streams of the state, except in Mitchell, Howard, Winneshiek, Allamakee, Fayette, Clayton, Delaware, Dubuque, and Jackson Counties. Trotlines or throw lines may be used in the above nine counties in the following stream segments: Maquoketa River, mouth to ~~Buchanan-Fayette County~~ *Backbone State Park* dam; *North Fork Maquoketa River, mouth to Jones-Dubuque County line;* Turkey River, mouth to ~~state highway 13~~ *the Elkader dam;* and Upper Iowa River, mouth to ~~state~~ *U.S.* highway ~~76~~ *52*.

This rule is intended to implement Iowa Code section 109.74.

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7207

CONSERVATION COMMISSION[290]

Pursuant to the authority of Iowa Code section 107.24 as amended by 1986 Iowa Acts, Senate File 2175, sections 1836 and 1837, and Iowa Code sections 109.38 and 109.39, the Department of Natural Resources on November 13, 1986, adopted Chapter 111, "Wild Turkey Spring Hunting Regulations," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 24, 1986, as **ARC 6951**.

These rules give the regulations for hunting wild turkeys and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation tag requirements.

There are no changes from the Notice of Intended Action, except for rule 111.4(109), where the word "said" was changed to "the".

These rules implement Iowa Code sections 109.38 and 109.39, and shall become effective January 7, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (chapter 111) is being omitted. These rules are identical to those published under Notice as **ARC 6951**, Iowa Administrative Bulletin 9/24/86, with the exception of rule 111.4(109), where the word "said" was changed to "the".

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

[For replacement pages for IAC, see IAC Supplement, 12/3/86.]

ARC 7208

EDUCATION, DEPARTMENT OF[281]

Pursuant to the authority of Iowa Code section 257.9(2), the Iowa Department of Education adopted on November 12, 1986, amendments to 670—Chapter 3, "Approved Schools and School Districts," Chapter 9, "Extracurricular Interscholastic Competition," and Chapter 22, "School Transportation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, August 27, 1986, as **ARC 6880**.

These rules are identical to those published as Notice of Intended Action.

These rules will become effective on January 7, 1987.

The following amendments are adopted:

ITEM 1. Amend subrule 670—3.4(14) to read as follows:

3.4(14) ~~Medical~~ *Physical* examination. Except as otherwise provided in the rules of the state board of ~~public instruction~~ *education*, the local board shall require each employee to file with it, at the beginning of service and at three *(3)*-year intervals thereafter, a written report of a ~~medical~~ *physical* examination by a licensed physician and surgeon, osteopathic physician and surgeon ~~or~~, osteopath, *or qualified doctor of chiropractic* which shall include a check for tuberculosis, certifying that ~~such~~ *the* employee has the fitness to perform the tasks assigned.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

ITEM 2. Amend subrule 670—9.15(3) to read as follows:

9.15(3) ~~Medical~~ *Physical* exam. Every year each student shall present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon ~~or~~, osteopath, *or qualified doctor of chiropractic*, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

The certificate of ~~medical~~ *physical* examination is valid for the purpose of this rule for one *(1)* calendar year. A grace period not to exceed thirty *(30)* days is allowed for expired ~~medical~~ *physical* certifications.

EDUCATION, DEPARTMENT OF[281] *(cont'd)*

ITEM 3. Amend rule 670—22.15(285) to read as follows:

670—22.15(285) Physical fitness. Applicants for the school bus driver's permit must submit each year to the ~~school transportation and safety education division~~ *school administration and accreditation bureau,* a signed report (Form TR-F-6-497B) of a ~~medical~~ *physical* examination by a licensed physician and surgeon, osteopathic physician and surgeon, ~~or~~ osteopath, *or qualified doctor of chiropractic,* indicating physical fitness as follows:

22.15(1) No change.
22.15(2) No change.
22.15(3) No change.
22.15(4) *Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.*

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7210

EDUCATION, DEPARTMENT OF[281]

Pursuant to the authority of Iowa Code section 280.13, the Iowa Department of Education adopted on November 12, 1986, amendments to 670—Chapter 9, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, September 10, 1986, as **ARC 6926.**

This rule is identical to that published as Notice of Intended Action.

This rule will become effective on January 7, 1987.

The following amendments are adopted:

ITEM 1. Amend 670—subrule 9.20(2) to read as follows:

9.20(2) The attendance boundary of each school which is party to the agreement is contiguous to or contained within the attendance boundary of ~~each~~ *one* of the other schools, unless the activity is not offered at any school contiguous to the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school members will utilize the attendance boundaries of the public school in which its attendance center is located.

ITEM 2. Amend 670—subrule **9.20(8)**, second unnumbered paragraph, to read as follows:

For the ~~1985-86~~ *1986-87* school year and appropriate summer programs only, the governing board of each organization may approve agreements in each activity which meet the spirit of the above provisions concerning shared extracurricular activities.

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7198

ENVIRONMENTAL PROTECTION COMMISSION[567]

Pursuant to the authority of 1986 Iowa Acts, Senate File 2175, section 1806; Iowa Code section 17A.3(1)"a" and section 455B.105 as amended by 1986 Iowa Acts, Senate File 2175, section 1887, the Environmental Protection Commission of the Department of Natural Resources adopts a new Chapter 1 governing the operation of the Commission.

The Notice of Intended Action was published in the October 8, 1986, Iowa Administrative Bulletin, as **ARC 7017.** These rules were adopted on November 13, 1986.

One change from the Notice of Intended Action was made in response to a comment from the public. The suggested five-day notice period in 1.5(2)"a" was deleted.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and 1986 Iowa Acts, Senate File 2175, section 1806.

These rules will become effective January 7, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (ch 1, also rescinds 900—chapter 2) is being omitted. These rules are identical to those published under Notice, Iowa Administrative Bulletin, 10/8/86, as **ARC 7017,** with the exception of 1.5(2)"a," where the suggested five-day notice period was deleted.

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

[For replacement pages for IAC, see IAC Supplement, 12/3/86.]

ARC 7197

ENVIRONMENTAL PROTECTION COMMISSION[567]

Pursuant to the authority of Iowa Code section 455B.105 as amended by 1986 Acts, Senate File 2175, section 1887, and 1985 Iowa Code supplement section 455B.173, as amended by the 1986 Acts, Senate File 2175, section 1899A, the Environmental Protection Commission for the Department of Natural Resources, formerly the Water, Air and Waste Management Commission for the Department of Water, Air and Waste Management, amends 900—Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code, pertaining to design standards for wastewater treatment facilities.

The Notice of Intended Action was filed by the Water, Air and Waste Management Commission for the Department of Water, Air and Waste Management and was published in the May 21, 1986, Iowa Administrative Bulletin, as **ARC 6554.** A public hearing was held on June 10, 1986. The rule change was adopted on November 13, 1986.

Several changes in the proposed design standards, Chapter 19, "Supplemental Treatment Processes," of the Iowa Wastewater Facilities Design Standards, were

made in response to comments from consulting engineers. The changes were minor corrections and clarifications, for the most part. A major change concerned section 19.4, Other Supplemental Treatment Processes. Microscreening was included in this section of the design standards filed with the Notice of Intended Action, but was deleted in this section of the design standards for the adopted rule due to comments received from the Environmental Protection Agency. These comments indicated that many design, construction and operational problems were reported in a preliminary assessment of several problem projects by the Environmental Protection Agency.

The commentors have been made aware of the Department's responses to their comments. A summary of the written comments received concerning the standards and the Department's responses is found in the Public Participation Responsiveness Summary for Chapter 19—Supplemental Treatment Processes, a copy of which is provided to the Code Editor. A copy of the Summary may be obtained from the Department upon request.

This rule is intended to implement Iowa Code chapter 455B, division III, part I, as amended by 1986 Acts, Senate File 2175, sections 1899, 1899A and 1899B.

This rule is intended to become effective January 7, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

Amend subrule **64.2(9)**, paragraph "b," Chapter 19 by striking the word "Reserved" and inserting the date of final adoption, "November 13, 1986".

[Filed 11/14/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7182

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 9, "Confidentiality and Records of the Department," and Chapter 40, "Application for Aid," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on November 12, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on October 8, 1986, as ARC 7008.

Currently the Department requires the client to sign Form PA-2206-0, Authorization for Release of Information, both when it is necessary to obtain information from a third party and when the Department releases information to a third party. The Department has been advised by legal staff that this form is not appropriate when the Department is releasing information. Consequently, a new Form, 470-2115, Authorization for the Department to Release Information, has been developed.

The current Form PA-2206-0, Authorization for Release of Information, is generic and is used to obtain all types of information from a third party. Forms have been developed to request information from persons able to verify household composition, financial institutions, landlords, schools, and employers. Using a separate form for the specific type of information required will (1) allow the clients to know exactly what information is being requested before they sign the release, (2) aid the worker in getting all the information needed to establish eligibility, and (3) make it easier for the provider of the information to complete the form.

This amendment will authorize use of the new forms which have been developed. The reference to Form PA-2206-0 in 498—Chapter 40 is being removed to allow for the use of the various releases.

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

These rules are intended to implement Iowa Code section 217.6.

These rules shall become effective February 1, 1987.

ITEM 1. Amend rule 498—9.1(125,217,229,232) as follows:

Amend subrule 9.1(5) as follows:

~~9.1(5) Authorization to release information.~~ "Authorization to release information" means a written statement, signed and dated by the person empowered to authorize release of confidential information by the rules of this chapter, such as the client or the institutional administrator. The statement shall specify to whom information is to be released, what information is to be released, and the period of time for which the authorization to release information is to be effective. *The statement may be provided by the client or the client may sign Form 470-2115, Authorization for the Department to Release Information.* A letter from a client to a state or United States legislator, the citizens' aide office, or other public official which seeks the addressee to intervene on behalf of the client in a matter that involves the client and the department, shall be construed as authorizing the department to release sufficient information to the addressee to resolve the matter.

Delete the subrule numbers, arrange the definitions alphabetically, and provide that each definition reads as a complete statement.

ITEM 2. Amend 498—Chapter 9 by adding the following new rule:

498—9.6(217) Obtaining information from a third party. The client shall give written permission for a third party to release information to the department when the information is needed to establish eligibility or the amount of benefits. Written permission shall be given on one of the following forms:

9.6(1) Form PA-2206-0, Authorization for Release of Information.

9.6(2) Form 470-1630, Household Member Questionnaire.

9.6(3) Form 470-1631, Financial Institution Questionnaire.

9.6(4) Form 470-1632, Landlord Questionnaire.

9.6(5) Form 470-1638, Request for School Verification.

9.6(6) Form 470-1639, Earned Income Verification.

9.6(7) Form 470-1640, Verification of Educational Financial Aid.

ITEM 3. Amend subrule **40.7(4)**, paragraph "c," as follows:

c. The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility and the amount of the aid-to-dependent-children grant within five *(5)* working days from the

date a written request is mailed by the local office to the recipient's current mailing address or given to the recipient. The recipient shall give written permission for release of information ~~on form PA-2206-0, Authorization for Release of Information,~~ when the recipient is unable to furnish information needed to establish eligibility and the amount of the aid-to-dependent-children grant. Failure to supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for cancellation of assistance.

[Filed 11/14/86, effective 2/1/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7183

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule on November 12, 1986. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on October 8, 1986, as **ARC 6999**.

This amendment revises the formula for figuring the equity value of nonexempt homestead property. Under the current policy the value of the excess homestead property is determined by deducting a proportionate amount of debt against the total property from the market value of the excess property. For example, if a client owns eighty (80) contiguous acres, half of which (forty (40) acres) is exempt as homestead property, and $20,000 is owed against the eighty (80) acres, $10,000 (half) would be deducted from the market value of the excess forty (40) acres to determine the value of the excess property.

The Iowa District Court judicial review of appeal, Behnke vs. Iowa Department of Human Services brought a deficiency in the policy to the Department's attention. The equity value of nonexempt homestead property should be computed in the same way that the equity value of any other property is determined for Aid-to-Dependent-Children purposes.

Therefore, policy is being revised to provide that the value of the excess homestead property will be determined by deducting any debts against the property. This change will allow the income maintenance worker to determine how a legal encumbrance affects any nonexempt property. If part of the property is exempt as a homestead and there is a mortgage against the total property, the total legal encumbrance may now be counted against the nonexempt property. This would occur if the terms of the loan require the net proceeds from the sale of any part of the property to be applied to the balance of the loan. In the example above, if the excess property were valued at $20,000, under the old policy the client would be ineligible ($20,000 minus $10,000 equals $10,000 to be counted as a resource). Under the new policy the client will be eligible.

However, the new policy may also have an adverse effect on clients if, for example, the mortgage is only on the house and surrounding land. Under old policy half of the mortgage in the example case could have been deducted. It cannot be deducted under the new policy.

This rule is identical to that published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 239.5.

The rule shall become effective February 1, 1987.

Amend subrule 41.6(3) as follows:

41.6(3) Homestead defined. The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed one-half *(½)* acre in area. When outside a city plat it shall not contain, in the aggregate, more than forty *(40)* acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined ~~by counting the market value of the excess property less the proportionate amount of legal debts, claims or liens against the total property~~ *in accordance with subrule 41.6(5).*

[Filed 11/14/86, effective 2/1/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7186

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 65, "Administration," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule on November 12, 1986. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on October 8, 1986, as **ARC 7010**.

This amendment clarifies that food stamp households receiving interest income are not subject to monthly reporting unless they are required to monthly report for another reason.

The Department already exempts this category of households from monthly reporting. However, this exemption is not clearly defined in the rules.

Although interest income received by food stamp clients can vary by a few pennies each month, or each quarter, the chance of the variance affecting the amount of food stamps issued is almost nil because of rounding procedures used in the food stamp program. The interest may vary slightly but the amount of stamps will stay constant in almost every case. Therefore, it would be unreasonable to require these households to monthly report.

This rule is identical to that published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 234.12.

This rule shall become effective February 1, 1987.

Amend subrule **65.19(6)**, paragraph "c," by adding the following new subparagraph:

(4) The income is from interest.

[Filed 11/14/86, effective 2/1/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7187

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 249A.4, the Iowa Department of Human Services hereby amends Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on November 12, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on October 8, 1986, as **ARC 7000**.

This amendment corrects policy as stated in the rules to reflect the fact that eligibility for intermediate care facilities for the mentally retarded (ICF/MR) is not based on county funding. Iowa Code section 249A.12 was changed by 1984 Iowa Acts, chapter 1297, section 6, to require counties to pay the nonfederal portion of ICF/MR services if the recipient meets eligibility criteria and the recipient's placement has been approved by the Iowa Foundation for Medical Care as medically necessary and appropriate. The federal share for ICF/MR services is currently fifty-eight and nine-tenths percent. This will increase to sixty and thirty-nine hundredths percent effective October 1, 1986.

Under old policy, counties were requested to sign Form MA-2152, ICF/MR Payment Agreement, to ascertain that funding is available. Counties will now be sent a Placement Statement notifying them of a resident's entry into a facility.

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

These rules are intended to implement Iowa Code section 249A.12.

These rules shall become effective February 1, 1987.

ITEM 1. Rescind and reserve subrule **82.3(1)**, paragraph "i."

ITEM 2. Amend rule 498—82.14(249A) as follows:

Amend subrule 82.14(1) as follows:

82.14(1) Method of payment. Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule ~~770~~*498*—82.5(249A). ~~Assistance shall be furnished only when it is determined that adequate funding is available, as evidenced by form MA-2152-0, ICF/MR Payment Agreement.~~

Rescind subrule 82.14(2) and insert the following in lieu thereof:

82.14(2) Payment responsibility. The department shall send the resident's county of legal settlement Form MA-2152-0, ICF/MR Placement Statement, notifying them of the resident's entry into the facility.

[Filed 11/14/86, effective 2/1/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7157

JOB SERVICE, DIVISION OF[345]

Pursuant to the authority of Iowa Code sections 96.11(1) and 17A.3, the Division of Job Service hereby amends Chapter 3, "Employer's Contribution and Charges," and Chapter 4, "Claims and Benefits," Iowa Administrative Code.

These rules are identical to those published in Iowa Administrative Bulletin, dated August 13, 1986, as **ARC 6848**, except for some punctuation and minor word changes; subrules 4.25(41) and 4.32(10) have been removed for further study due to public objections; and all references to agency identification number 370 have been corrected to 345.

The adopted amendments are:

Subrule 3.3(1) is changed to correct an error of omission in the Iowa Administrative Code.

Corrective change to subrule 4.2(1), paragraph "c," moves claimants having hiring hall placement facilities from group 1 to new group 5 to facilitate faster automated processing of information at lower costs. It allows new group 6 persons who must use résumés to count them as a part of their work search requirements.

Subrule 4.13(1), paragraph "s," corrects an error of omission. Tips and gratuities have been deductible from job insurance benefits because they are remuneration received for services rendered.

Rule 4.25(96) places the initial burden on the claimant to produce evidence that disqualification for voluntarily leaving employment should not be imposed.

Subrules 4.26(19) and 4.26(22) are changed to conform to Iowa Supreme Court decision, Des Moines Community School District vs. Iowa Department of Job Service, which held that a teacher, including a substitute teacher, who declines to accept a new contract or reasonable assurance to continued employment status is considered to have voluntarily quit employment.

New rule 4.60(96) conforms to Public Law 94-566 mandate disqualifying illegal aliens from receiving unemployment insurance and defines classifications of aliens as to their eligibility. It also defines color of law.

These rules were adopted on November 3, 1986, and will become effective January 7, 1987.

These rules are intended to implement Iowa Code sections 96.3(3), 96.4(1) to 96.4(3), 96.5(1), 96.5(10), and 96.6(2).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (3.3(1), 4.2(1)"c," 4.13(1)"s," 4.25, 4.26(19), 4.26(22) and 4.60) is being omitted. These rules are identical to those published under Notice, Iowa

JOB SERVICE, DIVISION OF[345] *(cont'd)*

Administrative Bulletin, 8/13/86, as **ARC 6848**, except for some punctuation, minor word changes, and subrules 4.25(3) and 4.32(10) have been removed for further study.

[Filed 11/7/86, effective 1/7/87]
[Published 12/3/86]

[For replacement pages for IAC, see IAC Supplement, 12/3/86.]

ARC 7193

REGENTS, BOARD OF[720]

Pursuant to the authority of Iowa Code section 262.9, the State Board of Regents hereby rescinds Chapter 7, "Equal Employment Opportunity," and adopts a new Chapter 7; and adopts amendments to Chapter 8, "Purchasing," Iowa Administrative Code.

The rules set forth policies on affirmative action, contract compliance, procurement set-asides from targeted small businesses; direct development of programs and procedures to carry out the Board of Regents policy; and designate appointment of the Regent equal employment opportunity compliance officer as coordinator of the board's equal employment opportunity program.

As a result of suggestions from the Administrative Rules Review Committee, from the public hearing, and from Regent institutional personnel and the Board of Regents staff, the adopted rule has been changed from that published as an Emergency Adopted and Implemented Rule and as a Notice of Intended Action.

These changes provide for inclusion of veterans of the Vietnam era as persons of the protected classes; provide additional definitions in subrule 7.1(1); clarify language; correct the name and address of a state agency; exclude fuels as part of the procurement targeted set-aside; and divide total purchases into smaller tasks or quantities when it is economically feasible.

Changes include the following:

Add "or status as a veteran of the Vietnam era." in 720—7.1(262) (lines 5 and 14); 7.1(1) in definition for "protected classes"; 7.2(2)"a"; 7.2(2)"b."

Subrule 7.1(1) - Add definitions for "Affirmative action" and "Bona fide occupational qualifications."

Subrule 7.2(2)"a" - Delete "any such," and "such" following "each" (twice).

Subrule 7.6(1)"b" - Delete "such" and add "these".

Subrule 7.6(2)"a" - Delete "therewith" and add "with these".

Subrule 7.6(2)"d" - Delete "such" and add "the".

Subrule 7.6(2)"g" - Delete "such" and add "the" twice.

Subrule 7.7(1) - Delete "Minority and women business enterprises also referred to as".

Subrule 7.7(2) - Add "or fuels purchased for the production of utility services" and "Regents institutions may divide total purchases into tasks or quantities when it is economically feasible in order to permit maximum targeted small business participation."

Subrule 7.7(3)"a" - Add "Regent institutions may request the assistance of the department of economic development or the department of management in the negotiation of a contract price."

Subrule 7.7(3)"c" - Add "submit with the bid".

Subrule 7.7(5) - Add "Iowa," "small business section, 200 East Grand Avenue," and delete "600 East Court Avenue".

Subrule 7.7(8)"b" - Delete "hereunder" and add "in this rule".

Subrule 8.1(2) - Delete "hereof".

Subrule 8.6(5) - Delete "hereof".

These rules were filed Emergency Adopted and Implemented on July 25, 1986, for timely implementation of Code changes adopted by the General Assembly in its 1986 Session, Senate File 2175, State Government Reorganization, and were published in the Iowa Administrative Bulletin on August 13, 1986 (**ARC 6845**). To solicit public comment, the rules were also filed as a Notice of Intended Action on July 25, 1986, and published on August 13, 1986 (**ARC 6846**). The Emergency Adopted rule should be terminated [effective 1/7/87] because of changes suggested at the Administrative Rules Review Committee hearing, at the public hearing, and by institutional and Board of Regent staff personnel.

The rules as amended were adopted on October 16, 1986, and will become effective on January 7, 1987.

ITEM 1. Rule 720—Chapter 7, "Equal Employment Opportunity," is rescinded and a new Chapter 7, "Equal Employment Opportunity, Affirmative Action, and Targeted Small Business," is adopted as follows:

CHAPTER 7
EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, AND TARGETED SMALL BUSINESS

720—7.1(262) Equal opportunity policy. It is the policy of the board of regents, hereinafter board, to provide equal opportunity in all aspects of regent operations to all persons without regard to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification. The board of regents and all officials who are responsible to the board of regents shall take affirmative action in personnel administration to overcome the effects of past or present practices, policies, or other factors which serve as barriers to equal employment opportunity. Contractors doing business with the board of regents shall take affirmative action to ensure that all persons without regard to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification above are effectively afforded equal employment opportunities. Institutions under the governance of the board of regents shall provide opportunities for minority and women businesses in the awarding of contracts through a procurement set-aside program as authorized by statute.

7.1(1) Definitions:

"Actively managed" in the above context means exercising the power to make policy decisions affecting the business.

"Affirmative action" means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

"Bona fide occupational qualification" means a qualification reasonably necessary to the normal function of a position in the operation of a particular business. The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

"Minority person" means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native.

"Operated" in the above context means being actively involved in the day-to-day management of the business.

"Protected classes" shall mean racial or ethnic minorities and groups who are protected under federal and state laws because of their creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability.

"Small business" means any enterprise which is located in this state, which is operated for profit under a single management, and which has either fewer than twenty (20) employees or an annual gross income of less than three million dollars ($3,000,000) computed as the average of the three (3) preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

"Targeted small business" means a small business which is fifty-one percent (51%) or more owned, operated, and actively managed by one (1) or more women or minority persons.

7.1(2) Equal employment opportunity—administration.

a. In order to carry out the purposes of the policy, the regent equal employment opportunity compliance office has been established at the Lucas State Office Building, Des Moines, Iowa. The coordination of the policy shall be the primary responsibility of the equal opportunity compliance officer, who in consultation with regent institutions will act under the general supervision of the executive secretary of the board.

b. The emphasis in the administration of the policy shall be to coordinate equal opportunity and affirmative action in employment at regent institutions and the board office and to require equal opportunity and affirmative action in employment by contractors who do business with the board of regents and its institutions. In administering the policy the equal opportunity compliance officer shall monitor utilization of minority and women business enterprises as sources of supplies, equipment, construction, and services.

720—7.2(262) Equal employment opportunity.

7.2(1) Affirmative action. The board of regents and all officials who are responsible to the board of regents shall appoint, assign, and advance employees on the basis of merit and fitness. Each institution under the board of regents shall promulgate a clear and unambiguous written policy of nondiscrimination in employment and shall adopt an affirmative action program containing goals and time specifications in personnel administration. Each institution shall submit its annual affirmative action report to the board between December 15 and December 31 each year. The board shall submit its affirmative action report to the department of management by January 31 of each year.

7.2(2) Personnel administration.

a. Each institution and the board office shall regularly review its personnel practices and procedures with a view to correcting personnel practices and procedures which may contribute to discrimination in appointment, assignment, or advancement. Each institution shall conduct programs of job orientation and provide training and organizational structure for upward mobility and shall place emphasis upon fair practices in employment. Each institution shall also bar from all employment application forms any inquiry as to race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability, except for statistical purposes, unless it relates to a bona fide occupational qualification. The employment practices of the board of regents shall be in strict conformity to the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

b. The board of regents shall develop a procedure to permit appointment of appropriately certified disabled applicants pursuant to 1986 Iowa Acts, Senate File 2175, section 221.

720—7.3(262) Employment services. All officials responsible to the board of regents, who provide placement or referral services for public or private employers, shall refuse to fill any job order which violates federal and state laws, executive orders and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

This rule is intended to implement Executive Order number 15 of 1973.

720—7.4(262) State educational, counseling, and training programs. All educational and vocational guidance programs and their essential components, counseling and testing and all on-the-job training programs for the employees of regent institutions and the board office shall be administered in accordance with the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Every official responsible for the implementation of such programs shall be charged with the duty of seeking to provide equal opportunity for all regardless of race, creed, color, religion, sex, national origin, age, or status as a veteran of the Vietnam era, or physical or mental disability except where it relates to bona fide occupational qualification.

This rule is intended to implement Executive Order number 15 of 1973.

720—7.5(262) State services and facilities. Equal treatment shall be guaranteed by all institutions of the board of regents in providing their services to the public, and equal treatment shall be guaranteed in the use of their facilities. Those in charge of the various institutions shall take especial care that no institutional facility is used in the furtherance of any discriminatory practices.

720—7.6(262) Contract compliance.

7.6(1) Equal employment opportunity. The state board of regents and the institutions under its jurisdiction are responsible for the administration and promotion of equal opportunity in contracts and services and the prohibition of discriminatory and unfair practices within any program administered by institutions under the board of regents receiving or benefiting from state financial assistance in whole or in part. Every official responsible to the board of regents who is authorized to make contracts or subcontracts for public works or for goods or services shall cause to be inserted into every such contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative

action. Contractors, vendors, and suppliers shall further be required to submit or have on file with the board of regents' equal employment opportunity compliance office a copy of their affirmative action program containing goals and time specifications. These contractual provisions shall be fully monitored and enforced. Any breach of them shall be regarded as a material breach of contract.

a. Compliance shall be determined by a comprehensive review and evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors, including the following:

(1) The contractor's publicly stated and posted policy regarding equal opportunity employment.

(2) The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.

(3) The methods by which and places where the contractor seeks to recruit employees.

(4) The contractor's use of tests and qualifications for positions which are job related and not culturally biased.

(5) Classification and compensation plans which apply equally to all employees.

(6) Training programs which provide all persons including those in the protected classes with an equal opportunity to qualify for employment and advancement.

(7) The contractor's active support of local and national community action programs.

(8) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical locations of the contractor's work force.

b. The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against these persons. Contractors must be able to demonstrate to the satisfaction of the compliance officer that their affirmative action program is productive.

7.6(2) Procedures.

a. Contractors will be sent periodically an informative statement explaining the regents' equal employment opportunity policy. In the case of construction contracts, the statement constitutes part of the general conditions and bid specifications, and compliance with these is a condition of doing business with regent institutions. It is the intention of the regents to be fair and to avoid harassment and unnecessary reporting requirements and to be clear and firm about policy and expectations.

b. Contractors are to submit periodic reports as requested by the compliance office. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The compliance office may request other relevant information from a contractor at any time.

c. The compliance office will solicit and compile additional information about present and prospective contractors from any reliable source including regent institutions, the Iowa civil rights commission, department of economic development, and other state and federal agencies.

d. The compliance office shall systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on such reports and information, as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with the regents' policy, the compliance office shall undertake a compliance review of the contractor. Every reasonable effort shall be made to secure compliance through conciliation and persuasion. The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the regents.

e. The compliance office will receive written and signed complaints against a contractor from any person aggrieved by the contractor's alleged discrimination. The compliance office shall promptly notify the institution involved of a complaint. The burden shall be on the complainant to prove the truth of the allegations. Cognizance will also be taken of verbal complaints, newspaper reports, and any other legitimate source, and these will be followed up if investigation appears to be justified. Award of contracts may be deferred while an investigation is pending, but executed contracts will not be suspended except in compelling situations.

f. If an investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the executive secretary in consultation with regent institutions may declare the contractor ineligible unless it can otherwise be affirmatively determined that the contractor is able to comply. The executive secretary shall issue a written notice of ineligibility to the contractor, and give the contractor thirty (30) days to show cause why enforcement proceedings should not be instituted. During the thirty (30)-day show cause period, every effort shall be made to effect compliance through the processes of conciliation, mediation, and persuasion.

g. If the contractor fails to show good cause for failure to comply or fails to remedy that failure, the executive secretary in consultation with regent institutions may issue a written notice of proposed cancellation or termination of the existing contract or subcontract and debarment from future contracts and subcontracts, giving the contractor ten (10) days to request a hearing. If a request for hearing has not been received within ten (10) days from the notice, the contractor may be declared ineligible for future contracts and current contracts may be terminated for default following the approval of the state board of regents.

h. Hearings shall be conducted by a hearing examiner appointed by the executive secretary of the board from a panel for hearing examiners selected and approved by the board. The hearing examiner shall submit findings of fact and conclusions to the executive secretary who shall make final recommendations for final action to the board of regents.

i. The equal opportunity compliance officer shall promptly notify the board of regents and regent institutions when such action is pending regarding the suspension, cancellation, or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts.

7.6(3) Bidding requirement. All construction specifications shall include, in the "instruction to bidders," the following paragraph: "Bidders shall file with each bid a completed board of regents equal employment opportunity data reporting form as included in the specifications or certify on the certificate of reporting that they have filed their annual equal employment opportunity data reporting form with the board of regents equal opportunity compliance office."

720—7.7(71GA,SF2175) Targeted small business.

7.7(1) Procurement set-aside program. It is the policy of the board of regents to provide contract opportunities to targeted small businesses. Institutions governed by the board of regents shall establish procurement set-aside programs, pursuant to the Iowa Targeted Small Business Procurement Act, 1986 Iowa Acts, Senate File 2175, sections 831 to 837, and board policy. "Targeted small businesses" will be sources of supplies, equipment, construction, and services. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement set-asides for targeted small businesses to the extent there is no conflict. If the targeted small business program procedures set forth herein conflict with other laws, rules, purchasing, or contract procedures, then the targeted small business procurement program procedures set forth in this rule 720—7.7(71GA,SF2175) shall govern. This subrule is to implement 1986 Iowa Acts, Senate File 2175, section 837.

7.7(2) Procurement set-aside procedures. Regent institutions in consultation with the board office shall develop a procurement set-aside program for awarding contracts to targeted small businesses of at least two percent (2%), with a goal of up to ten percent (10%), of the value of anticipated procurements of goods and services, including construction, but not including utility services or fuels purchased for the production of utility services, each fiscal year. Regent institutions may divide total purchases into tasks or quantities when it is economically feasible in order to permit maximum targeted small business participation.

7.7(3) Construction contracts.

a. Regent institutions are authorized to negotiate or obtain competitive bids solely from targeted small businesses on construction contracts under conditions specified. Appropriate wording notifying all bidders of these provisions shall be inserted in bid documents. Regent institutions may request the assistance of the department of economic development or the department of management in the negotiation of a contract price.

(1) Regent institutions are authorized to obtain competitive bids limited to targeted small businesses on construction contracts for which more than one (1) targeted small business is qualified to perform. The contract shall be awarded to the responsible targeted small business offering the lowest price if the price is not more than five percent (5%) above the estimated price that would be obtained under open competitive bidding.

(2) If only one (1) targeted small business is qualified to perform the work on a construction contract, the regent institutions are authorized to negotiate an award of a contract to the targeted small business if the negotiated price is not more than five percent (5%) above the estimated price to accomplish the work under open competitive bidding.

(3) Regent institutions shall encourage targeted small business contractors to submit bids as prime contractors on capital projects. Regent institutions may award a contract to a targeted small business contractor who submits a fully responsive bid that does not exceed by more than five percent (5%) the lowest responsive bid.

b. Regent institutions are authorized to establish targeted small business participation requirements for construction contracts that are publicly bid on a competitive basis. On contracts for which targeted small business participation is required, the targeted small business participation requirement shall be clearly identified in the supplemental conditions of the contract documents. Satisfaction of the participation requirement may be achieved through targeted small business participation in a contract as a prime contractor or subcontractor, provided that only that portion of the contract price accruing to the targeted small business for work performed shall be used to determine whether the participation requirement has been met.

c. On construction contracts competitively bid for which a participation requirement is indicated, each bidder who is not a targeted small business shall submit with the bid the name(s) of targeted small business(es) to whom a subcontract will be awarded, a description of the work to be performed, and the dollar amount assigned to the work to be performed. The prime contractor and the targeted small business subcontractor(s) shall cosign a statement attesting to this provision. Bidders not complying with these provisions may be considered nonresponsive.

d. Subsequent to the award of a construction contract, if a prime contractor fails to achieve the targeted small business requirement established for that specific project, the prime contractor may be considered to be in nonconformance and shall be subject to appropriate penalties.

7.7(4) Supply, service, and equipment contracts.

a. Regent institutions are authorized to negotiate or obtain competitive bids solely from targeted small businesses on supply, service, and equipment purchase orders or contracts under conditions specified. Appropriate wording notifying all bidders of these provisions shall be inserted in the bid documents.

(1) Regent institutions are authorized to obtain competitive quotations or bids limited to targeted small businesses on purchase orders or contracts for which two (2) or more targeted small businesses can be identified as vendors or suppliers of the same or comparable supplies, services, or equipment. The contract or purchase order shall be awarded to the lowest priced bid submitted by a responsible targeted small business if the price is not more than five percent (5%) above the estimated price that would be obtained under open competitive bidding.

(2) If only one (1) targeted small business is qualified to perform the work on the contract or purchase order, regent institutions are authorized to negotiate a contract or purchase order with the targeted small business if the negotiated price is not more than five percent (5%) above the estimated price under open competitive bidding procedures.

(3) The regent institutions shall encourage targeted small business(es) to submit bids or quotations on supply, service, and equipment solicitations. Regent institutions may award a contract or purchase order to a targeted small business which submits a fully responsive bid or quotation that is within five percent (5%) of the lowest responsive bid.

b. Reserved.

7.7(5) Certified targeted small businesses. Only those targeted small businesses that have been certified by the department of economic development shall be eligible as part of the targeted small business program to participate in the regents' procurement set-aside program. Application to participate in the regents' procurement set-aside program may be made by completing a vendor/contractor application form available from the Iowa Department of Economic Development, Small Business

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Section, 200 East Grand Avenue, Des Moines, Iowa 50309, or from regent institutions.

7.7(6) Assistance to targeted small businesses. Regent institutions shall cooperate with the director of the department of economic development in the director's efforts to carry out the responsibility to develop and make available in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses, as set forth in 1986 Iowa Acts, Senate File 2175. The advice and services shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

7.7(7) Performance standards. Targeted small businesses shall meet the required performance standards, procurement specifications, and the purchasing procedures of regent institutions.

a. Determination of performance capability shall include consideration of production capacity, financial capacity, and technical competence.

b. Determination of performance capability shall be made by the regent institutions before a procurement set-aside program award is announced.

7.7(8) Inability to perform.

a. When the institution determines that a targeted small business is unable to perform under a set-aside contract, the executive secretary of the board of regents, the regent equal opportunity compliance officer, and the director of the department of economic development shall be informed.

b. Nothing in this rule shall prohibit the institution from pursuing remedies set forth in contractual agreements entered into between the institution and the targeted small business where the institution reasonably determines that the targeted small business is unable to perform.

7.7(9) Reporting. The institutions shall notify the executive secretary of anticipated purchasing requirements and shall provide additional information as required by statute no later than August 10 and quarterly thereafter. The board shall receive and review anticipated purchasing requirements by the institutions on a quarterly basis. The executive secretary shall notify the department of economic development and the office of management of anticipated purchases and recommended set-asides no later than August 15 of each fiscal year and quarterly thereafter.

These rules are intended to implement 1986 Iowa Acts, Senate File 2175, sections 222, 802, 808, 831 to 837, and Executive Order number 15 of 1973.

ITEM 2. Rule 720—8.1(262) is amended by adding the following new subrule:

8.1(2) Targeted small business—purchasing. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement set-asides for targeted small businesses to the extent there is no conflict, if the provisions of the targeted small business procurement program are contained in chapter 7. If the provisions concerning purchasing contracts in this chapter 8 conflict with the provisions of the targeted small business procurement program set forth in chapter 7, then the provisions of chapter 7 govern.

This rule is intended to implement 1986 Iowa Acts, Senate File 2175, section 837.

ITEM 3. Rule 720—8.6(262) is amended by adding the following new subrule:

8.6(5) Targeted small business—construction contracts. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement set-asides for targeted small businesses to the extent there is no conflict, if the provisions of the targeted small business procurement program are contained in chapter 7. If the provisions concerning construction contracts in this chapter 8 conflict with the provisions of the targeted small business procurement program set forth in chapter 7, then the provisions of chapter 7 govern.

This rule is intended to implement 1986 Iowa Acts, Senate File 2175, section 837.

[Filed 11/14/86, effective 1/7/87]

[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7159

TRANSPORTATION, DEPARTMENT OF[820]

01 DEPARTMENT GENERAL

Pursuant to the authority of Iowa Code sections 307.12 as amended by 1986 Iowa Acts, Senate File 2175, section 1909, and 307A.2, the Department of Transportation on November 4, 1986, adopted amendments to 820—[01,A] Chapter 1, "Organization of the Department of Transportation," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the September 24, 1986, Iowa Administrative Bulletin as **ARC 6943**.

These amendments update the department's organization and add an agency mission statement.

These amendments are identical to the ones published under Notice except for the addition of the words "approves the departmental budget" under the Commission rule (Item 4).

These amendments are intended to implement Iowa Code chapters 17A, 307 and 307A.

These amendments are to be published as adopted in the December 3, 1986, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective January 7, 1987.

Rule-making actions:

ITEM 1. Amend rule **820—[01,A]1.1(307)** by striking the definitions for "Authority" and "Superintendent."

ITEM 2. Rescind rule 820—[01,A]1.2(17A) and insert in lieu thereof the following:

820—[01,A]1.2(17A) Mission statement. The mission of the department is to promote a transportation system to satisfy user needs and maximize economic and social benefits for Iowa citizens, to encourage and support programs to provide commodity movement and mobility for all citizens, and to promote financing of the transportation system through user and nonuser sources in an equitable manner.

ITEM 3. Rescind rule 820—[01,A]1.3(17A) and insert in lieu thereof the following:

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

820—[01,A]1.3(17A) Location and business hours. The main office of the department is located at 800 Lincoln Way, Ames, Iowa 50010; phone (515) 239-1101. The department's business hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

ITEM 4. Rescind rule 820—[01,A]1.6(17A,307,307A) and insert in lieu thereof the following:

820—[01,A]1.6(17A,307,307A) Commission. A seven (7)-member transportation commission approves the departmental budget, develops a comprehensive transportation policy and plan for the state, identifies transportation needs, and develops programs to meet these needs. Other commission duties and responsibilities are broadly stated in Iowa Code chapters 307 and 307A. Inquiries and requests may be submitted to the commission at the address given in rule 1.3(17A).

ITEM 5. Strike rule 820—[01,A]1.7(17A,307) and insert in lieu thereof the following:

820—[01,A]1.7(17A,307) Director of transportation. The director of transportation is based in Ames and serves as the chief administrative officer of the department and the secretary of the Iowa railway finance authority. The director is responsible for the management of the department and for statutory duties including but not limited to those listed in Iowa Code section 307.12. The following units report to the director:

1. The deputy director.
2. The divisions described in rule 1.8(17A,307).
3. The bureau of policy and information, which identifies, analyzes, and develops options for transportation policy issues; coordinates the department's legislative program; and communicates transportation programs and information to the department and the public.
4. The bureau of transportation safety, which investigates methods of improving highway safety and administers risk management and employee safety programs for the department.
5. The bureau of human resources, which provides personnel administration for the department.

ITEM 6. Rescind the introductory paragraph of rule 820—[01,A]1.8(17A,307) and insert in lieu thereof the following:

820—[01,A]1.8(17A,307) Divisions. The department is made up of the following divisions, which report to the director:

ITEM 7. Rescind subrule 1.8(2) and insert in lieu thereof the following:

1.8(2) Air and transit division. The air and transit division is located at the Des Moines airport. The address is State Capitol, Des Moines, Iowa 50319; phone (515) 281-4265.

a. The aeronautics section administers the Iowa Code provisions which relate to air transportation, including: airport development, registration and zoning; aircraft registration; state aircraft pool; safety promotion; public education and air service analysis.

b. The public transit section provides advice and assistance regarding financial, technical, and management matters to urban and regional transit systems; compiles and analyzes data from transit systems, certifies providers of transit services for the purpose of coordinating these services; and administers state and federal funds for public transit assistance.

ITEM 8. Rescind subrule 1.8(3) and insert in lieu thereof the following:

1.8(3) General counsel division. The department's general counsel is based in Ames; phone (515) 239-1521. It is made up of a special assistant attorney general and assistant attorneys general. It provides legal services for the department.

ITEM 9. Amend the first paragraph of subrule **1.8(5)** by striking the words "operating authority" and inserting in lieu thereof the words *"motor carrier services"*.

ITEM 10. Rescind the second paragraph of subrule **1.8(5)** and insert in lieu thereof the following:

The motor vehicle division is responsible for administering and enforcing Iowa Code provisions relating to:

a. The licensing and financial responsibility of drivers, including motor vehicle accident records and driver improvement.

b. The titling of motor vehicles and mobile homes, the titling and licensing of official vehicles, and the registration of vehicles. The division also issues handicapped identification devices.

c. The licensing of motor vehicle, mobile home and travel trailer dealers, manufacturers and distributors, and the licensing of motor vehicle lessors, salvagers, and recyclers. The division also receives applications to discontinue or terminate motor vehicle franchises or to establish additional motor vehicle dealerships of the same line-make in the community.

d. The proportional registration of commercial vehicles operated in interstate commerce.

e. The size and weight of vehicles, including permit provisions for the movement of vehicles and loads of excess size and weight.

f. The payment of fuel taxes for interstate motor vehicle operations.

g. Carriers engaged in the business of transporting passengers or property for compensation, excluding railroads. This responsibility includes the issuance of operating authority for intrastate carriers and the registration of interstate commerce commission authority for interstate carriers.

h. Odometers. The responsibility includes the enforcement of federal odometer laws.

i. Vehicle equipment and safety.

ITEM 11. Rescind subrules **1.8(7)**, **1.8(8)**, and **1.8(9)**.

ITEM 12. Adopt subrule 1.8(7) as follows:

1.8(7) Rail and water division. The rail and water division is based in Ames; phone (515) 239-1367. The division administers state and federal funds for railroad track and grade crossing improvements, reviews and develops policy position recommendations on rail abandonments and mergers, performs track safety inspections, reviews and recommends financing projects to the Iowa railway finance authority, promotes river transportation and coordinates river programs with other transportation modes, and administers other railroad and river related Iowa Code responsibilities assigned to the department.

[Filed 11/7/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

ARC 7160

TRANSPORTATION, DEPARTMENT OF[820]

01 DEPARTMENT GENERAL

Pursuant to the authority of Iowa Code section 307.12 as amended by 1986 Iowa Acts, Senate File 2175, section 1909, and Iowa Code section 307A.2, the Department of Transportation, on November 4, 1986, adopted amendments to 820—[01,B] Chapter 1, "Administrative Rules and Declaratory Rulings," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the September 24, 1986, Iowa Administrative Bulletin as **ARC 6944**.

These amendments delete a reference to the Transportation Regulation Authority, include the director's designee in the definition of director, remove other references to the director's designee, since the term is being defined, allow the director to delegate declaratory rulings, allow the director to adopt and file nonsubstantive amendments to rules, and add the removal of references to gender as an example of nonsubstantive amendments.

These amendments are identical to the ones published under Notice.

These amendments are intended to implement Iowa Code chapter 17A.

These amendments are to be published as adopted in the December 3, 1986, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective January 7, 1987.

Rule-making actions:

ITEM 1. Rescind subrule **1.1(1)** and reserve for future use.

ITEM 2. Amend the definition of "Director" found in subrule **1.1(2)** as follows:

"Director" means the director of transportation *or the director's designee.*

ITEM 3. Amend the first paragraph of subrule 1.2(1) as follows:

1.2(1) Notice of intended action—approval and content. Written authorization to publish proposed rules under Notice of Intended Action in the "Iowa Administrative Bulletin" shall be made by the director ~~or a designee~~. The Notice of Intended Action shall contain:

ITEM 4. Amend subrule **1.2(3)**, paragraph "b," as follows:

b. Upon adoption of proposed rules by the commission, the director ~~or a designee~~ shall file them in accordance with Iowa Code section 17A.5.

ITEM 5. Amend subrule 1.2(5) as follows:

1.2(5) ~~Ammendment of rules without notice~~ *Nonsubstantive amendments to rules.* In reliance upon Iowa Code subsection 17A.4(2), rule making concerning nonsubstantive amendments shall be exempted from Iowa Code subsection 17A.4(1) *and subrules 1.2(1) to 1.2(3).* Because nonsubstantive amendments do not alter the meaning or consequence of a rule, it is determined unnecessary and contrary to the public interest to expend resources in publishing a Notice of Intended Action and providing an opportunity for public comment during the rule-making process. *Nonsubstantive amendments may be adopted and filed by the director.* Nonsubstantive amendments shall include the following:

a. Correcting the name, address, or telephone number of an organizational unit within the department.

b. Updating references to the Iowa Code or the Iowa Acts to reflect the most current citation.

c. Correcting spelling, typographical, or grammatical errors.

d. Eliminating references to gender.

[Filed 11/7/86, effective 1/7/87]
[Published 12/3/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/3/86.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Agriculture and Land Stewardship, Department of[21]	9.3, 9.7 [IAB 10/8/86, ARC 7020]	Seventy days from effective date of November 12, 1986.

State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TWENTY-FIVE

WHEREAS, on February 19, 1986, I, Terry E. Branstad, Governor of the State of Iowa issued Executive Order Number Twenty-Two providing a process for allocating among the various political subdivisions, and issuing agencies and authorities (collectively the "political subdivisions" and singularly the "political subdivision") of the State of Iowa (the "State") the principal amount of State or local Bonds, the interest on which is not included in gross income for federal income tax purposes under the International Revenue Code of 1954, as amended (the "Code") or the Internal Revenue Code of 1986, as amended (the "1986 Code"), which could be issued by Political Subdivisions within the State (the "Bonds") under the terms of H.R. 3838, the Tax Reform Act of 1985, as passed by the United States House of Representatives (the "House") on December 17, 1985; and

WHEREAS, an amended version of H.R. 3838, the Tax Reform Act of 1985 now known as H.R. 3838, the Tax Reform Act of 1986 (the "Act") was passed by the House on September 25, 1986 and was passed by the United States Senate (the "Senate") on September 27, 1986 and was signed into law by the President on October 22, 1986; and

WHEREAS, in order to provide a process for allocating among the Political Subdivisions of the State the principal amount of Bonds which may be issued by Political Subdivisions of the State within any calendar year and which are subject to the volume cap provisions of Section 146 of the 1986 Code, the Governor of the State deems the best interests of the citizens of the State to be served by an amendment to Executive Order Number Twenty-Two that will permit, on an interim basis only, an orderly and equitable process for allocating the principal amount of Bonds which can be issued by political subdivisions of the State during each calendar year and which are subject to the provisions of Section 146 of the 1986 Code, until the date on which an alternate allocation method is enacted by the legislature of the State; and

WHEREAS, the Act creates Section 42 of the 1986 Code providing for a low-income housing credit which is to be allocated among various eligible projects by an agency authorized to carry out the provisions of Section 42 of the 1986 Code in an amount not to exceed the State Housing Credit Ceiling and the Governor of the State of Iowa deems the best interests of the citizens of the State to be served by a further amendment to Executive Order Number Twenty-Two that will permit, on an interim basis only, an orderly and equitable process for allocating the allowable amount of low-income housing

credit among the various eligible projects within the State during each calendar year until the date on which an alternate allocation method is enacted by the legislature of the State.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the laws of the State do hereby order and decree that the following amendment be made to Executive Order Number Twenty-Two to provide a procedure for allocating the total principal amount of Bonds which can be issued by political subdivisions of the State during any calendar year and which are subject to the provisions of Section 146 of the 1986 Code and further to provide a procedure for allocating the State Housing Credit Ceiling amount of low-income housing credit available for eligible projects under Section 42 of the 1986 Code, both until an alternate allocation method is enacted by the legislature of the State:

Section 1. Section 1 of Executive Order Number Twenty-Two is hereby amended to read as follows:

Section 1. The aggregate principal amount of Bonds subject to the provision of Section 146 of the 1986 Code which may be issued by all Political Subdivisions during a calendar year shall not exceed the "State Ceiling" provided in Section 146(d) of the 1986 Code (the "State Ceiling") for each calendar year except as provided in Section 5 hereof. The State Ceiling shall be allocated among Bonds issued for various purposes as follows:

(a) For each calendar year, an amount of the State Ceiling equal to $75,000,000 shall be allocated solely to the Iowa Finance Authority for purposes of (i) issuing qualified Mortgage Bonds as defined in Section 143 of the 1986 ("Qualified Mortgage Bonds"), (ii) reallocating such amount, or any portion thereof, to another qualified issuer for the purpose of issuing Qualified Mortgage Bonds, or (iii) exchanging such allocations, or any portion thereof, for authority to issue mortgage credit certificates by election under Section 25(c)(2)(A)(ii) of the 1986 Code; provided, however, that at any time during any calendar year the Executive Director of the Iowa Finance Authority may determine that a lesser amount need be allocated to the Iowa Finance Authority hereunder and from and after that date such lesser amount shall be so allocated and the excess above such amount shall be allocated under Subsection 1(d) below;

(b) For each calendar year, an amount of the State Ceiling equal to $30,000,000 shall be allocated to Bonds issued to carryout programs established under Sections 280A, 280B and 280C of the Iowa Code; provided, however, that at any time during any calendar year the Director of the Iowa Departmet of Economic Development may determine that a lesser amount need be allocated under this Subsection 1(b) and from and after such date such lesser amount shall be so allocated and the excess above such amount shall be allocated under Subsection 1(d) below;

(c) For each calendar year after 1986 an amount of the State Ceiling equal to $40,000,000 shall be allocated to Qualified Student Loan Bonds, as defined in Section 144 of the 1986 Code; provided, however, that at any time during a calendar year the Governor's Designee, with approval of the Iowa Student Loan Liquidity Corporation and the Iowa Higher Education Loan Association may determine that a lesser amount need be allocated to Qualified Student Loan Bonds

and from and after that date such lessor amount shall be so allocated and the excess above such amount shall be allocated under Subsection 1(d) below;

(d) Any amount of the State Ceiling not allocated in Subsections 1a, (b) or (c) above shall be allocated to all Bonds requiring an allocation under the provisions of Section 146 of the 1986 Code without priority of one type of Bond over another except as otherwise provided in Sections 2 and 9 hereof, except that for the calendar year ending December 31, 1986, no such allocation shall be used for Bonds described in Subsections 1(a), (b) and (c) above; and

The population of the State shall be determined in accordance with the provisions of the 1986 Code.

Section 2. Section 4(c) of Executive Order Number Twenty-Two is hereby amended to read as follows:

(c) The allocation will cease to be valid unless the Bonds are issued and delivered prior to December 24 (December 31 in the case of Bonds described in Section 9(b) hereof) of the calendar year in which the allocation is certified, except as provided in Section 5.

Section 3. Section 9 of Executive Order Number Twenty-two is hereby amended by deleting the provisions thereof in their entirety and inserting in lieu thereof the following: Section 9. (a) Pursuant to the provisions of this Executive Order, as amended by Executive Order Number Twenty-Five, an allocation of the State Ceiling is hereby made with respect to Bonds which have been delivered after December 31, 1985 and prior to the date of Executive Order Number Twenty-Five.

(b) Notwithstanding any other provisions of this Executive Order, the Governor's designee shall give priority in the allocation of the State Ceiling at the time unallocated to all Bonds which must be issued and delivered on or prior to December 31 of any calendar year in order for the interest on the Bonds to be exempt from federal income taxation. Applications for an allocation with respect to such Bonds shall be accompanied by an opinion of nationally recognized bond counsel to the effect that such Bonds must be issued and delivered on or prior to December 31 in such calendar year in order for the interest on the Bonds to be exempt from federal income taxation.

Section 4. Executive Order Number Twenty-Two is hereby further amended to read as follows:

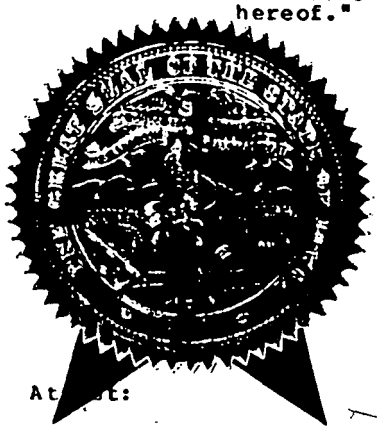
Section 11. The aggregate low-income housing credit, as described in Section 42 of the 1986 Code, allowable in each calendar year shall not exceed the State Housing Credit Ceiling provided in Section 42(h)(3) of the 1986 Code. The State Housing Credit Ceiling shall be allocated to various types of projects eligible for the low-income housing credit under Section 42 of the 1986 Code except that no more than 90% of the State Housing Credit Ceiling shall be allocated to projects other than "qualified nonprofit housing projects" as described in Section 42(h)(5)(B) of the 1986 Code.

The population of the State shall be determined in accordance with the provisions of the 1986 Code.

Section 12. All references herein to the "Act" shall be to H.R. 3838, the Tax Reform Act of 1986 as passed by the House on September 25, 1986 and the Senate on September 27, 1986. All references in Sections

2, 3, 4, 6, 7 and 8 herein to the term "Bonds" shall include "private activity bonds" as defined in Section 141 of the 1986 Code and the "low-income housing credit" provided for in Section 42 of the 1986 Code. All references to the term "political" subdivision or "political subdivisions" in Sections 2, 3, 4, 6, 7 and 8 herein shall include the "taxpayer" making application for the low-income housing credit in accordance with Section 42 of the 1986 Code. The word "chapter" in Section 3(g) is hereby amended to read "Executive Order".

Section 13. Notwithstanding anything herein to the contrary, Sections 2, 3, 4 , 6 and 7 hereof shall not apply to amounts allocated under Section 1(a) hereof."



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines, Iowa the 17th day of November in the year of our Lord, 1986.

Terry E. Branstad
Governor

Attest:

Mary Jane Odell
Secretary of State

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

October 1986

AUDITOR

Cities. Iowa Code § 11.18 (1985). Auditor has discretion to audit cities when the Auditor deems such action to be in the public interest. (Galenbeck to Renaud, State Representative, 10-30-86) #86-10-4(L)

CONSTITUTIONAL LAW

Appropriations. Iowa Const. art. III, § 24; Iowa Code §§ 8.33 and 93.15 (1985); Senate File 2305, 71st G.A., 2d Sess., § 8 (Iowa 1986), 1986 Iowa Acts, ch. ___. Monies appropriated from the Petroleum Overcharge Fund are subject to reversion, and may not be obligated beyond the fiscal year of appropriation or other expressly established deadline, unless appropriated by the General Assembly. (Norby to Bean, Administrator, Energy and Geological Resources Division, Department of Natural Resources, 10-22-86) #86-10-2(L)

Health. House File 2484, § 204(10)(b), 71st G.A., 2d Sess. (Iowa 1986). A reasonable basis exists for the legislative classification created by H.F. 2484 and if challenged, it is unlikely a court would find it violates equal protection under either the federal or Iowa constitutions. (McGuire to Welsh, State Senator, 10-22-86) #86-10-3(L)

INSURANCE

Mandatory Chiropractic Coverage In Group Insurance Policies Or Plans. 1986 Iowa Acts, H.F. 2219, §§ 2, 5, 7, amending Iowa Code §§ 509.3, 514.7, 514B.1(2) (1985). (1) Existing group plans offered by a nonprofit service corporation which renew on the very date - July 1, 1986 - which is the effective date of 1986 Iowa Acts, H.F. 2219, mandating chiropractic coverage in certain group policies or insurance-like plans, are subject to the requirements of H.F. 2219 at that time and not later. (2) H.F. 2219 is inapplicable to a self-insured plan. The point at which a plan with a stop-loss loses its self-insured status and becomes subject to H.F. 2219 as "group" coverage is when there is an actuarial certainty of payment upon the stop-loss. (3) H.F. 2219 does not, by its own terms, exclude plans of the state or federal government providing benefits for their employees. (4) It cannot be stated that a health maintenance organization must contract with a chiropractor in its service area in order to comply with H.F. 2219. (5) The "Farm Bureau" plan is a "group subscriber contract or plan" under H.F. 2219. (6) The date of renewal of the master policy of the Iowa State Bar Association plan, rather than the anniversary date of any law firm in the plan, determines the timing of the application of H.F. 2219. (Haskins to Hager, Commissioner of Insurance, 10-2-86) #86-10-1(L)

MENTAL HEALTH

Mental Retardation; County Board Of Supervisors. Iowa Code §§ 222.1(2), 222.13, 222.31, 222.59, 222.59(1), 222.59(5), 222.59(6), 222.60, 222.73; Iowa Code chapter 222 (1985). The county board of supervisors has little discretion to determine what are necessary costs of admission, commitment, or treatment, training, instruction, care, habilitation, support and transportation of mentally retarded persons committed or admitted as patients in a hospital-school or special unit. The board of supervisors has some discretion to determine those costs for mentally retarded persons committed to public or private institutions. However, courts will defer to the judgment of professionals when confronted with challenges to the adequacy of treatment received by persons whose liberty interests are infringed. (McCown to O'Kane, State Representative, 10-30-86) #86-10-5(L)

STATUTES CONSTRUED

1985 CODE	OPINION
8.33	86-10-2(L)
11.18	86-10-4(L)
93.15	86-10-2(L)
ch. 222	86-10-5(L)
222.1(2)	86-10-5(L)
222.13	86-10-5(L)
222.31	86-10-5(L)
222.59	86-10-5(L)
222.59(1)	86-10-5(L)
222.59(5)	86-10-5(L)
222.59(6)	86-10-5(L)
222.60	86-10-5(L)
222.73	86-10-5(L)
509.3	86-10-1(L)
514.7	86-10-1(L)
514B.1(2)	86-10-1(L)

71st G.A., 2d sess.	OPINION
H.F. 2219, §§ 2, 5, 7	86-10-1(L)
H.F. 2484, § 204(10)(b)	86-10-3(L)
S.F. 2305, § 8	86-10-2(L)

IOWA CONSTITUTION	OPINION
Art. III, § 24	86-10-2(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - November 12, 1986

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, Iowa 50319, for a fee of 40 cents per page.

No. 85-1556. JOHNSON v. JUNKMANN.
Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Reversed and remanded with directions. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Reynoldson, C.J. (16 pages $6.40)

This tort suit arises from an automobile accident. The jury returned a verdict for plaintiffs finding the defendant driver was three percent at fault and finding another driver, who had been released from liability by the plaintiffs pursuant to a settlement, was ninety-seven percent at fault. Plaintiffs were neither alleged nor found to be at fault. The district court set aside the verdict and awarded the defendants a judgment notwithstanding the verdict. The plaintiffs have appealed. OPINION HOLDS: I. There was substantial evidence to support the jury's findings that the defendant driver was at fault, that her fault was a proximate cause of the plaintiffs' damages, and that her statutory violations were not excused by the sudden emergency doctrine. The district court thus erred in granting the defendants a judgment notwithstanding the verdict. II. This case is governed by Iowa's Comparative Fault Act, Iowa Code chapter 668. The fact that the plaintiffs were neither alleged nor found to be at fault does not remove the case from the Act's coverage. The Act applies to any "claim involving the fault of more than one party." This case involves the fault of the defendant driver and also of the driver previously released from liability, who falls within the Act's definition of a "party." Therefore the Act applies to this case.

NO. 85-1084. BREWER v. IOWA DISTRICT COURT.
NO. 85-1864. HARRINGTON v. STATE.
Certiorari and appeal from the Iowa District Court for Pottawattamie County, Paul H. Sulhoff, Judge. Writ sustained; reversed and remanded. Considered by Harris, P.J., and McGiverin, Larson, Carter, and Lavorato, JJ. Opinion by Carter, J. (10 pages $4.00)

Prior to July 1, 1984, applications for postconviction relief could be filed at any time following conviction. On July 1, 1984, a three-year statute of limitations on postconviction applications took effect. In the present consolidated proceedings, two postconviction applicants challenge district court determinations that this three-year

statute of limitations barred their claims. In both cases, the challenged criminal convictions occurred before July 1, 1984; in one case (Brewer), the postconviction relief application itself was filed before July 1, 1984. OPINION HOLDS: I. With respect to the Brewer application, we are reluctant to abate pending actions which were timely when filed by retroactive application of the statutory change adding a statute of limitations. If it had been the purpose of the 1984 amendment to abate pending proceedings as well as to limit the time for commencing new proceedings, we believe the legislature would have made that intention clear. We conclude that the district court erred in dismissing Brewer's application for postconviction relief on the ground it was barred by the three-year limit now found in Iowa Code section 663A.3. II. A different question is presented by applicant Harrington, whose conviction occurred before July 1, 1984, but whose postconviction application was filed after that date. We believe that the legislature was free to establish the statute of limitations but that persons adversely affected, such as Harrington, must be given a reasonable time after the change in the law to avoid its consequences. We hold that all potential postconviction applicants whose convictions became final prior to July 1, 1984, must file their applications for postconviction relief on or before June 30, 1987, or be barred from relief. We reverse the district court's conclusion that Harrington's postconviction claim was barred.

NO. 85-438. LOWERY INVESTMENTS CORP. v. STEPHENS INDUSTRIES, INC.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (10 pages $4.00)

Plaintiffs appeal from judgment for defendant in an action seeking to set aside the forfeiture of the vendee's interest under a contract for the sale of commercial real estate. OPINION HOLDS: The substantive claims presented in the present action have been resolved adversely to the plaintiffs by a prior judgment in an action for forcible entry and detainer of the subject property.

NO. 85-434. LAUHOFF GRAIN CO. v. McINTOSH.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge. Decision of court of appeals vacated; judgment of district court affirmed in part and reversed in part; remanded with instructions. Considered en banc. Opinion by Larson, J. (19 pages $7.60)

Ted McIntosh, an employee of Lauhoff Grain Co., fell on the job, fracturing the "neck" of his femur at a point just below the hip joint. The fracture was treated, but complications later developed, making it necessary to install a prosthetic hip joint. In the workers' compensation

proceedings which followed, the key issue was whether McIntosh was entitled to benefits for a "scheduled" injury to his leg, Iowa Code § 85.34(2)(o), or industrial disability benefits under Iowa Code section 85.34(2)(u) on the basis the hip surgery had extended his disability to the body as a whole. The industrial commissioner interpreted the leg schedule as not including a hip and awarded benefits on the basis of industrial disability. OPINION HOLDS: I. A. We conclude that Iowa Code section 85.34(2)(o), in defining a leg, does not include a hip joint. B. Under Iowa Administrative Rule 500-2.4(85), the industrial commissioner was not bound to follow the AMA Guides to the Evaluation of Permanent Impairment. II. The impairment of body functions in this case was in the hip, not the leg, and we will not consider these functions to be coextensive merely because the hip function impacts on that of the leg. To do so would extend the application of section 85.34(2)(o) beyond its express terms by applying it to a body member not expressly included. In any event, there was evidence in this case from which the commissioner could have found impairment of functions not directly related to the leg. III. We cannot say with certainty that the commissioner's findings of disability to the body as a whole were based upon actual impairment of the hip, rather than on the surgical intrusion alone, as the ruling suggests. We therefore remand for a determination on the record already made, on the question of impairment of the body as a whole.

NO. 86.76. VAN DUSSELDORP v. STATE BANK.
Appeal from the Iowa District Court for Marion County, Thomas Bown, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (8 pages $3.20)

Defendant bank, who was joined as an alleged junior lienor in a mortgage foreclosure action brought by plaintiff, appeals from the district court's determination that a mortgage instrument executed in the bank's favor by defendant debtors does not secure any present indebtedness owed to the bank by them. OPINION HOLDS: The mortgage executed in favor of the bank does secure certain indebtedness owed to it and is prior to the plaintiff's mortgage with respect to that sum. The indebtedness in question did not consist of subsequent advances subject to the open-end clause of the mortgage, which were not secured by the mortgage because both debtors did not sign a renewal note. The district court erred in ruling otherwise. We reverse the district court's order fixing priority of liens.

NO. 86-1026. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. STIENSTRA.

On review of the report of the Grievance Commission. License suspended. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Larson, J. (5 pages $2.00)

Two separate disciplinary matters involving attorney Warren R. Stienstra were consolidated for hearing before the Grievance Commission, which recommended suspension of his license to practice law. The first of the present disciplinary actions involves Stienstra's handling of the estate of John Bretthauer; the second involves the mishandling of an accident claim for Phillip Meier. Common to both disciplinary cases is the failure of Stienstra to respond to inquiries by investigating authorities of the Committee on Professional Ethics and Conduct. An earlier case involved a similar lack of cooperation by Stienstra and resulted in a reprimand. See Committee on Professional Ethics & Conduct v. Stienstra, 390 N.W.2d 135 (Iowa 1986). OPINION HOLDS: We conclude that Stienstra's dilatory handling of the estate over a nine-year period despite numerous delinquency notices and his continuing failure to respond to inquiries of investigating authorities violated the following rules of professional conduct: DR 1-102(A)(1), (5), and (6); EC 6-1; EC 6-4; and DR 6-101(A)(3). Stienstra had also assumed the representation of Phillip Meier in a claim for damages arising out of an accident, but negligently allowed the two-year statute of limitations to run on the case. In an attempt to compensate his client for the loss of his claim, Stienstra agreed to reimburse him in monthly installments. When Stienstra defaulted, Meier filed a disciplinary complaint. The committee sent several letters of inquiry to Stienstra, and, again, Stienstra ignored them. We conclude Stienstra's conduct in the Meier case, and the ensuing investigation, violated DR 1-102(A)(1), (5), and (6); EC 6-1; EC 6-4; DR 6-101(A)(3); and DR 7-101(A)(1), (2), and (3). As already noted, Stienstra has been disciplined for his lack of cooperation with investigating authorities. We suspend Warren R. Stienstra's license to practice law in this state indefinitely, with no possibility of reinstatement for three months from the date this opinion is filed.

NO. 85-760. FOSTER v. STATE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Warren County, Michael J. Streit and Thomas S. Bown, Judges. Decision of court of appeals vacated; district court judgment reversed and remanded. Considered by Reynoldson, C.J., and Larson, Schultz, Wolle, and Neuman, JJ. Opinion by Larson, J. (4 pages $1.60)

Petitioner was granted further review of the court of appeals decision affirming summary dismissal of his petition for postconviction relief. OPINION HOLDS: Several of the allegations of the petition raise fact issues outside the record. Under these circumstances, it was improper to summarily dismiss the application without evidentiary hearing.

No. 85-1218. JOHN DEERE LEASING COMPANY v. FRAKER.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated; judgment of district court reversed; remanded. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Wolle, J. (8 pages $3.20)

Plaintiff repossessed from defendant a leased combine harvester and sold it at a private sale for much less than defendant owed. The district court granted plaintiff summary judgment for the deficiency. The court of appeals upheld the summary judgment, and we granted further review. OPINION HOLDS: I. We find no merit in defendant's contention that he did not receive adequate notice of the private sale. Plaintiff's written notice satisfied the applicable statutory notice requirement found in Iowa Code section 554.9504(3)(1981). II. Section 554.9504(3) also mandates that "every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable." The burden of proving commercial reasonableness was on the plaintiff, as was the burden to show the absence of a genuine fact issue. On this summary judgment record, a finder of fact could reasonably conclude that the price plaintiff received for the combine was grossly inadequate, that the timing of the sale was inappropriate and consequently that plaintiff had not satisfied those burdens on the question of commercial reasonableness. We reverse the summary judgment granted plaintiff and remand for further proceedings in the district court.

No. 85-1616. BISHOP v. IOWA STATE BOARD OF PUBLIC INSTRUCTION.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge. Affirmed and remanded. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by McGiverin, J. Dissent by Wolle, J. (16 pages $6.40)

An administrative ruling allowed a school board to pay attorney fees incurred by the school superintendent in defending himself against a complaint before the Iowa professional teaching practices commission. On judicial review, the district court ruled the school board had power to make such a payment and remanded the case to the agency for a hearing and decision on whether the exercise of the power under these circumstances constituted an abuse of discretion. This appeal followed. OPINION HOLDS: I. The district court's ruling is a final judgment for purposes of our review. The fact that the district court remanded this case to the agency for development of the record and a new determination of the abuse of discretion issue will not bar our review. II. A school board has discretionary authority to pay the legal expenses of its superintendent arising out of a challenge to his official actions. We remand this case

to the agency for evidence, findings and conclusions as to the validity of the school board's exercise of discretion in the present case. DISSENT ASSERTS: I would hold that the school board had no authority to pay the fee bill submitted by the superintendent's attorney.

No. 85-449. STATE v. BALDWIN.

Appeal from the Iowa District Court for Jasper County, Michael J. Streit and M. C. Herrick, Judges. On review from the Iowa Court of Appeals. Decision of court of appeals affirmed; judgment of district court reversed; remanded. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Wolle, J. (13 pages $5.20)

Following trial to a jury, defendant was convicted of burglary in the second degree in violation of Iowa Code section 713.5 (1983). The court of appeals reversed the conviction on the ground that the district court erred when it refused to suppress evidence police officers had obtained by impounding defendant's van and inventorying its contents. We granted further review to examine the court of appeals decision. OPINION HOLDS: I. The State has not carried its burden of demonstrating that the police officers had reasonable grounds to impound the van. Although the temporary registration card on the rear window of defendant's van lacked the VIN and year of manufacture, these facts gave the investigating officers no reasonable basis for impounding the van. In spite of the fact that defendant left his van unattended for twenty to thirty minutes in a truck stop parking lot at an early morning hour, we find no merit in the State's contention that the van could lawfully be impounded as an abandoned vehicle. Even though the officers observed a garden tractor in plain view in the rear of the van by peering through a van window, the facts in this record do not support the State's theory that the officers were merely undertaking to safeguard the garden tractor. II. On this record we agree with the court of appeals that the admission of the evidence found in the van solidly buttressed a case otherwise dependent largely on circumstantial evidence. The State has not demonstrated beyond a reasonable doubt that admission of the challenged evidence was harmless. Defendant is entitled to a new trial.

No. 85-976. STATE v. HALL.

Appeal from the Iowa District Court for Jefferson County, Harlan W. Bainter, Judge. Affirmed. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by McGiverin, J. (10 pages $4.00)

Defendant appeals from conviction of first degree murder in violation of Iowa Code §§ 690.1-.2 (1977). OPINION HOLDS: I. We conclude the seven year delay by the State in bringing charges against Hall was both reasonable and justified. We also conclude Hall's defense was not actually prejudiced by the absence of three witnesses at trial or the unavailability of FCC reports concerning a

television news broadcast on May 29, 1977, which Hall claims may have impeached the testimony of a prosecution witness. For these reasons, Hall failed to establish the two conditions for reversal on the ground of preaccusatorial delay, as set forth in State v. Williams, 264 N.W.2d 779, 783 (Iowa 1978). Therefore, we affirm the trial court's judgment on Hall's first degree murder conviction.

NO. 85-914. BASCOM v. JOS. SCHLITZ BREWING COMPANY.
Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. Affirmed. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (15 pages $6.00)

Plaintiffs filed a personal injury action (Bascom I) for injuries sustained by the husband when an employee of one of the out-of-state defendants allegedly caused a pile of beer kegs to fall on top of him while he was unloading his truck in Tennessee. The trial court dismissed the case for lack of personal jurisdiction over the defendants, after finding insufficient minimum contacts with Iowa. The plaintiffs, who did not appeal the dismissal, then filed a second action against the same defendants (Bascom II). The trial court again dismissed the case on a lack of personal jurisdiction. Plaintiffs now appeal, contending the trial court erred in concluding that the plaintiffs' cause of action did not arise out of the defendants' activities within Iowa, and that it could not exercise personal jurisdiction over the defendants because their contacts with Iowa were not continuous and systematic. The defendants have cross-appealed, contending the trial court erred in failing to dismiss the case on the basis of issue preclusion. OPINION HOLDS: The district court declined to rule against the plaintiffs on the basis of issue preclusion because it found that plaintiffs' additional allegations in Bascom II relating to defendants' distribution and advertising in Iowa were enough to distinguish Bascom II from Bascom I for purposes of issue preclusion. We disagree. In Bascom II, the district court was dealing with an identical issue raised and decided in Bascom I: whether the defendants had sufficient minimum contacts with Iowa to allow the court to exercise personal jurisdiction over them consistent with due process. The additional allegations did not change the ultimate fact issue of sufficient minimum contacts; they were simply evidentiary facts to be considered in determining the issue. The minimum contacts issue was raised and litigated in Bascom I, was material and relevant to the disposition of Bascom I, and was essential to the resulting judgment in Bascom I. We therefore conclude the four prerequisites for the application of the doctrine of issue preclusion are met in this case on the minimum contacts issue. We affirm the district court's order sustaining defendants' special appearance because it reached the right result though on a different ground. Because we affirm the order of the district court on the grounds asserted in the cross-appeal, we do not reach the grounds asserted in the appeal. We express no opinion whether the district court

was right in Bascom II in its conclusion that the defendants' activities in Iowa were not so "continuous and systematic" as to constitutionally support jurisdiction over them.

No. 86-818. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION v. SILVER.
On review of the report of the Grievance Commission. License revoked. Considered en banc. Opinion by Harris, J. (4 pages $1.60)

This lawyer disciplinary proceeding stems from a conversion of funds which were proceeds of a real estate sale. Silver was retained to assist the executor in the probate of a decedent's estate. A house was sold and the net proceeds of $31,789.60 were deposited in Silver's office trust account. During the following six months Silver withdrew sums totaling $13,960.71 from the account for his personal use. The withdrawals were without the knowledge or consent of the executor. When the executor inquired about the distribution of the funds Silver misled him about the delay, stating there was a need to await a tax refund. The delay in distribution became the subject of inquiry by the local grievance commission of the Scott County bar association. Silver at first told the local bar investigator the same falsehood but later admitted otherwise. He thereafter made restitution. Silver admits he took the funds but attempts to justify his conduct by way of claimed war experiences. He ascribes his conduct to stress associated with the war scenes he described. OPINION HOLDS: Insanity or diminished responsibility cannot be offered as a defense in lawyer discipline cases. Our decision in Committee on Professional Ethics and Conduct v. Holmes, 271 N.W.2d 702, 704 (Iowa 1978) did not, as Silver contends, make criminal defenses available to lawyers charged in disciplinary cases. Those who equate lawyer discipline cases with criminal prosecutions fail to grasp the perspective in which we view the proceedings. To be sure, a criminal act sometimes precipitates a lawyer disciplinary proceeding. But the proceeding is not criminal in nature because its purpose is not alone, or even primarily, intended to punish the lawyer. Rather the primary goal in disciplinary cases is to protect the public. Silver's conduct violated a number of disciplinary rules and ethical considerations listed in the code of professional responsibility for lawyers. We are convinced Silver's license must be revoked.

NO. 85-1720. NORDBROCK v. STATE.
Appeal from the Iowa District Court for Henry County, Harlan W. Bainter, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (13 pages $5.20)

Plaintiffs appeal from the dismissal of their tort action against the State and its agencies for alleged negligence in bank examinations and supervision, which led to the bank's insolvency. OPINION HOLDS: The alleged conduct fell within the discretionary function exception to state tort liability.

No. 85-957. SMITH v. SHAFFER.
Appeal from the Iowa District Court for Jones County, William L. Thomas, Judge. Affirmed. Considered en banc. Opinion by Harris, J. (10 pages $4.00)

Plaintiffs' decedents were killed in a tragic automobile collision near Iowa City in November 1980. The pickup truck in which they had been traveling collided with an automobile which had been stolen by minors and which was being driven by an intoxicated fourteen-year-old boy. This wrongful death suit was brought against the minors' parents, two taverns the youths had visited during the evening, and the owners of the stolen car. The trial court sustained defendants' pretrial motion for summary judgment. OPINION HOLDS: I. The trial court was correct in rejecting plaintiffs' theory that the tavern operators had an affirmative duty to inform authorities and parents of an intoxicated minor's illicit presence in the tavern. Such a requirement would be tantamount to making informants out of bar owners and would represent an unjustifiable extension of the scheme devised by the legislature in the dramshop statute. II. Although plaintiffs contend that the negligence of the owners of the stolen car in leaving their keys in their unlocked car was a proximate cause of the accident and resulting deaths, we find their assignment is without merit. III. No failure on the part of the parents was a proximate cause of the accident. No parental failure was a substantial factor in bringing about the collision. It was not the parents' failure to supervise but rather their childrens' independent decision to become intoxicated, steal a car, and recklessly operate it which caused the accident. We think the trial court was correct in dismissing the claim.

NO. 85-1029. INTERFIRST BANK v. HANSON.
Appeal from the Iowa District Court for Hardin County, Carl E. Peterson, Judge. Affirmed in part, reversed in part and remanded. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (12 pages $4.80)

Plaintiff in a replevin action appeals from an award of compensatory and punitive damages to defendant on his counterclaim for wrongful conversion. OPINION HOLDS: I. An instruction that due process required a hearing before a debtor can be deprived of property was fatally defective. Under the lease and Iowa Code section 554.9503 the bank may have been entitled to self-help repossession. The judgment entered upon the counterclaim must therefore be reversed. The instructional error did not affect the judgment against the bank on the replevin action. The judgment on the replevin action is therefore affirmed. II. On this record the court did not err in submitting the issue of punitive damages to the jury. On retrial, however, the trial court will be bound by the facts as presented anew. As the award of punitive damages was a part of the conversion counterclaim, this award is also reversed and remanded for a new trial.

NO. 84-1273. CROSS v. LIGHTOLIER INCORPORATED.
On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (11 pages $4.40)

The plaintiff, an Iowan, sued the defendant, a New York corporation, alleging breach of an employment contract. The district court sustained the defendant's special appearance; the district court found it lacked personal jurisdiction over the defendant. The court of appeals reversed, and the defendant applied for further review. OPINION HOLDS: There was substantial evidence to support the district court's finding that the employment contract was not to be performed in whole or in part by either party in Iowa. Therefore there was no basis for obtaining jurisdiction over the defendant under Iowa Code section 617.3. There is no merit to the plaintiff's argument that Iowa courts have jurisdiction over a foreign corporation under section 617.3 when the corporation is doing business within the state, regardless of where the contract is to be performed. (We note that the plaintiff here relied solely upon service under section 617.3 and did not attempt service under Iowa R. Civ. P. 56.2.) We do not believe the plaintiff's petition alleged a tortious act; therefore the plaintiff cannot benefit from the principle that jurisdiction is appropriate under section 617.3 when the foreign corporation commits a tortious act in whole or in part in Iowa causing damage or injury to a resident of Iowa.

NO. 85-1129. CASTEEL v. IOWA DEPARTMENT OF TRANSPORTATION
Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge. Reversed and remanded. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (6 pages $2.40)

The Iowa Department of Transportation appeals from a district court ruling holding that Iowa Code section 321.215 authorized the district court to grant work permits to persons whose driver's licenses had been revoked for chemical test failure under Iowa Code section 321B.16. OPINION HOLDS: The district court misconstrued the scope of section 321.215. The statute does not authorize the court to grant a work permit in cases where the licensee is undergoing a revocation for chemical test failure under section 321B.16. In such a case, the authorization rests with the department pursuant to section 321B.16, subject to petitioner's right of judicial review in accordance with Iowa Code section 321B.27 and the customary standards of review set forth in section 17A.19 of the Iowa Administrative Procedure Act. We reverse the decision of the district court and remand for further proceedings consistent with this opinion.

No. 86-1061. WESTERN INTERNATIONAL v. KIRKPATRICK.
Appeal from decision of Iowa industrial commissioner. Case transferred to district court. Considered en banc. Opinion by McGiverin, J. Special concurrence by Wolle, J. (19 pages $7.60)

A motion filed in this court by petitioners in a workers' compensation case requires a determination of the validity of recent statutory changes providing review by direct appeal to this court rather than by judicial review petition to district court under provisions of Iowa Code chapter 17A. OPINION HOLDS: I. This "appeal" is actually an original proceeding in the courts. Taking this case would result in an unconstitutional exercise of original jurisdiction by the supreme court. Alternatively, the legislation unconstitutionally expands this court's appellate jurisdiction. II. The legislation violates the single subject requirement of the Iowa Constitution by providing for substantive changes in a code corrections bill. III. The title of the bill did not meet constitutional requirements. IV. Because sections 46 through 49 of House File 2066 violate the Iowa Constitution, they are stricken and of no effect as amendments to the Code. Iowa Code sections 86.24 and 86.26 (1985) remain in effect. Other provisions of House File 2066 are not affected by this decision. This court lacks jurisdiction over petitioners' appeal and petition for judicial review from the industrial commissioner's decision. Filing of the petition in this court triggered the judicial review process. We transfer the case to district court for further appropriate proceedings. SPECIAL CONCURRENCE ASSERTS: I would not address the Division III constitutional issues because Divisions I and II are entirely dispositive of the case.

NO. 86-1057. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION v. McGREVEY.
On review of the report of the Grievance Commission. Attorney reprimanded. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (5 pages $2.00)

This attorney disciplinary proceeding arises out of a delay by Dan T. McGrevey in filing various documents with the clerk of the district court. In 1984 the Department of Transportation revoked the driver's license of a man represented by McGrevey. McGrevey obtained an ex parte order from the district court, staying the revocation pending judicial review of it. McGrevey, however, did not file a petition for judicial review before applying for the order. He delayed filing both documents with the clerk of the district court for more than two months. Initially, this delay was due to an oversight in McGrevey's office; subsequently, it was due to his client's failure to advance the filing fee. OPINION HOLDS: We agree with the commission's conclusion that McGrevey violated DR7-102(A)(3). Once signed by the district court, the order

"was no longer a private paper and became a court document in the public domain." By his delay in filing it, he "concealed or knowingly failed to disclose that which he was required by law to reveal," in violation of DR7-102(A)(3). Principles governing appropriate sanctions for ethical violations were recently set forth in Committee on Professional Ethics and Conduct v. Stienstra, 390 N.W.2d 135, 137 (Iowa 1986). We consider these principles as well as McGrevey's previous good record in imposing a sanction in this case. We therefore reprimand McGrevey for violating DR7-102(A)(3).

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