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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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

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 Iowa Administrative Bulletin.

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Fourth quarter	April 1, 1993, to June 30, 1993	\$ 55.25 plus \$2.76 sales tax

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Grimes State Office Building
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Phone: (515)281-8796

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FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 4 '92	Dec. 23 '92	Jan. 12	Jan. 27	Feb. 17	Mar. 24	June 21
Dec. 18 '92	Jan. 6	Jan. 26	Feb. 10	Mar. 3	Apr. 7	July 5
Jan. 1	Jan. 20	Feb. 9	Feb. 24	Mar. 17	Apr. 21	July 19
Jan. 15	Feb. 3	Feb. 23	Mar. 10	Mar. 31	May 5	Aug. 2
Jan. 29	Feb. 17	Mar. 9	Mar. 24	Apr. 14	May 19	Aug. 16
Feb. 12	Mar. 3	Mar. 23	Apr. 7	Apr. 28	June 2	Aug. 30
Feb. 26	Mar. 17	Apr. 6	Apr. 21	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Sept. 1	Oct. 6	Jan. 3 '94
July 2	July 21	Aug. 10	Aug. 25	Sept. 15	Oct. 20	Jan. 17 '94
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 29	Nov. 3	Jan. 31 '94
July 30	Aug. 18	Sept. 7	Sept. 22	Oct. 13	Nov. 17	Feb. 14 '94
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 27	Dec. 1	Feb. 28 '94
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Nov. 10	Dec. 15	Mar. 14 '94
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 24	Dec. 29	Mar. 28 '94
Sept. 24	Oct. 13	Nov. 2	Nov. 17	Dec. 8	Jan. 12 '94	Apr. 11 '94
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 22	Jan. 26 '94	Apr. 25 '94
Oct. 22	Nov. 10	Nov. 30	Dec. 15	Jan. 5 '94	Feb. 9 '94	May 9 '94
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Jan. 19 '94	Feb. 23 '94	May 23 '94
Nov. 19	Dec. 8	Dec. 28	Jan. 12 '94	Feb. 2 '94	Mar. 9 '94	June 6 '94
Dec. 3	Dec. 22	Jan. 11 '94	Jan. 26 '94	Feb. 16 '94	Mar. 23 '94	June 20 '94
Dec. 17	Jan. 5 '94	Jan. 25 '94	Feb. 9 '94	Mar. 2 '94	Apr. 6 '94	July 4 '94
Dec. 31	Jan. 19 '94	Feb. 8 '94	Feb. 23 '94	Mar. 16 '94	Apr. 20 '94	July 18 '94

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.

PRINTING SCHEDULE FOR IAB		
ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
19	Friday, February 26, 1993	March 17, 1993
20	Friday, March 12, 1993	March 31, 1993
21	Friday, March 26, 1993	April 14, 1993

PLEASE NOTE:

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

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

A T T E N T I O N

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Phyllis Barry, Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

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Ami Pro 1.2	Manuscript	SuperCalc
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dBase	MultiMate	Windows Write
DCA/FFT	Navy DIF	Word for Windows 1.x, 2.0
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DIF	Paradox	WordStar
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Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

"A GUIDE TO RULE MAKING" pamphlet available upon request from:

Administrative Code Division
 Lucas State Office Building, 4th Floor
 or
 Administrative Rules Coordinator
 Capitol, Ground Floor, Room 11

The Administrative Rules Review Committee will hold a special meeting which is tentatively scheduled for Monday March 8, 1993, 7 a.m. in Senate Committee Room 22, State Capitol. This meeting will be in lieu of the regular statutory date. The following rules will be reviewed:

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PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners — elimination of requirement for certification of freedom from infectious or contagious diseases, inactive practitioners, reinstatement of inactive or lapsed instructor license, penalty fee for late renewals, 20.5(2), 20.108, 20.112, 20.214(3), 20.214(9), <u>Filed</u> ARC 3772A	2/17/93
Barber examiners — certificate for continuing education, 20.105, <u>Filed</u> ARC 3777A	2/17/93
Ophthalmic dispensers, public records and fair information practices, rescind chs 160, 169, <u>Filed</u> Emergency ARC 3740A	2/3/93
Board of optometry examiners — licensure by endorsement, 180.6, 180.10(7), <u>Filed</u> ARC 3736A	2/3/93
Fee increase for physical therapy and physical therapist assistant examinations, 200.9(1), 202.10(1), <u>Notice</u> ARC 3771A	2/17/93
Occupational therapy examiners, ch 201, <u>Filed</u> ARC 3757A	2/17/93
Speech pathology and audiology examiners — uniform rules, chs 303 to 305, <u>Filed</u> ARC 3778A	2/17/93

PUBLIC HEALTH DEPARTMENT[641]

Swimming pools and spas, ch 15, <u>Filed</u> ARC 3743A	2/3/93
Backflow prevention assembly tester registration, ch 26, <u>Filed</u> ARC 3741A	2/3/93
Misadministration of radiation, 41.1(8)"c," 41.1(8)"c"(5), 41.1(9)"d," 41.1(9)"d"(5), <u>Filed</u> ARC 3739A	2/3/93
First responder and EMT-A certification, 131.4(1)"g" and "o," 131.4(8)"b," 131.4(9), 131.4(10), 131.5(5)"c," 131.5(11)"e," <u>Filed</u> ARC 3738A	2/3/93
Advanced emergency medical care, 132.2(4), 132.3(1), 132.4(9), 132.5(5)"c," 132.7(6), 132.8(1), 132.9(4), 132.14(7), <u>Filed</u> ARC 3737A	2/3/93

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Business conduct, administrative procedure, 1.24(2), 1.27(7), 1.30(6), 1.32(6), 2.1, <u>Filed</u> Emergency ARC 3770A	2/17/93
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REVENUE AND FINANCE DEPARTMENT[701]

Taxation of nonresidents' pensions and annuities, reduction in state itemized deductions for certain high-income taxpayers, reduced state deduction for home mortgage interest for taxpayers with mortgage interest credit, 40.44, 41.11, 41.12, <u>Notice</u> ARC 3751A	2/17/93
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SECRETARY OF STATE[721]

Application for status as a political party, 21.15, <u>Filed</u> ARC 3718A	2/3/93
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TRANSPORTATION DEPARTMENT[761]

Vehicle registration and certificate of title — damage disclosure statement, 400.23(3), 400.55, <u>Filed</u> ARC 3719A	2/3/93
Salvage, 405.1 to 405.10, 405.12, 405.15, rescind Appendix to ch 405, <u>Filed</u> ARC 3712A	2/3/93
Definition of car lot, use of dealer plates, definition of travel trailer dealer's extension lot, vehicle rebuilders, used parts dealers, vehicle salvagers, rescission of transitional rule on temporary licenses, 420.1, 420.4(1)"f," 420.4(2)"f," 422.1(6), 431.2(3)"f" to "h," rescind 431.6, <u>Filed</u> ARC 3720A	2/3/93

TREASURER OF STATE[781]

Deposit and security of public funds in savings and loans, ch 3, <u>Notice</u> ARC 3776A, also <u>Filed</u> <u>Emergency</u> ARC 3775A	2/17/93
Deposit and security of public funds in credit unions, ch 14, <u>Notice</u> ARC 3773A, also <u>Filed</u> <u>Emergency</u> ARC 3774A	2/17/93

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"	
Deregulation of new services, 5.2(3), 5.3(2), <u>Filed</u> ARC 3780A	2/17/93
Rate-making treatment for postemployment benefits other than pensions, 7.11(3), 7.11(4), <u>Filed</u> ARC 3731A	2/3/93
Statement of financial accounting Standard No. 106 — postemployment benefits other than pensions, 16.9, <u>Filed</u> ARC 3779A	2/17/93
Terminating local access transport service, 22.14(2)"d"(7), <u>Filed</u> ARC 3730A	2/3/93

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regulatory statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 1995.

Senator Berl E. Priebe, Co-chair
2106 100th Avenue
Algona, Iowa 50511

Representative Janet Metcalf, Co-chair
1808 79th Street
Des Moines, Iowa 50322

Senator H. Kay Hedge
R.R. 1, Box 39
Fremont, Iowa 52561

Representative Horace Daggett
400 N. Bureau
Creston, Iowa 50801

Senator John P. Kibbie
R.R. 1, Box 139A
Emmetsburg, Iowa 50536

Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245

Senator William Palmer
1340 E. 33rd Street
Des Moines, Iowa 50317

Representative Roger Halvorson
609 S. Main
Monona, Iowa 52159

Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742

Representative David Schrader
R.R. 2
Monroe, Iowa 50170

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515)281-3084

Paula Dierenfeld
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 15
Des Moines, Iowa 50319
Telephone (515)281-6331

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] Pseudorabies, 64.156 to 64.160, 64.162(4) IAB 2/17/93 ARC 3752A	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 9, 1993 10 a.m. to 12 noon
Animal welfare, 67.2, 67.5(4), 67.7(2) IAB 2/17/93 ARC 3754A	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 19, 1993 10 a.m.
CIVIL RIGHTS COMMISSION[161] Contested cases, 4.1 to 4.35 IAB 2/17/93 ARC 3750A	Second Floor Conference Room 211 E. Maple Des Moines, Iowa	March 9, 1993 1 p.m.
CORRECTIONS DEPARTMENT[201] Mount Pleasant Correctional Facility, 24.2 IAB 2/17/93 ARC 3767A	Corrections Conference Room 523 E. 12th Street Des Moines, Iowa	March 9, 1993 1 to 3 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] Targeted small business financial assistance program, 27.2 to 27.4, 27.7 IAB 2/17/93 ARC 3761A	Conference Room Division of Business Development 200 E. Grand Ave. Des Moines, Iowa	March 11, 1993 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282] Special education teaching endorsements, 15.2(12) IAB 12/9/92 ARC 3616A	State Board of Education Conference Room Grimes State Office Bldg. Des Moines, Iowa	March 18, 1993 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] Water quality standards, 61.2(5), 61.3(5)"e" IAB 2/17/93 ARC 3756A	Community Room 111 N. Main Denison, Iowa	March 9, 1993 10:30 a.m.
	Public Library, Room A 210 N. Phillips Algona, Iowa	March 9, 1993 7 p.m.
	Council Chambers 313 1st St. E. Independence, Iowa	March 10, 1993 10:30 a.m.
	Conference Room Fifth Floor, West Half Wallace State Office Bldg. Des Moines, Iowa	March 10, 1993 1 p.m.
	Council Chambers 400 Claiborne Dr. Decorah, Iowa	March 10, 1993 7 p.m.

HUMAN SERVICES DEPARTMENT[441]

Licensing and regulation of child-placing agencies, purchase of independent living services, ch 108, 156.12, 202.9
IAB 2/17/93 ARC 3745A

Conference Room—6th Floor
221 4th Ave. S.E.
Cedar Rapids, Iowa

March 11, 1993
10 a.m.

Lower Level
417 E. Kanessville Blvd.
Council Bluffs, Iowa

March 11, 1993
10 a.m.

Conference Room 3—5th Floor
Bicentennial Bldg.
428 Western
Davenport, Iowa

March 15, 1993
10 a.m.

Conference Room 100
City View Plaza
1200 University
Des Moines, Iowa

March 11, 1993
10 a.m.

Mohawk Square
22 N. Georgia Ave.
Mason City, Iowa

March 11, 1993
9:30 a.m.

Conference Room
120 E. Main
Ottumwa, Iowa

March 12, 1993
10 a.m.

Suite 624
507 7th St.
Sioux City, Iowa

March 11, 1993
1 p.m.

Conference Room 201
Pinecrest Office Bldg.
1407 Independence Ave.
Waterloo, Iowa

March 11, 1993
9:30 a.m.

LABOR SERVICES DIVISION[347]

Permit-required confined spaces
for general industry, 10.20
IAB 2/17/93 ARC 3749A

Division of Labor Services
1000 E. Grand Ave.
Des Moines, Iowa

March 11, 1993
9 a.m.
(If requested)

LOTTERY DIVISION[705]

Ticket sales restrictions,
3.12
IAB 2/3/93 ARC 3711A

Iowa Lottery
2015 Grand Ave.
Des Moines, Iowa

February 23, 1993
9 a.m.

NATURAL RESOURCE COMMISSION[571]

Nonresident deer hunting, 94.1,
94.2, 94.8
IAB 2/17/93 ARC 3763A

Auditorium
Wallace State Office Bldg.
Des Moines, Iowa

March 11, 1993
10 a.m.

NURSING BOARD[655]

Licensure fee increases, 3.1, 7.1
IAB 1/6/93 ARC 3679A

Kirkwood Civic Center Hotel
4th and Walnut
Des Moines, Iowa

March 3, 1993
7 p.m.

PERSONNEL DEPARTMENT[581]

Personnel policies—generally,
amendments to chs 1, 3 to 5,
8, 10, 11, 13 to 15
IAB 2/17/93 ARC 3753A

Grimes State Office Bldg.
Des Moines, Iowa

March 9, 1993
10 a.m.

SOIL CONSERVATION DIVISION[27]

Coal mining, ch 40
IAB 12/23/92 ARC 3632A

Conference Room
Second Floor, North Half
Wallace State Office Bldg.
Des Moines, Iowa

March 10, 1993
2 p.m.

TREASURER OF STATE[781]

Deposit and security of public funds
in savings and loans, ch 3
IAB 2/17/93 ARC 3776A
(See also ARC 3775A herein)

Office of Treasurer of State
First Floor, State Capitol
Des Moines, Iowa

March 11, 1993
10 a.m.

Deposit and security of public funds
in credit unions, ch 14
IAB 2/17/93 ARC 3773A
(See also ARC 3774A herein)

Office of Treasurer of State
First Floor, State Capitol
Des Moines, Iowa

March 11, 1993
10 a.m.

UTILITIES DIVISION[199]

Alternate energy production,
15.1, 15.12(3)"a"(3)
IAB 1/20/93 ARC 3703A

First Floor Hearing Room
Lucas State Office Bldg.
Des Moines, Iowa

March 9, 1993
10 a.m.

CITATION of Administrative Rules

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

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

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

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

AGENCY IDENTIFICATION NUMBERS

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

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

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

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

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]
Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]
Banking Division[187]
Credit Union Division[189]
Insurance Division[191]
Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
Savings and Loan Division[197]
Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]
Historical Division[223]
Library Division[224]
Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]
Iowa Finance Authority[265]
High Technology Council[267]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]
College Student Aid Commission[283]
Higher Education Loan Authority[284]
Iowa Advance Funding Authority[285]
School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]
Job Service Division[345]
Labor Services Division[347]

EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HEALTH DATA COMMISSION[411]
 HUMAN RIGHTS DEPARTMENT[421]
 Children, Youth, and Families Division[425]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services, Division of [429]
 Persons With Disabilities Division[431]
 Spanish-Speaking People Division[433]
 Status of Blacks Division[434]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
 INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]
 LAW ENFORCEMENT ACADEMY[501]
 LIVESTOCK HEALTH ADVISORY COUNCIL[521]
 MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
 NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
 NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
 PERSONNEL DEPARTMENT[581]
 PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
 PREVENTION OF DISABILITIES POLICY COUNCIL[597]
 PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Disaster Services Division[607]
 Military Division[611]
 PUBLIC EMPLOYMENT RELATIONS BOARD[621]
 PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners[650]
 Medical Examiners[653]
 Nursing Board[655]
 Pharmacy Examiners[657]
 PUBLIC SAFETY DEPARTMENT[661]
 RECORDS COMMISSION[671]
 REGENTS BOARD[681]
 Archaeologist[685]
 REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
 SECRETARY OF STATE[721]
 SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
 TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority, Iowa[765]
 TREASURER OF STATE[781]
 UNIFORM STATE LAWS COMMISSION[791]
 VETERANS AFFAIRS COMMISSION[801]
 VETERINARY MEDICINE BOARD[811]
 VOTER REGISTRATION COMMISSION[821]
 WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

Citizens' Aide[210]

Iowa Advance Funding Authority[515]

Product Development Corporation[636]

Records Commission[710]

NOTICE OF AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Farm Health and Safety	Iowa Communities	Non-Profit Community organizations, coalitions, individuals identifying specific need	Farm safety and health education	4/15/93	6/1/93 - 6/30/94

Request application packet from: Kris McIntee
Iowa Department of Public Health
Disability Prevention Program
Lucas Building; Des Moines, Iowa 50319-0075
Telephone: (319)232-3212

ARC 3748A**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 192A.28, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 23, "Dairy Trade Practices," Iowa Administrative Code.

New subrule 23.8(4) requires processors and distributors to file promotions on a monthly basis as required by Iowa Code section 192A.7.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 9, 1993. Written materials should be directed to Lillian M. Moore, Dairy Trade Practices Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319; FAX (515)281-6236; or telephone (515)281-5961.

This amendment is intended to implement Iowa Code chapter 192A.

The following amendment is proposed.

Amend 21—23.8(192A) by adding the following new subrule:

23.8(4) All promotional filings filed with the department are to be broken down on a monthly basis (either a calendar month or a one-month billing period) listing the dairy products offered, length of time the promotion can be run, and the terms and conditions which the distributor, wholesaler or retailer must meet to qualify for said promotion, if a condition is required.

ARC 3752A**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 159.5(11), 159.6(2), 163.1(1), 166D.1, and 166D.16, the Iowa Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Pseudorabies Disease segment, Iowa Administrative Code.

These amendments establish the requirements and time limits for selling swine for further feeding; provide for

mandatory vaccination in some infected herds; provide for restricted movement of some swine herds; and rescind the time requirements for herd review.

Any interested person may make written comments on these proposed amendments on or before March 9, 1993. Written comments should be addressed to Walter D. Felker, D.V.M., State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

A public hearing will be held on March 9, 1993, from 10 a.m. to 12 noon in the Second Floor Conference Room, Wallace State Office Building, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 166D.5, 166D.8, 166D.9, 166D.10, and 166D.12.

The following amendments are proposed.

ITEM 1. Amend subrule **64.156(2)** by adding a new paragraph "d" as follows:

d. Feeder pigs may be sold for further feeding without additional testing while the "monitored" status is maintained.

ITEM 2. Amend subrule **64.157(2)**, paragraph "c," as follows:

c. Brief description of the plan, *which may mandate the use of vaccine.*

ITEM 3. Amend subrule **64.157(5)** as follows:

64.157(5) If this herd cleanup plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd *and subject to restricted movement, according to 64.154(2)"c" and 64.155(8), until a new and approved cleanup plan is in place.*

ITEM 4. Amend subrule **64.158(2)**, paragraph "f," as follows:

f. Feeder pigs may be marketed intrastate as feeder pigs of unknown status *only, until December 31, 1994, provided that testing procedures, as required by the epidemiologist or coordinator epidemiologist's representative, are followed.*

ITEM 5. Amend subrule **64.158(3)**, paragraph "c," as follows:

c. A brief description of the plan *which may mandate the use of vaccine.*

ITEM 6. Amend subrule **64.158(4)** as follows:

64.158(4) ~~Progeny from this herd may move for feeding purposes within the state of Iowa as pigs of unknown status.~~ Breeding swine may move direct to slaughter or as feeder swine *they may move* by restricted movement to an approved premises *to be fed out to slaughter.* No swine may be represented as breeding swine when originating from infected herds agreeing to a feeder pig cooperator plan.

ITEM 7. Amend subrule **64.158(6)** as follows:

64.158(6) If this feeder pig cooperator plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd *and subject to restricted movement according to 64.154(2)"c" and 64.155(8), until a new and approved cleanup plan is in place.*

ITEM 8. Add new rule 21—**64.159(166D)** and renumber existing rule 21—**64.159(166D)** as 21—**64.160(166D)** as follows:

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

21—64.159(166D) Herds of unknown status. Feeder pigs from herds of unknown status may not move after June 30, 1993; however, these herds may test to determine status and feeder pigs may be moved according to 64.156(1), 64.156(2), 64.156(3), 64.157(3), or 64.158(2).

ITEM 9. Amend subrule 64.162(4), paragraph "b," as follows:

b. ~~One-year review~~ Review of herd cleanup plan. Payment will be made upon submission of the completed form and department approval of the plan review, ~~provided the review is conducted between 12 and 14 months from the anniversary date of the initial herd cleanup plan.~~

ARC 3754A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 162.16, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 67, "Animal Welfare," Iowa Administrative Code.

These amendments are intended to allow for the regulated use of grass exercise areas and runs, provide a definition for "breeding animal," create a classification for in-home kennels with modified regulation, phase out the use of wire flooring for runs and exercise areas, and provide for the neutering of dogs and cats adopted from animal shelters and pounds.

Interested persons may submit their comments in writing to Dr. John J. Schiltz, Bureau of Animal Industry, Second Floor, Wallace State Office Building, Des Moines, Iowa 50319, prior to 4:30 p.m. on Friday, March 19, 1993.

A public hearing will be held commencing at 10 a.m. on Friday, March 19, 1993, in the Second Floor Conference Room of the Wallace State Office Building. Interested persons may submit their comments orally or in writing at that time.

These amendments are intended to implement Iowa Code sections 162.3, 162.4, 162.8, and 162.9.

The following amendments are proposed.

ITEM 1. Amend subrule 67.2(1), paragraph "j," as follows:

j. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. *Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Wire floors are permissible, provided that they are not injurious to the animals.*

ITEM 2. Amend subrule 67.2(1) by adding the following new paragraph "k" and relettering existing paragraph "k" as paragraph "l":

k. Dog runs and exercise areas utilizing wire floors are permissible, provided that they are not injurious to the animals. However, no new construction utilizing wire floors will be approved after July 1, 1993. Facilities utilizing wire floors that are licensed and in use prior to July 1, 1993, may continue to be utilized until January 1, 1998, after which date use and licensing of such facilities shall be discontinued.

ITEM 3. Amend rule 21—67.2(162) by adding the following new subrule:

67.2(3) In-home kennel.

a. For the purposes of this subrule, "in-home kennel" means an individual required to be licensed as a boarding kennel or as a commercial breeder under Iowa Code chapter 162 who maintains or harbors not more than six animals in the individual's living quarters.

b. Notwithstanding subrules 67.2(1), 67.2(2), and 67.3(2), an in-home kennel shall comply with the following standards:

(1) Food supplies shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food unclean.

(2) Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours. Animals shall be protected from excessive illumination.

(3) Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

(4) Facilities shall be provided to isolate diseased animals to prevent exposure to healthy animals.

(5) Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Wire floors are not permissible.

(6) Group housing is permitted for animals which are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the facility. Females in estrus shall not be housed with males, except for breeding purposes.

(7) If the animals are confined to a restricted area of the living quarters, the restricted area shall meet the space requirements set out in paragraph 67.2(2)"c."

(8) Litter pans, containing clean litter, shall be provided at all times for kittens and cats.

(9) Means shall be provided to maintain that temperature and ventilation which is comfortable for the species within the primary enclosure or housing facility.

(10) Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised.

(11) Housing facilities shall be cleaned as necessary to reduce disease hazards and an effective program shall be established and maintained for the control of vermin infestation.

ITEM 4. Rescind subrule 67.5(4) and insert in lieu thereof the following:

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

67.5(4) For the purposes of determining an individual's obligation to be licensed under Iowa Code section 162.8, "breeding animal" will include any sexually intact animal over the age of 12 months.

ITEM 5. Rescind subrule 67.7(2), paragraph "b," and insert in lieu thereof the following:

b. Licensees shall develop and implement a plan providing for the surgical sterilization of all dogs and cats released, unless released to the original owner or under contract to a licensed research facility, by using one of the following options:

(1) Prerelease sterilization.
 (2) Written contract with the person obtaining the animal. The licensee using this option shall implement follow-up procedures to ensure compliance with the contract.

(3) A written alternative plan approved by the department.

c. In addition to records required by subrule 67.5(1), animal shelters and pounds shall maintain, for a period of 12 months, the following records:

(1) Euthanasia records, including date of entry, source of animal, and date of euthanasia.

(2) Sterilization records, including verification.

(3) Disposition records of all animals lawfully claimed by a research facility.

January 1, 1992 – January 31, 1992	6.65%
February 1, 1992 – February 29, 1992	6.05%
March 1, 1992 – March 31, 1992	6.00%
April 1, 1992 – April 30, 1992	6.10%
May 1, 1992 – May 31, 1992	6.20%
June 1, 1992 – June 30, 1992	5.85%
July 1, 1992 – July 31, 1992	5.70%
August 1, 1992 – August 31, 1992	5.35%
September 1, 1992 – September 30, 1992	5.10%
October 1, 1992 – October 31, 1992	4.90%
November 1, 1992 – November 30, 1992	4.75%
December 1, 1992 – December 31, 1992	5.00%
January 1, 1993 – January 31, 1993	5.15%
February 1, 1993 – February 28, 1993	5.00%

ARC 3750A**CIVIL RIGHTS COMMISSION[161]****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 subsection 216.5(10), the Civil Rights Commission proposes to amend Chapter 4, "Contested Cases," Iowa Administrative Code.

The amendment to Chapter 4 is being made to ensure that the Commission hearing process is effective, fair and conforms to the legal principles currently set forth in case law, the Iowa Civil Rights Act [1993 Iowa Code chapter 216], the Iowa Administrative Procedure Act, the Uniform Administrative Rules on Contested Cases, and other legal authorities.

The Commission has determined that this amendment may have an impact on small business as defined in Iowa Code subsection 17A.31(1). Because of this possibility, an interested person has the right to demand a regulatory flexibility analysis.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 9, 1993. Such written suggestions or comments should be directed to the Civil Rights Commission, 211 East Maple, Second Floor, c/o Grimes State Office Building, Des Moines, Iowa 50319; FAX (515)242-5840.

Persons are also invited to present oral or written comments at a public hearing which will be held on March 9, 1993, at 1 p.m. in the Conference Room at the Civil Rights Commission, 211 East Maple, Second Floor, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

These rules are intended to implement Iowa Code chapter 216.

The following amendment is proposed.

NOTICE—AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

May 1, 1990 – May 31, 1990	9.85%
June 1, 1990 – June 30, 1990	10.00%
July 1, 1990 – July 31, 1990	9.75%
August 1, 1990 – August 31, 1990	9.80%
September 1, 1990 – September 30, 1990	9.55%
October 1, 1990 – October 31, 1990	9.55%
November 1, 1990 – November 30, 1990	9.50%
December 1, 1990 – December 31, 1990	9.05%
January 1, 1991 – January 31, 1991	9.15%
February 1, 1991 – February 28, 1991	8.70%
March 1, 1991 – March 31, 1991	8.20%
April 1, 1991 – April 30, 1991	8.25%
May 1, 1991 – May 31, 1991	8.00%
June 1, 1991 – June 30, 1991	7.75%
July 1, 1991 – July 31, 1991	7.75%
August 1, 1991 – August 31, 1991	7.60%
September 1, 1991 – September 30, 1991	7.70%
October 1, 1991 – October 31, 1991	7.55%
November 1, 1991 – November 30, 1991	7.25%
December 1, 1991 – December 31, 1991	6.95%

CIVIL RIGHTS COMMISSION[161](cont'd)

Rescind rules 161—4.1(601A) to 161—4.6(601A), insert the following and renumber rules 161—4.7(601A) and 161—4.8(601A) as 161—4.34(216) and 161—4.35(216), respectively:

161—4.1(216) General provisions.

4.1(1) Scope and applicability. This chapter applies to contested case proceedings conducted by the civil rights commission.

4.1(2) Parties. The parties in contested cases maintained pursuant to Iowa Code section 216A.15 are the complainant, the respondent and the civil rights commission.

4.1(3) Prosecutory representative of commission. The commission's case in support of the complaint shall be presented by the attorney or agent of the commission. An assistant attorney general may represent the civil rights commission at a contested case proceeding.

4.1(4) Time. Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.1(5) Modification of time limits. For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the administrative law judge shall afford all parties an opportunity to be heard or to file written arguments.

4.1(6) Extension of time for service by mail. Whenever a party has the right or is required by this chapter to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and the notice or paper is served upon that party by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where the administrative law judge has prescribed the method of service of notice and the number of days to be given. This rule has no effect on actions which must be taken within a prescribed period after the issuance of a proposed decision or final order.

161—4.2(216) Notice of hearing and answer.**4.2(1) Statement of charges.**

a. Where conciliation efforts fail and it is determined that the record justifies proceeding to hearing, the commission's attorney or the executive director shall prepare a written statement of charges in support of the complaint and forward it to the administrative law judge together with a request for a hearing date.

b. The statement of charges shall contain:

(1) An allegation that the respondent is a proper respondent within the meaning of and subject to provisions of the Iowa civil rights Act.

(2) A factual allegation or allegations of an unfair or discriminatory practice or practices, substantially as uncovered in the investigation, stated in the complaint (including amendments thereto), stated in the order of probable cause, or stated in the investigative summary.

c. A statement of charges is sufficient if it:

(1) Names the respondents and complainants;

(2) States the section(s) of the statute alleged to be violated; and

(3) Incorporates by reference the complaint and any amendments to the complaint.

d. The statement of charges shall also specifically identify all allegations, if any, in the complaint, as amended, which:

(1) Have been closed by other than a probable cause finding, or

(2) The commission has elected not to prosecute despite a probable cause finding.

e. None of the allegations identified pursuant to sub-rule 4.2(1), paragraph "d," shall be considered as a claim of discrimination in the contested case proceeding, but evidence on such allegations may be considered when relevant to other allegations of discrimination or as background evidence. Allegations identified pursuant to sub-rule 4.2(1), paragraph "d," subparagraph (2), shall be administratively closed and the complainant may obtain an administrative release for such allegations.

4.2(2) Scheduling conference.

a. The administrative law judge may set the matter for a scheduling conference in order that the parties, including the commission, and the administrative law judge may arrive at a mutually agreed date for the public hearing. If practicable the scheduling conference should be set for no sooner than 7 and no later than 30 days after the administrative law judge receives the statement of charges. The parties may be notified by regular mail of the date of the scheduling conference. The scheduling conference may be conducted in whole or in part by telephone.

b. If no date can be agreed upon, the date of the public hearing may be set according to the administrative law judge's discretion.

c. A public hearing should be scheduled for as early a date as practicable. The availability of the administrative law judge, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

d. Unless otherwise designated by the administrative law judge, the hearing shall be held in the offices of the civil rights commission. In setting the place of hearing, the location of the administrative law judge, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

4.2(3) Notice of hearing. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery shall be executed by any of the following means: certified mail with return receipt requested, personal service as provided in the Iowa rules of civil procedure, first-class mail, or publication as provided by the Iowa rules of civil procedure to all interested parties or their attorneys at least 30 days before the date of the hearing. Certified mail return receipts, returns of service, or similar evidence of service shall be filed with the administrative law judge. The notice shall include:

a. The time and place of hearing;

b. The nature of the hearing, the legal authority and jurisdiction under which the hearing is being held;

c. A statement of the issues as described by the statement of charges or an incorporation of the attached statement of charges;

d. The reference to the sections of the statute and rules involved;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission and of parties' counsel where known; and

f. Reference to the procedural rules governing conduct of the contested case proceeding.

4.2(4) After the service of the notice of hearing, a party may apply for a more definite and detailed statement from the commission. If the administrative law judge determines that the notice of hearing is not sufficiently specific, the commission shall be required to provide a more specific statement. Such an application must be filed within 20 days of the service of the notice of hearing.

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4.2(5) Answer to notice of hearing. The respondent is encouraged to file an answer to the allegations contained within the notice of hearing within 20 days of the service of the notice of hearing. Answers are encouraged as a means of sharpening the issues and preserving claimed error.

a. If an answer is filed, it should show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations contained within the notice of hearing. The answer should also state any facts alleged to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. An answer should state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf the answer is filed, and the attorney, if any, representing that person.

c. Failure to file an answer or failure to follow the guidelines of this rule does not by itself constitute a waiver of any argument nor an admission of any issue. The optional nature of the answer, however, does not affect the respondent's obligations to raise issues in a timely fashion, to reply to discovery, or to fulfill any other obligation which is imposed upon respondent by law.

161—4.3(216) Amendment of pleadings.

4.3(1) Amendment of notice of hearing. The notice of hearing may be amended in the same manner and upon the same terms as are provided for the amendment of complaints in rule 161—3.7(216). As provided in rule 161—3.7(216), when an amendment is made, the respondent may be granted a continuance, within the discretion of the administrative law judge, if it is needed to allow the respondent to prepare to defend on the additional grounds.

4.3(2) Amendment of answer. An answer may be amended by the respondent at any time prior to the hearing and thereafter at the discretion of the administrative law judge. If an amendment is made, the complainant and commission may be granted a continuance, within the discretion of the administrative law judge, if it is needed to allow them to adequately prepare to litigate the additional defenses.

4.3(3) Amendment by stipulation. An amendment to either the notice of hearing or the answer may also be made by stipulation of all the parties.

4.3(4) Amendments to conform to evidence. When issues not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If the evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the administrative law judge may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission would prejudice that party in maintaining the action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

161—4.4(216) Failure to appear and default.

4.4(1) Procedure at hearing. If a party fails to appear in a contested case proceeding after proper service of notice, the administrative law judge may, if no adjournment

is granted, proceed with the hearing and make a decision in the absence of the party.

4.4(2) Entry of default. Where authorized by law, the administrative law judge may, within the discretion of the administrative law judge, issue a default order. In exercise of this discretion the administrative law judge should take into account the policies favoring adjudication on the merits and conservation of administrative resources.

4.4(3) Default defined. A "default" is a failure to take a step required in the progress of an action and an adjudication by default is an adjudication against the party who has failed to take such step. A party is in "default" who (a) withdraws an appearance or fails to be present for hearing, or (b) fails to comply with any order of the administrative law judge or do any act which permits entry of default under any applicable rule or statute.

4.4(4) Proof of personal jurisdiction required. In order to enter default against a party who has not voluntarily appeared or filed an answer or a motion, it must first be shown that the commission has acquired personal jurisdiction over the party. Such jurisdiction is shown by proof of delivery of the notice of hearing to the party. Official notice may be taken of certified mail return receipts or other records in the commission's possession which verify service of the notice of hearing.

161—4.5(216) Consolidation and severance.

4.5(1) Grounds for consolidation. The administrative law judge may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.5(2) Effect of consolidation. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the other, and a separate or joint decision shall be made at the discretion of the administrative law judge.

4.5(3) Severance. The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

161—4.6(216) Filing and service of documents.

4.6(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every other paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.6(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

4.6(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers shall be filed with Administrative Law Judge, Iowa Civil Rights Commission, 211 E. Maple, Second Floor, Des

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Moines, Iowa 50319. Except as provided by these rules, the Iowa rules of civil procedure pertaining to discovery, or other law, all pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the administrative law judge.

4.6(4) Filing—how and when made. In a contested case before the commission, a document is filed by any of the methods described in 161—subrule 3.5(1). Those seeking to file a document by facsimile transmission are referred to 161—subrule 3.5(2) for suggested procedures and 161—subrule 3.5(3) for charges. The date a document is deemed to be filed in a contested case before the commission is determined according to 161—subrule 3.5(4).

4.6(5) Proof of mailing. In a contested case before the commission, proof of mailing is made according to 161—3.5(5)"a." Conflicts among proofs of mailing are resolved according to 3.5(5)"b."

161—4.7(216) Discovery.

4.7(1) Civil procedure rules govern discovery. Discovery procedures applicable in civil actions, as set forth in the Iowa rules of civil procedure, are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the administrative law judge, time periods for compliance with discovery shall be as provided in the Iowa rules of civil procedure.

4.7(2) Motions relating to discovery. Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the administrative law judge. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.7(1). The administrative law judge may rule on the basis of the written motion and any response or may order argument on the motion.

4.7(3) Use at hearing. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding. Because of their binding character, requests for admissions in the contested case wherein they are requested and responses to same are considered to be admitted into evidence once filed with the administrative law judge. Responses to requests for admissions from other cases, answers to interrogatories, responses to requests for production, and depositions are not considered as evidence unless offered and admitted into evidence or admitted by stipulation. Discovery materials not otherwise considered as evidence under this rule may be considered as evidence for the purpose of resolving discovery disputes.

4.7(4) Sanctions available. The Iowa rules of civil procedure govern what sanctions may be imposed by the administrative law judge for the failure to comply with a discovery order, the failure to respond to discovery, or failing to otherwise comply with the rules of discovery.

4.7(5) Discovery on commission and complainant. When discovery of information from the complainant is sought, discovery should be made upon the complainant with a copy thereof provided to the commission's representative. When discovery of information from the commission is sought, discovery should be made upon the commission with a copy thereof provided to the complainant or the complainant's representative. Discovery of the commission's investigative file may be made pursuant to Iowa Code section 17A.13(2).

4.7(6) Filing of discovery materials.

a. Interrogatories. Interrogatories are not to be filed with the administrative law judge. Parties who serve interrogatories shall serve and file a notice of serving interrogatories stating the parties upon whom interrogatories were served, the numbers of the interrogatories, and the date of service.

b. Answers to interrogatories. Answers or objections to interrogatories are to be filed at the time that they are served.

c. Requests for admissions and responses. Requests for admissions and responses to requests for admissions are to be filed at the time that they are served.

d. Notice of taking deposition. Notices of taking a deposition should be filed at the time that they are served.

e. Requests for production. Requests for production of documents may be filed at the time that they are served.

f. Responses to requests to produce. The response and any objections to a request to produce may be filed with the administrative law judge. This does not mean that the documents produced should be filed. Copies of documents produced in response to a request for production shall not be filed with the administrative law judge. However copies of documents produced may be filed with the appropriate motion when necessary to support or resist a motion to compel production of documents, a motion for a protective order, or other discovery motion.

4.7(7) Discovery conference. A discovery conference may be ordered, requested, and held in the same manner and upon the same terms as are provided for in Iowa rule of civil procedure 124.2.

4.7(8) Duplication of civil procedure rules. The duplication in these rules of provisions contained within the rules of civil procedure relating to discovery does not imply that other portions of the civil procedure rules do not govern discovery in contested cases before the commission.

161—4.8(216) Subpoenas.**4.8(1) Issuance of subpoenas.**

a. A commission subpoena shall be issued to a party upon request. Such a request should be in writing, but oral requests may be honored by the administrative law judge. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled public hearing. The request shall include the name, address, and telephone number of the requesting party. The administrative law judge may issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank to a party requesting it, who shall fill it in before service.

b. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.8(2) Motion to quash or modify.

a. Any person served with a subpoena issued by the commission who intends not to comply with all or part of it shall, promptly after the date of service of the subpoena upon that person, make a motion to the administrative law judge to revoke or modify the subpoena. The motion shall separately identify each portion of the subpoena with which the movant does not intend to comply and shall state, with respect to each such portion, the grounds upon which the movant relies. A copy of the subpoena shall be attached to the motion.

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b. The administrative law judge may quash or modify a subpoena for any lawful reason. A motion to quash or modify a subpoena shall be set for argument promptly.

161—4.9(216) Motions.

4.9(1) Form. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought. Any motion for summary judgment shall comply with the Iowa rules of civil procedure. Motions made during the hearing may be stated orally upon the record.

4.9(2) Response. Any party may file a written response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by the rules of the commission or the administrative law judge. The administrative law judge may consider a failure to respond within the required time period in ruling on a motion.

4.9(3) Oral argument.

a. The administrative law judge may schedule oral argument on any motion.

b. Oral arguments on motions shall be held in Des Moines or by telephone conference call, unless the administrative law judge orders otherwise.

c. A record of arguments will be made at the discretion of the administrative law judge. A record may be made by tape recording or by certified shorthand reporter.

d. If a record of oral argument is kept, then the oral argument or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

4.9(4) Motions regarding hearing.

a. Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the administrative law judge.

b. Motions regarding exclusion of witnesses need not be made ten days prior to the hearing.

161—4.10(216) Prehearing conferences.

4.10(1) Subject matter of conference. Upon the administrative law judge's own motion or the motion of the parties, the administrative law judge may direct the parties or their counsel to participate in a conference to consider:

- a. Simplification of the issues;
- b. Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;
- c. Stipulations, admissions of fact and of contents and authenticity of documents;
- d. Limitation of number of witnesses;
- e. Scheduling dates for the exchange of witness lists and proposed exhibits;
- f. Identifying matters which the parties intend to request be officially noticed;
- g. Such other matters, including discovery matters, as may tend to expedite the disposition of the proceedings.

4.10(2) Prehearing conferences shall be conducted by telephone unless otherwise ordered. A record of the conference will be kept unless otherwise ordered by the administrative law judge. A record of the conference may be by tape recording or by certified shorthand reporter. If a record of the conference is kept, then either (a) a copy of the tape recording or a transcript, if recorded; or (b) a transcript, if reported, of the conference shall be provided at the request of any party with the expense of the recording or transcription charged to the requesting party.

4.10(3) Effect of conference. The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

161—4.11(216) Continuances. Unless otherwise provided, applications for continuances shall be made to the administrative law judge.

4.11(1) Written or oral motions for continuance. A written motion for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral motion for a continuance may be made if the administrative law judge waives the requirement for a written motion. However, a party making an oral motion for a continuance must confirm that request by written motion within five days after the oral request unless that requirement is waived by the administrative law judge. No motion for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

4.11(2) Factors to consider. In determining whether to grant a continuance, the administrative law judge may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirement;
- g. The existence of a conflict in the schedules of counsel, parties, and witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

4.11(3) The administrative law judge may require documentation of any ground for continuance.

4.11(4) Failure of a party to timely obtain counsel, after clear and adequate notice of the right to be represented by an attorney, will not be considered grounds for a continuance in order to allow time to obtain counsel.

161—4.12(216) Telephone proceedings. The administrative law judge may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties or by order of the administrative law judge. The administrative law judge will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

161—4.13(216) Disqualification.

4.13(1) Grounds. The administrative law judge, a commissioner, or other administrative adjudicator shall withdraw from participating in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;
- b. Has personally prosecuted or advocated, in connection with the case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case, involving the same parties;

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c. Is subject to the authority, direction, or discretion of any person who has personally prosecuted or advocated, in connection with the case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case, involving the same parties;

d. Has personally investigated the pending contested case by taking affirmative steps to interview witnesses directly or obtain documents directly. The term "personally investigated" does not include either direction or supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators;

e. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

f. Knows that the adjudicator, individually or as a fiduciary, or the adjudicator's spouse or minor child residing in the adjudicator's household, has a personal financial interest in the outcome of the case or any other interest that could be substantially affected by the outcome of the case;

g. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; (4) is likely to be a material witness in the case; or

h. Has any other legally sufficient cause to require withdrawal from participation in the decision making in that case.

4.13(2) An administrative adjudicator should be informed about any personal and fiduciary financial interests and make a reasonable effort to be informed about the personal financial interests of the adjudicator's spouse and minor children residing in the adjudicator's household.

4.13(3) For the purposes of this subrule:

a. The degree of relationship is calculated according to the civil law system;

b. "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;

c. "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(3) The proprietary interest of a policyholder in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(4) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

d. "Personal bias or prejudice" refers to either an adverse, preconceived mental attitude or disposition toward a party, or such personal favoritism or regard for some opposite party, of such weight or nature as to materially impair or destroy that impartiality essential to a fair hearing. It does not relate to views entertained regarding the subject matter involved.

(1) In order to be sufficient to require disqualification, allegations of personal bias or prejudice must be true and based on an extrajudicial source and not on anything the adjudicator learned during the course of the hearing or other judicial proceedings, past or present, before the commission; or on any impressions the adjudicator gained in the official capacity as an adjudicator; or on any rulings, findings of fact, or conclusions of law of the adjudicator (unless these rulings are not based on anything the adjudicator has learned from participation in the case and explicitly state they are based on an extrajudicial source); or on any definite views of the law possessed by the adjudicator.

(2) Reserved.

4.13(4) Remittal of disqualification. An administrative adjudicator disqualified by the terms of 4.13(1)"f" or 4.13(1)"g" may, instead of withdrawing from the proceeding, disclose, either in writing or orally, on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the administrative adjudicator's participation, all agree in writing that the adjudicator's relationship is immaterial or that the adjudicator's financial interest is insubstantial, the adjudicator is no longer disqualified and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

4.13(5) Partial disqualification of commission. The disqualification of one or more members of the commission who are considering adoption of a proposed decision of the administrative law judge shall not prevent the remaining commissioners from considering the proposed decision.

4.13(6) Procedure. If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.13(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If a continuance has already been granted, such motion shall not be granted except for a cause arising since such continuance or not known to the movant prior thereto.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the administrative law judge or, in the event of a motion for disqualification of a commissioner, the chairperson of the commission determines that disqualification is appropriate, the administrative law judge or commissioner shall withdraw. If the administrative law judge or, in the event of a motion for disqualification of a commissioner, the chairperson of the commission determines that withdrawal is not required, the administrative law judge or chairperson shall enter an order to that effect.

161—4.14(216) Ex parte communications.

4.14(1) Prohibited communications. Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. Nothing in this provision is in-

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tended to preclude persons assigned to render a proposed or final decision in a contested case or to make findings of fact and conclusions of law in such a case from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.13(1), prosecuting, or advocating in either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

4.14(2) Disclosure of prohibited communication. Any person who receives a communication prohibited by subrule 4.14(1) shall disclose that communication to all parties. The disclosure shall contain a summary of the communication, if oral, or a copy of the communication, if written, and the time, place and means of the communication. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record. After notification of the communication, any party to the contested case shall be given a reasonable opportunity to respond to the communication.

4.14(3) Penalty for ex parte communication. The administrative law judge or the agency may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency; and censure, suspension, dismissal, or other disciplinary action against agency personnel.

161—4.15(216) Powers of administrative law judge. The administrative law judge who presides at the hearing shall have all powers necessary to the conduct of a fair and impartial hearing including, but not limited to, the power to:

1. Conduct formal hearings in accordance with the provisions of this chapter;
2. Administer oaths and examine witnesses;
3. Compel the production of documents and appearance of witnesses in control of the parties;
4. Issue subpoenas;
5. Issue decisions and orders;
6. Rule on motions, and other procedural items or matters pending before the administrative law judge;
7. Require the submission of briefs;
8. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
9. Receive, rule on, exclude or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
10. Maintain the decorum of the hearing including the power to refuse to admit or to expel anyone whose conduct is disorderly;
11. Take any action authorized by these rules;
12. Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:
 - Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;
 - Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party, if any, having control over the witness, and
 - Expelling any party or person from further participation in the hearing.

161—4.16(216) Hearing procedures.

4.16(1) Objections. All objections shall be timely made and stated in the record. Any objection not duly made before the administrative law judge shall be deemed waived.

4.16(2) Representation of parties. Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.16(3) Rights of parties. Subject to terms and conditions prescribed by the administrative law judge, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.16(4) Exclusion of witnesses. At the request of a party, an administrative law judge may order witnesses excluded so they cannot hear the testimony of other witnesses, and the judge may make the order sua sponte. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

4.16(5) Conduct of hearing. The administrative law judge shall conduct the hearing in the following manner:

- a. The administrative law judge shall give an opening statement briefly describing the nature of the proceeding;
- b. The parties shall be given an opportunity to present an opening statement;
- c. Parties shall present their cases in the sequence determined by the administrative law judge;
- d. Each witness shall be sworn or affirmed by the administrative law judge or the court reporter, and be subject to examination and cross-examination. The administrative law judge may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

4.16(6) Marking of exhibits. Exhibits entered into evidence which are offered by the commission or the complainant shall be numbered serially, i.e., 1, 2, 3, etc.; whereas those offered by the respondent shall be lettered serially, i.e., A, B, C, . . . AA, BB, etc.; and those offered jointly shall be designated by "joint exhibit" and numbered serially.

4.16(7) Contents of record. The record in a contested case before the administrative law judge shall include:

- a. All pleadings, motions, and rulings;
- b. All evidence received or considered and all other submissions;
- c. A statement of matters officially noticed;
- d. All questions and offers of proof, objections, and rulings thereon;
- e. All proposed findings and exceptions;
- f. Any decision, opinion or report by the officer presiding at the hearing.

The term "all other submissions" as used in this rule includes, but is not limited to, all written arguments filed with the administrative law judge or the commission plus any attachments to such arguments. This term does not

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include any discovery materials not considered as evidence under subrule 4.7(3).

4.16(8) Standards of conduct.

a. All persons appearing in proceedings before the administrative law judge are expected to act with integrity and in an ethical manner.

b. The administrative law judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The administrative law judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The administrative law judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative. In accordance with Rule 1.2, Filing, Rules of Procedure of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association, the administrative law judge may also file a complaint with the committee if the judge believes that there has been a violation by an attorney of the Iowa code of professional responsibility for lawyers.

c. An order barring an individual from participation in a proceeding should be made only in exceptional circumstances.

161—4.17(216) Evidence.

4.17(1) The administrative law judge shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.17(2) Stipulation of facts is encouraged. The administrative law judge may make a decision based on stipulated facts. Stipulated facts are binding on the administrative law judge and the commission when it has not been proven that the stipulation was the result of fraud, wrongdoing, misrepresentation, or was not in accord with the intent of the parties.

4.17(3) New issues at hearing.

a. Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice, under subrule 4.3(4) or by other express or implied waiver, or the administrative law judge determines that good cause justifies their expansion. If the administrative law judge decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely motion, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue. The scope of the issues at public hearing shall include the facts as uncovered in the investigation and shall not be limited to the allegations as stated in the original complaint.

b. Exceptions. This rule does not apply to stipulations as to factual issues under subrule 4.17(2) or prehearing orders expressly limiting the issues. Such stipulations and prehearing orders may be modified only to prevent manifest injustice.

4.17(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.17(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The administrative law judge may rule on the objection at the time it is made or may reserve ruling until the written decision. Evidentiary objections, other than those based on relevancy, materiality, or unduly repetitious evidence, privilege, discovery rules, or scope of examination, or any ground for which a ruling is compulsory as a matter of law, shall be simply noted in the record by the administrative law judge.

4.17(6) Whenever evidence is ruled inadmissible, the party offering that exhibit may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the administrative law judge, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

4.17(7) Although the rules of evidence do not apply in a contested case hearing, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The commission shall give effect to the rules of privilege recognized by law.

4.17(8) The authenticity of all documents submitted as proposed exhibits at least ten days in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

4.17(9) No evidence shall be received at any hearing concerning offers or counteroffers of adjustment during efforts to conciliate or settle an alleged unfair or discriminatory practice.

161—4.18(216) Evidence of past sexual practices.

4.18(1) Discovery regarding past sexual practices. In a contested case alleging conduct which constitutes sexual harassment, a party seeking discovery of information concerning the complainant's sexual conduct with persons other than the person who committed the alleged act of sexual harassment must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.

4.18(2) Evidence of past sexual practices inadmissible. In a contested case against a respondent which is accused of sexual harassment, or whose agent or employee is accused of sexual harassment, evidence concerning the past sexual behavior of the alleged victim is not admissible.

161—4.19(216) Cost of copies of record. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record shall be paid by the requesting party.

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161—4.20(216) Posthearing briefs.

4.20(1) In general. The administrative law judge may fix times for submission of posthearing briefs. Unless otherwise ordered by the administrative law judge, such briefs shall be filed simultaneously by all parties and there shall be no page limit nor any other formal requirements.

4.20(2) Reply briefs. If simultaneous briefs are filed, then any party may file a reply brief within ten days after service of the brief to which the reply is made.

4.20(3) Supplemental briefs. Posthearing briefs in addition to those ordered by the administrative law judge under subrule 4.20(1) or those allowed by 4.20(2) may be filed only upon application to the administrative law judge.

4.20(4) Extensions. A motion for an extension of the time to file a brief shall be made no later than the day before the brief is due. A motion for an extension to file a brief may be oral and may be granted ex parte where the movant represents either (a) that the other parties who are filing briefs have been notified and that the motion is unopposed or (b) that there is an emergency which justifies such a request. An order granting an extension shall be in writing.

4.20(5) Late filing. Upon motion and within the discretion of the administrative law judge, a brief which is filed late may be struck.

4.20(6) Failure in a party's briefs to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue by that party before the administrative law judge.

161—4.21(216) Findings of fact submitted by parties.

4.21(1) Restrictions. Except as allowed by subrule 4.21(2), the parties may not file proposed findings of fact with the administrative law judge. Proposed findings of fact which are filed but which do not satisfy subrule 4.21(2) shall be struck from the record by the administrative law judge.

4.21(2) Exception. Proposed findings of fact may be filed if:

a. Allowed by order of the administrative law judge; or
 b. All parties to the contested case have filed a written stipulation that the parties waive the requirement that the administrative law judge's decision include a ruling upon each proposed finding of fact as required by Iowa Code subsection 17A.16(1). The following statement will be sufficient to meet the requirement of this subrule: "Pursuant to Iowa Civil Rights Commission rule 161—4.21(216) we hereby waive our rights to have the decision in this matter include a ruling upon each of the proposed findings of fact which the parties to this contested case may file or may have filed with the administrative law judge."

c. A waiver filed pursuant to this rule waives only the right to have a specific ruling for each of the proposed findings submitted. Such a waiver affects no other right of the waiving parties.

d. The Iowa civil rights commission hereby consents to all waivers of the kind described in paragraph "b" of this subrule.

4.21(3) Miscellaneous.

a. If a party desires to file proposed findings of fact as well as any proposed conclusions of law, the party must file them at the time fixed by the administrative law judge for that party to file its posthearing brief.

b. If proposed findings of fact are struck pursuant to this rule, they may be reinstated and considered if the par-

ties subsequently file a waiver as specified in subrule 4.21(2)"b."

c. In the event a party files proposed findings of fact and conclusions of law in a manner which does not conform to this rule, and the party has not filed a brief, such proposed findings of fact and conclusions of law shall be considered as a brief.

161—4.22(216) Requests to present additional evidence.

4.22(1) In general. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence.

4.22(2) After proposed decision issued. If a request to present additional evidence is made after the issuance of the proposed decision by the administrative law judge, then the request must be filed with the appeal or, by a nonappealing party, within five days after the service of the appeal. If the commission grants the motion to present additional evidence, the commission shall remand the case to the administrative law judge for the taking of the additional evidence and any appropriate modification of the proposed order.

161—4.23(216) Proposed decision.

4.23(1) Written decision. After a review of the transcript, the evidence, and the briefs, the administrative law judge shall set forth, in writing, findings of fact, conclusions of law, and a proposed decision and order, as the proposed decision to the commission for its adoption, modification, rejection, or remand to obtain additional evidence, to make new findings of fact, or to make new conclusions of law.

4.23(2) Notification. Upon receipt of the administrative law judge's proposed decision, the commission shall forward a copy of the proposed decision to each of the parties by certified mail. A copy shall also be sent to counsel and to each commissioner.

161—4.24(216) Objection to proposed decision.

4.24(1) How filed. No later than 12 days after the issuance of the administrative law judge's proposed decision, any party may file objections with the administrative law judge and serve copies on the other parties. Any party filing objections shall file one original and nine copies of such objections with the administrative law judge. The other parties may file a response to the objections no later than seven days after service of the objections. Any party filing a response shall file one original and nine copies of such response with the administrative law judge.

4.24(2) Effect. The administrative law judge may reconsider the portion of the proposed decision objected to and may order oral argument. If the administrative law judge does not rule on the objections within 20 days after the objections are filed, the objections shall be deemed to be overruled. This 20-day period may be extended by order of the administrative law judge. Copies of any written ruling on objections shall be provided by regular mail to the parties, their attorneys, and the commissioners.

4.24(3) Scope of objections.

a. Objections may address only the following issues:
 (1) Any issues raised prior to the proposed decision by a party, but not ruled upon, and
 (2) Issues discussed in the proposed decision, but not argued on brief by the party filing objections.

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b. Any objections or any portion of objections which challenge the proposed decision based upon issues other than those listed in this subrule shall be overruled.

4.24(4) Relationship between objections and appeal to the commission. The filing of objections with the administrative law judge does not constitute the filing of an appeal with the commission. If objections are filed by a party, but no appeal is timely filed by that party, the party's objections are deemed to have no effect. Where no appeal is timely filed by a party, any ruling by the administrative law judge on the party's objections, whether in writing or by operation of this rule, is also of no effect and constitutes neither a proposed nor final action by the commission.

The filing of an appeal under rule 4.26(216) does not affect the administrative law judge's authority to address objections filed under this rule.

4.24(5) Commission review of objections. When either party has filed a timely appeal of a proposed decision, the commission shall automatically review all written rulings on objections filed by either party. A proposed written ruling on objections is never final until reviewed by the commission. The objections of a party and the proposed written ruling, if any, on the objections shall be reviewed at the same meeting as that at which the commission reviews the proposed decision and the party's appeal to the proposed decision. If the party has not timely filed an appeal, its objections shall not be considered by the commission.

4.24(6) For the purpose of this rule, "filed with the commission" shall mean receipt of the objections and any supporting brief or reply brief or brief in support of the proposed decision by the commission at its offices in Des Moines. All objections and briefs shall be sent to the administrative law judge in care of the commission at its Des Moines address.

161—4.25(216) Review of proposed decision on appeal to the commission.

4.25(1) Time limits for appeals or commissioner motions for review. An appeal and any supporting brief must be filed with the commission no later than 30 calendar days after issuance of the proposed decision unless the commission grants an extension of time for good cause. If, upon the expiration of this period, no appeal has been filed, the proposed decision shall, by operation of this rule, be adopted as the commission's final decision unless, prior to the expiration of this period, any commissioner makes a motion in writing to review the proposed decision. Such motion shall be filed with the executive director and will automatically result in a review of the case by the commission.

4.25(2) Time limits for reply briefs and briefs in support of the proposed decision. Briefs in reply to appeals and briefs supporting the proposed decision must be filed within 45 calendar days after issuance of the proposed decision unless the commission grants an extension of time for good cause. Any extension of time granted for the filing of any appeal or supporting brief shall operate to automatically extend the time for the filing of any reply brief or brief in support of the proposed decision by an equivalent amount.

4.25(3) Time limits for review of the proposed decision. If an appeal is filed, the commission shall review the proposed decision at a commission meeting within 90 calendar days after the filing of the last such appeal. If no appeal is filed, but a commissioner has filed a written mo-

tion for review, the commission shall review the proposed decision at a commission meeting within 90 calendar days after the timely filing of the first motion for review. If no final decision or remand order is rendered by the commission within 90 calendar days after the last timely filed appeal or first timely filed motion for review by a commissioner, the proposed decision shall, by operation of this rule, be adopted as the commission's final decision.

4.25(4) Review date. If an appeal or motion for review is filed, the executive director shall set a review date. The parties shall be notified of this date by certified mail. Copies of this notification shall also be sent to counsel and the commissioners. In setting the review date, the executive director may consult with the administrative law judge in order to ascertain whether a ruling on objections shall be made before the 20-day deadline.

4.25(5) Review date. If objections are filed pursuant to rule 4.24(216), there shall be a minimum of 30 calendar days between the date the objections are ruled upon or are deemed denied and the date of the meeting at which the commission reviews the proposed decision along with any proposed ruling on the objections.

4.25(6) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. A notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall state:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.25(7) "Filed with the commission" defined. For the purposes of this rule, "filed with the commission" shall mean receipt of an original and nine copies of the notice of appeal and any supporting brief, or reply brief or brief in support of the proposed decision, by the commission at its offices in Des Moines. All appeals and briefs shall be sent to the administrative law judge in care of the commission at its Des Moines address.

4.25(8) Settlements. Notwithstanding any other provision of these rules, in the event a settlement of the contested case is reached, the commission's legal representative shall so inform the commission and no review of the contested case shall be conducted by the commission.

161—4.26(216) Oral argument. All parties or their attorneys shall be allowed five minutes to present oral argument to the commission whenever the commission reviews a proposed decision pursuant to rule 4.25(216). The commission may, in its discretion, allow oral argument to continue longer.

161—4.27(216) Scope of review by commission.

4.27(1) In general. Whenever the commission reviews a proposed decision, it has all the power it would have in initially making the final decision. The commission may adopt, modify or reject the administrative law judge's proposed decision or it may remand the case to the administrative law judge for the taking of additional evidence and the making of any further proposed findings of fact, conclusions of law, or decision and order the commission deems necessary.

4.27(2) Limitation of issues. Whenever the commission reviews a proposed decision, it shall consider only

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those issues actually presented to the administrative law judge, either prior to the proposed decision or pursuant to rule 4.24(216). This rule does not affect a party's right to seek disqualification of a commissioner under rule 4.13(216).

161—4.28(216) Content of orders. Orders of the commission shall seek to remedy an injury in accordance with the intent of Iowa Code chapter 216.

161—4.29(216) Awards of attorney's fees.

4.29(1) Retention of jurisdiction. In any final decision in which it is determined that the complainant is entitled to an award of attorney's fees, but the actual amount has not yet been determined, there is, by operation of this rule, an express retention of jurisdiction of the case by the commission in order to determine the actual amount of attorney's fees to which the party is entitled and to enter a subsequent order awarding those fees, regardless of whether or not such retention of jurisdiction is expressed in the final decision. In such case, the decision is final in all other respects except the determination of the amount of the attorney's fees.

4.29(2) Stipulation. A final decision in which it is determined that the complainant is entitled to an award of attorney's fees may provide for an opportunity for the parties to file a written stipulation concerning the amount of the fees to be awarded. Any such stipulation entered into by the complainant(s) and respondent(s) is binding on the commission in the absence of evidence of fraud, wrongdoing, misrepresentation, or evidence that the stipulation is not in accord with the intent of the parties.

4.29(3) Hearing. If the amount of attorney's fees is not stipulated to by the parties, the administrative law judge shall schedule a hearing on the issue of the amount of the attorney's fees. The hearing shall be governed by the same procedures as a hearing on the merits of a complaint except where otherwise ordered by the administrative law judge. The parties may elect, by written stipulation, to utilize some method, such as stipulation of facts or submission of a documentary record, other than or complementary to a hearing, in order to make a record on attorney's fees which may then be reviewed by the administrative law judge. By operation of this rule, the commission expresses its consent to such stipulations if agreed to by the parties seeking and contesting attorney's fees. The record of the original hearing is part of the record on the attorney's fee issue. Regardless of the method by which the record is made, the complainant has the burden of persuasion in proving attorney's fees.

161—4.30(216) Application for rehearing.

4.30(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.30(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in rule 4.22(216), the applicant requests an opportunity to submit additional evidence.

4.30(3) Time of filing. The application shall be filed with the commission within 20 days after the issuance of the final decision.

4.30(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties

of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.30(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

161—4.31(216) Hearing—other reasons. At any other time, the commission, executive director, or designee may, in its discretion, convene a hearing whenever a problem of discrimination arises; in order to expedite the disposition of preliminary matters in any action before it; or when in the judgment of the commission, executive director or designee, the circumstances warrant.

161—4.32(216) Waiver, modification of rules.

4.32(1) By administrative law judge. Upon notice to all parties, the administrative law judge may, with respect to matters pending before the administrative law judge, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served.

4.32(2) By parties. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the administrative law judge, in the discretion of the administrative law judge, may refuse to give effect to such a waiver when the administrative law judge deems the waiver to be inconsistent with the public interest.

161—4.33(216) Expanded media coverage.

4.33(1) General. Broadcasting, televising, recording and photographing will be permitted in the hearing room and adjacent areas during sessions of the hearing, including recesses between sessions, under the following conditions:

a. Expanded media coverage of a proceeding shall be permitted unless the administrative law judge concludes, for reasons stated on the record, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of parties to a fair trial.

b. There shall be no audio pickup or broadcast of conferences in a hearing between attorneys and their clients, between co-counsel, between counsel and the presiding administrative law judge held at the bench or in chambers or other private location.

4.33(2) The administrative law judge may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds (a) these rules or any additional rules imposed by the administrative law judge have been violated, or (b) that substantial rights of individual participants or rights to a fair hearing will be prejudiced by such manner of coverage if it is allowed to continue.

4.33(3) The rights of photographic and electronic coverage provided for herein may be exercised only by persons or organizations which are part of the news media.

4.33(4) Technical.

a. Equipment specifications. Equipment to be used by the media in hearing rooms must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the hearing room, must

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be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the proceedings being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Microphones for use of counsel and judges shall be equipped with off/on switches to facilitate compliance with this subrule, paragraph "f."

b. Lighting. Other than light sources already existing in the hearing room, no flashbulbs or other artificial light device of any kind shall be employed in the hearing room.

c. Television. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside of the hearing room.

d. Audio. Where possible, electronic recording equipment and operating personnel shall be located outside of the hearing room.

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

f. Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain proper hearing room decorum at all times while covering a proceeding.

ARC 3766A**CORRECTIONS DEPARTMENT[201]****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 246.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

Amendments to rule 20.5(246) further clarify the types of clothing that can be purchased for inmates by outside persons and the vendors from which items can be purchased.

Persons may submit written comments to the Director no later than March 9, 1993, at 523 East 12th Street, Des Moines, Iowa 50319.

These amendments were approved by the Corrections Board at their regular meeting on January 25, 1993.

These amendments are intended to implement Iowa Code section 246.108.

The following amendments are proposed.

Amend rule 201—20.5(246) as follows:

201—20.5(246) Gifts to inmates. Gifts may be sent to inmates, but the necessary restrictions of security, personal safety and hygiene, and problems associated with transfer between institutions must be observed.

20.5(1) Since problems are alleviated when purchases are made through the institution's authorized vendors, persons should send money orders according to 20.4(3) for gifts rather than items. Any item not approved per the institution's property list shall be returned to the senders or the inmate's family at the expense of the inmate or disposed of at the inmate's choice.

20.5(2) Preapproved items may be ordered by family or friends for inmates, ~~but through the institution's approved mail order vendors.~~ Preapproved items shall be sent directly by mail from the mail order company where the purchase was made. Minimum security institutions may allow additional items, as approved by the warden/superintendent or designee, to be brought directly to the institution. *No cash refunds will be granted to inmates on returned gift items.*

a. Preapproved items for the men's correctional institutions:

(1) Solid color, *short-sleeved* T-shirts with no lettering or symbols.

(2) Nonhooded solid color sweatshirts with no lettering or symbols. (In maximum security institutions and medium or minimum security satellite units of maximum security, only blue or gray sweatshirts are permitted.)

(3) Plain style blue jeans of denim or denim appearing material with no extra pockets, decorative leather cloth trim, beads, or similar decoration. (In maximum security institutions, this item is not permissible.)

(4) Socks.

(5) Men's pajamas (*no nightshirts or bed jackets*).

(6) Male undergarments.

(7) Electric or disposable razors.

(8) Unframed photographs of appropriately clothed individuals; which do not exceed eight inches by ten inches.

b. No change.

ARC 3769A**CORRECTIONS DEPARTMENT[201]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 246.108 and 17A.4(1)"b," the Department of Corrections hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 19, 1992, as ARC 2807A amending Chapter 21, "Iowa State Penitentiary," Iowa Administrative Code.

Amendments to rules 21.2(246) and 21.5(246) relating to visitation are being terminated because the Department's effort to amend the Hazen vs. Reagan Consent Decree to reduce the number of visiting hours at the Iowa State Penitentiary was denied by the U. S. Federal Court. As a result of this unfavorable decision, there is no further need to proceed with rule making.

This termination was approved by the Corrections Board at the regular meeting of the Board on January 25, 1993.

ARC 3767A

CORRECTIONS DEPARTMENT[201]

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 246.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 24, "Medium Security Unit," Iowa Administrative Code.

The Department proposes to amend rule 24.2(246) by changing the name of the institution from "Medium Security Facility" to its legal name of "Mount Pleasant Correctional Facility," allow visitors to leave money for inmates at the institution business office as opposed to the Mental Health Institution, and reduce the number of days the visiting room is open from seven days to six days by closing the visiting room on Mondays.

A public hearing is scheduled for March 9, 1993, from 1 p.m. to 3 p.m. in the Corrections Conference Room at 523 East 12th Street, Des Moines, Iowa 50319.

Written comments may be submitted to the Director no later than March 9, 1993, at the above address.

This amendment was approved by the Corrections Board at their regular meeting on January 25, 1993.

This amendment is intended to implement Iowa Code sections 246.108 and 246.512.

The following amendment is proposed.

Amend rule 201—24.2(246) as follows:

201—24.2(246) Mt. Pleasant ~~medium-security~~ correctional facility.

24.2(1) Visiting.

a. Visitors shall not give any article to inmates during a visit. Money may be left at the ~~mental health institute~~ institutional business office during business hours.

b. Visiting hours are ~~Monday~~, Wednesday, Friday, and Sunday from 9 a.m. to 3:30 p.m., and Tuesday, Thursday, and Saturday from 12 noon to 7:45 p.m. Inmates will be permitted eight visits a month from each approved person on the visiting list. *The visiting room will be closed on Mondays unless a state holiday falls on that day, in which case visiting hours will be 9 a.m. to 3:30 p.m.*

c. Visits may be limited to two hours in length.

d. A maximum of five persons may visit with one inmate at any one time.

e. A maximum of two inmates may visit with a visitor. Both inmates shall be members of the visitor's immediate family.

24.2(2) Tours.

a. Scheduled evening tours for the general public are conducted and shall be scheduled through the superintendent's office. Daytime tours are limited to professional groups in work related to corrections and/or school groups.

b. Tours shall be approved by the superintendent or the assistant to the superintendent.

These rules are intended to implement Iowa Code sections 246.108 and 246.512.

ARC 3768A

CORRECTIONS DEPARTMENT[201]

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 246.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to rescind Chapter 26, "North Central Correctional Facility," and adopt a new Chapter 26, "North Central Correctional Facility," Iowa Administrative Code.

The Department proposes to rescind and rewrite rules 26.1(246) and 26.2(246) and implement new rule 26.3(246) which establishes specific guidelines for visitation of inmates, tours, and inmate trips.

Rewritten rule 26.1(246) reorganizes the current rule and includes a number of substantive changes which reflect current policy and practice. This rule also changes the visiting hours on Thursday and Friday from 8:30 a.m. to 3:30 p.m. to 12:30 p.m. to 7:30 p.m. with no reduction in total visiting hours.

Subrule 26.1(1) changes the visiting hours on Thursday and Friday to 12:30 p.m. to 7:30 p.m. and establishes visiting hours from 8:30 a.m. to 3:30 p.m. on Tuesday or Wednesday if a state holiday falls on either of these two days which are days that the visiting room is normally closed.

Subrule 26.1(2) clarifies items that are allowed to be brought into the visiting room by visitors.

Subrule 26.1(3) prohibits the exchange of any article between the visitor(s) and inmate.

Subrule 26.1(4) allows visitors to leave money for the inmate at the institution's business office.

Subrule 26.1(5) establishes the length of visits and the modification/termination of visits for security reasons.

Subrule 26.1(6) establishes the number of visits per month per visitor.

Subrule 26.1(7) establishes the maximum number of visitors at any one time per inmate.

Subrule 26.1(8) establishes a maximum of two inmates who may be visited by an immediate family member at one time.

Subrule 26.1(9) establishes guidelines for attorney and chaplain visits.

Subrule 26.1(10) established guidelines for inmate visits while in segregation status.

Subrule 26.2(1) establishes guidelines for public tours of the institution.

Subrule 26.2(2) prohibits sight-seeing tours unless specifically approved by the Warden.

Subrule 26.2(3) establishes days and times for which tours will be conducted.

Subrule 26.2(4) establishes a minimum age for persons requesting to tour.

Subrule 26.2(5) establishes a maximum number of persons allowed on any one tour.

Subrule 26.2(6) requires Warden approval for relatives or friends of inmates to tour.

Subrule 26.2(7) requires all tours to be approved by the Warden.

CORRECTIONS DEPARTMENT[201](cont'd)

New rule 26.3(246) establishes guidelines for outside groups or organizations requesting inmate attendance.

Persons may submit written comments to the Director no later than March 9, 1993, at 523 East 12th Street, Des Moines, Iowa 50319.

These rules were approved by the Corrections Board at their regular meeting on January 25, 1993.

These rules are intended to implement Iowa Code section 246.512.

The following chapter is proposed.

Rescind 201—Chapter 26 and insert the following in lieu thereof:

CHAPTER 26

NORTH CENTRAL CORRECTIONAL FACILITY

201—26.1(246) Visiting.

26.1(1) Visiting hours are from 8:30 a.m. to 3:30 p.m. on Saturday, Sunday and Monday. On Thursday and Friday visiting hours are from 12:30 p.m. to 7:30 p.m. There is no visiting on Tuesday and Wednesday unless a recognized state holiday falls on either of these days, and then the visiting hours shall be 8:30 a.m. to 3:30 p.m.

26.1(2) Visitors are authorized to bring in only the following items to a visit: one small change purse, wallet or billfold, as long as it does not contain paper money; coin money for the purpose of purchasing items from the vending machines; and, when applicable, one baby bottle, one jar of baby food, three baby diapers, one carrying bag, and one infant seat. Tobacco products are not allowed in the visiting room as smoking is not permitted at any time.

26.1(3) Visitors shall not give any article to inmates during a visit. This does not apply to purchases from the vending machines which must be consumed during the visit.

26.1(4) Visitors may leave money for inmates at the facility's business office during normal business hours.

26.1(5) Inmates are permitted three-hour visits on Saturday, Sunday, and recognized state holidays, and four-hour visits are permitted on Monday, Thursday, and Friday. Visits may be extended at the discretion of the warden when visitors are from great distances or when they are only able to make rare visits or in cases when an inmate is in need of comfort during a time of personal or family crisis. Visits may be temporarily modified, suspended, or terminated by the warden due to a disturbance, riot, fire, labor dispute, natural disaster, or other emergency; and, visits may be temporarily modified or terminated by the shift supervisor due to disruptive conduct by the inmate or visitor or due to space restrictions in the visiting room.

26.1(6) Inmates are permitted eight visits per month from each approved person on the inmate's visiting list.

26.1(7) A maximum of five persons may visit one inmate at a time.

26.1(8) A maximum of two inmates may be visited by a visitor at a time provided both inmates are members of the visitor's immediate family.

26.1(9) Visits with attorneys or chaplains shall be conducted during normal business hours unless previously approved by the warden.

26.1(10) Inmates in administrative segregation and disciplinary detention may have their visits modified as to length of time and location depending on the conduct which caused placement in that status.

201—26.2(246) Tours.

26.2(1) Tours of the facility are classified as either regular or official tours. A regular tour is given to per-

sons with a genuine interest in corrections and for whom the tour might prove to be beneficial or enlightening, such as students, representatives of the criminal justice system, and probationers under the jurisdiction of the department of corrections or the judicial system. An official tour is given to persons directly related to the operation of the facility such as legislators and the board of corrections.

26.2(2) Sight-seeing tours to the general public shall not be allowed unless approved by the warden for specific reasons.

26.2(3) Regular tours shall be conducted on Tuesday and Wednesday between the hours of 9 a.m. and 3 p.m. while official tours shall be conducted during the daytime or evening hours on a day scheduled by the warden.

26.2(4) Minimum age for regular tours is 12 years of age.

26.2(5) Tour groups larger than 30 persons, excluding nonstaff sponsors, shall not be allowed.

26.2(6) Prior approval from the warden is required for relatives or close friends of inmates to tour the facility.

26.2(7) All tours require the approval of the warden.

201—26.3(246) Inmate trips. An outside group wishing to have an inmate from one of the facility's approved organizations visit it shall send a written request to the warden. Trips are limited to a 100-mile radius from the facility.

ARC 3761A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 27, "Targeted Small Business Financial Assistance Program," Iowa Administrative Code.

The proposed amendments change the definition of "small business," describe the evaluation process, revise the evaluation criteria point assignments, provide more information on case management assistance, and make other administrative changes.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on March 11, 1993. Interested persons may submit written or oral comments by contacting: Donna Lowery, Division of Business Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4813.

A public hearing to receive comments about the proposed amendments will be held on March 11, 1993, at 10 a.m. at the above address in the IDED Division of Business Development conference room. Individuals interested in providing comments at the hearing should contact

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Donna Lowery by 4 p.m. on March 10 to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.247.

The following amendments are proposed.

ITEM 1. Amend rule 261—27.2(15) by amending the definition of "small business" as follows:

"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 20 employees or an average annual gross income of less than \$3 million computed as the average of the three preceding fiscal years.~~ *The average annual gross income of the business is based on the prior three years.*

ITEM 2. Amend rule 261—27.3(15) as follows:

261—27.3(15) Eligibility requirements.

27.3(1) Residence. An applicant must be a resident of Iowa to be eligible to apply for assistance. *Applicants may be asked to provide necessary documentation to prove legal residency.*

27.3(2) Business location. The business, or proposed business, must be located in the state of Iowa.

27.3(3) Targeted small business. An applicant may apply only on behalf of a business which meets the targeted small business definition. A business must be certified as a "targeted small business" by the Iowa department of inspections and appeals prior to application for financial assistance under this program.

27.3(4) Who may apply. Only persons who are owners (i.e., at least 51 percent owners and operators) of a targeted small business are eligible to apply. (This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, ~~satellite center, small business development centers, private sector service providers~~ or other similar agencies.)

27.3(5) Other program requirements. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

ITEM 3. Amend rule 261—27.4(15) as follows:

261—27.4(15) Loan and grant program.

27.4(1) Application procedures. Application materials may be obtained from the IDEED ~~division of financial assistance business finance bureau~~ or any small business development center (SBDC). ~~A business plan must accompany the application. It must address marketing, financing, operations, management, organization and personnel.~~

27.4(2) Maximum funding levels. In no case shall an award exceed \$25,000, nor in the case of a loan shall the interest rate charged exceed 5 percent per annum or be less than 0 percent per annum. Under no circumstances shall the targeted small business financial assistance program fund 100 percent of a project.

27.4(3) Forms of financial assistance available. The following types of financial assistance may be awarded under this program:

a. Direct loan. The term of loan shall not exceed five years; the interest rate shall not exceed 5 percent per annum.

b. Grant. Grant funds shall only be awarded in instances where the grant will leverage a significant amount of other financing, such as conventional or SBA financing packages. Leveraged financing shall be considered sig-

nificant when at least two dollars of leveraged funds are provided for every one dollar in grant funds. *The applicant must be able to demonstrate a cash investment of at least 10 percent in the project.*

27.4(4) Eligible uses of funds. Awards of funds under this program shall be used for legitimate business expenses, including, but not limited to, the following purposes: purchase of ~~and improvement of land and buildings;~~ equipment and furnishings, ~~working capital;~~ inventory, ~~purchase of and improvements to land and buildings~~ and *specific operating expenses.*

27.4(5) Ineligible uses of funds. Targeted small business financial assistance funds shall not be used to refinance existing debt. Existing debt in the context of this rule does not include interim financing obtained after the date of the targeted small business award. Neither shall the department award funds to facilitate financing of a project which would consist solely of relocation of an existing business within Iowa. *IDED may waive this limitation if the business demonstrates to IDEED that it faces unusual circumstances which make the relocation necessary for the business's continued viability.*

27.4(6) Threshold criteria. Applicants for funds under the targeted small business financial assistance program must meet the following minimum criteria before their application will be considered complete and eligible for ranking:

a. The business must be certified as a "targeted small business" by the Iowa department of inspections and appeals before applying for funding. In order to be certified as a targeted small business, a business owner must be a woman or targeted minority and have established at least 51 percent ownership of the business, and be actively involved in the *day-to-day* management of the business. *(The targeted business owner must have the expertise or related experience in order to be considered actively involved in the day-to-day management of the business.)*

~~b. The business must have fewer than 20 full-time employees (as defined by the U.S. Small Business Administration) or an average annual gross income of less than \$3 million based on the prior three year period.~~

b. After the TSB has been awarded a loan or grant, they must continue to be a certified TSB for the life of the loan or grant. Failure to meet this requirement may result in the loan or grant being called and due within 30 days. This will include all principal, interest and any penalties that have been assessed. If recertification occurs within 30 days of the date of the notice, the original terms will be reinstated.

27.4(7) Submittal process. All applications and related ~~informational~~ materials shall be submitted on forms prescribed by IDEED. Completed applications shall be submitted to: Targeted Small Business Financial Assistance Program, ~~Division of Financial Assistance Bureau of Business Finance,~~ Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

27.4(8) Review process. All *completed* TSB applications are reviewed by the program manager on an ongoing basis. Applications are reviewed for completeness. If additional information is required, the program manager shall send the applicant notice to submit additional information. The applicant shall then have three weeks from the date of the IDEED letter to submit the requested information.

Application requests are initially rated for funding by IDEED staff. They are then reviewed on a monthly basis

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261](cont'd)

by a loan review committee. The loan review committee is comprised of private sector representatives experienced in small business management and operation. *The loan review committee membership shall consist of three private sector representatives. It requires the vote of at least two committee members to recommend action on an application to the director. If there is less than a quorum of the loan review committee, three IDED staff individuals within the bureau of business finance will act on behalf of the loan review committee and make a recommendation to the director.* Recommendations by the committee are submitted to the director of the department of economic development for final approval, denial or deferral. The committee may recommend to approve, deny, or defer an application.

27.4(9) Rating factors. Applicants must score a minimum of 60 out of a possible 100 points in order to be recommended for funding. Points are awarded based on the information contained in the application according to the following criteria:

a. Business plan (25 20 points possible). *Factors considered include: Does the application contain significant information regarding the product or service to be offered? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions, e.g., third-party documentation regarding market size, annual sales and competition?*

b. Financial plan (25 20 points possible). *Factors considered include: Does the application contain comprehensive two-year cash flow projections which show the viability of the business? Does the application provide completed personal financial information and information on other funding sources?*

c. Financial need (10-20 points possible). *Factors considered include: The applicant's ability or inability to secure a loan from conventional sources (i.e., bank, savings and loan, credit union, SBA) for the business venture and personal liquid assets.*

d. Marketing plan (15-5 points possible). *Factors considered include: Does the application contain sufficient information to ascertain that the applicant fully understands who the customers are and how to effectively reach them?*

e. Management expertise (15 points possible) and related experience (20 points possible). *Factors considered include: Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?*

f. Loan repayment plan (10 points possible). *Factors considered include: Does the application document the business's ability to service its debt?*

g. Nontraditional (5 points possible). *Factors considered include: Is the proposed business category one in which TSBs have traditionally been underrepresented as owners?*

27.4(10) Negotiations of funds awarded.

a. The department reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan or grant prior to award.

b. *The department may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens).*

27.4(11) Award process. Upon approval by the director, the applicant business will receive an award letter which shall state the amount of award, conditions of the

award, any security agreements, and the amount of monthly loan repayments.

27.4(12) Contract. Following notification of award, contracts are prepared for execution between the business owner and IDED. ~~Business owners are subject to credit checks at this time. If judgments, federal tax liens, or state liens are found, funding may be denied.~~ After execution of the contract, the business owner may request disbursement of funds, on the form prescribed by IDED. The time frame between final award date and disbursement of funds will generally be one to two months.

27.4(13) Deferral process. Applications may be deferred only one time by the loan review committee. If all additional information requested is received within the three-week time frame, the application will be considered on the following month's agenda. If information is not received in a timely manner, second consideration will be delayed by 30 days. No application will be held for over 60 days. If the request for additional information is not answered, the application will be denied.

27.4(14) Reapplication. Upon denial by the director, an applicant cannot resubmit an application for funding under the targeted small business financial assistance program for ~~six months (180 days)~~ 90 days (3 months) from the date of IDED's denial letter.

27.4(15) Default. When a loan is in default for a period of 60 days, the IDED shall notify the office of the attorney general and ~~recommend request~~ appropriate action.

27.4(16) Misuse of funds. *A person receiving funds under the TSB financial assistance loan program may be subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement in writing to procure economic development assistance from the state.*

27.4(17) Comprehensive management assistance and entrepreneurial development.

a. *Limitation. Comprehensive management assistance and entrepreneurial development is limited to businesses or individuals that have been awarded TSB funding.*

b. *Use of funds. Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:*

1. Management skills;
2. Inventory controls;
3. Financial controls;
4. Marketing plans;
5. Personnel assistance; or
6. Other related business assistance.

c. *Determination of assistance. The administrator for the division of business development shall have the authority to approve contracts for management assistance. The maximum of case management assistance shall not exceed \$2,500 per business or individual.*

ITEM 4. Amend rule 261—27.7(15) as follows:

261—27.7(15) Monitoring and reporting for loan, grant, and loan guarantee programs.

27.7(1) Monitoring. The IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. *The department retains the authority to request information on the condition of the business at any time during the life of the loan to determine the status of the project. IDED staff will contact the loan or grant recipient within 90 days of the award and as fre-*

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261](cont'd)

quently as conditions may warrant during the life of the loan or grant.

27.7(2) Management assistance. The department may require a program recipient to consult with designated small business providers for assistance with various aspects of the management and operation of the business.

~~27.7(3) Reporting. Assisted businesses are required to report to IDEED on a regular basis and in a format required by the department.~~

ARC 3756A

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 sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendments establish designated uses for various water bodies for the purpose of applying existing surface water quality criteria and revise the publication date on a rule referenced document, "Iowa Water Quality Standards: Protected Flows For Selected Stream Segments."

Numerical water quality standards must normally be met when the flow of the receiving stream equals or exceeds the seven-day, ten-year low flow. However, subrule 61.2(5) allows that under certain conditions the seven-day, ten-year low flow may be waived and a numerically higher value may be established. Minimum flows established under this waiver provision are published in the document "Iowa Water Quality Standards: Protected Flows For Selected Stream Segments." Minimum flow values have been determined for an additional 126 stream segments throughout Iowa and have been added to this rule referenced document. Item 1 in this Notice amends the publication date of this document. This document will be revised and updated as the need arises. A copy of the document is on file with the Iowa Administrative Rules Coordinator.

The amendments proposed in Item 2 add designated uses for numerous stream segments. The amendments represent the fifth round of a multiyear effort to establish stream use designations in accordance with the aquatic use protection classifications adopted by the Commission in May 1990 and currently found in subrule 61.3(1). The 237 stream segments listed under Item 2 generally represent water bodies which are currently considered general use waters but are proposed to be designated as either Class B(LR) Limited Resource warm waters or Class B(WW) Significant Resource warm waters.

Any person may submit written suggestions or comments on the proposed rule changes through March 20, 1993. Such written material should be submitted to Ralph Turkle, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034, or FAX (515)281-8895. Persons who have questions may contact Ralph Turkle at (515)281-7025. Persons are also invited to present oral or written comments at public hearings which will be held on:

March 9, 1993

10:30 a.m. in the City of Denison Community Room, 111 N. Main, Denison.

7 p.m. in the Algona Public Library, Room A, 210 N. Phillips, Algona.

March 10, 1993

10:30 a.m. in the City of Independence Council Chambers, 313 1st St. East, Independence.

1 p.m. in the Henry Wallace Building, 5th Floor Conference Room (West Half), 900 East Grand, Des Moines.

7 p.m. in the City of Decorah Council Chambers, 400 Claiborne Dr., Decorah.

These amendments may have an impact upon small businesses.

Copies of these proposed amendments may be obtained from Sarah Detmer, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule 61.2(5), first unnumbered paragraph, to reflect the revised date for the rule referenced document as follows:

The minimum flows, commonly termed protected flows, are presented in "Iowa Water Quality Standards: Protected Flows For Selected Stream Segments," dated ~~February 25, 1992~~ February 1, 1993. A copy of this document is available upon request from the department. A copy is also on file with the Iowa Administrative Rules Coordinator.

ITEM 2. Insert the following into paragraph 61.3(5)"e" in its natural sequence or hydrological order:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

e.

WESTERN IOWA RIVER BASINS

Western Iowa River Basins (Missouri, Big Sioux, and Little Sioux Rivers)

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Western Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Ashton Cr. - 18	Henry Cr. - 24	Rock Cr. - 20
Bacon Cr. - 16	Jordan Cr. - 7	Silver Cr. - 12
Battle Cr. - 10	Keg Cr. - 1	Silver Cr. - 21
Beaver Cr. - 9	Little Maple R. - 13	Soldier R. - 6
Big Cr. - 15	Maple Cr. - 14	Willow Cr. - 3
Brooke Cr. - 25	Montgomery Cr. - 28	Willow Cr. - 19
East Boyer R. - 4	Mud Cr. - 30	Willow Cr. - 23
East Soldier R. - 8	Otter Cr. - 5	Willow Cr. - 27
Elk Cr. - 11	Pierson Cr. - 17	Wolf Cr. - 31
Fox Run - 26	Pigeon Cr. - 2	
Gray Cr. - 22	Prairie Cr. - 29	

WESTERN IOWA RIVER BASINS	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - MISSOURI R. AND ITS TRIBUTARIES								
KEG CR. AND ITS TRIBUTARIES								

Keg Cr.

- Mouth (S6, T71N, R43W, Mills Co.) to confluence with an unnamed tributary (S1/2, S35, T78N, R41W, Harrison Co.)

PIGEON CR. AND ITS TRIBUTARIES

Pigeon Cr.

- Mouth (S3, T75N, R44W, Pottawattamie Co.) to confluence with North Pigeon Cr. (S5, T76N, R43W, Pottawattamie Co.)

BOYER R. AND ITS TRIBUTARIES

Willow Cr.

- Mouth (S28, T78N, R44W, Harrison Co.) to confluence South Willow Cr. (S27, T82N, R42W, Monona Co.)

East Boyer R.

- Mouth (S10, T83N, R39W, Crawford Co.) to confluence with an unnamed tributary (NW1/4, S15, T84N, R37W, Crawford Co.)

Otter Cr.

- Mouth (S18, T84N, R38W, Crawford Co.) to confluence with East Otter Cr. (NW1/4, S13, T85N, R39W, Crawford Co.)

			X					
			X					
			X					
			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
WESTERN IOWA RIVER BASINS								
MAJOR RIVER - MISSOURI R. AND ITS TRIBUTARIES								
BOYER R. AND ITS TRIBUTARIES								
SOLDIER R. AND ITS TRIBUTARIES								
<u>Soldier R.</u>								
6.			X					
Confluence with East Soldier River (S34, T84N, R42W, Monona Co.) to confluence with Little Soldier Cr. (S24, T86N, R40W, Ida Co.)								
<u>Jordan Cr.</u>								
7.			X					
Mouth (S16, T82N, R43W, Monona Co.) to confluence with an unnamed tributary (SE 1/4, NE1/4, S10, T83N, R43W, Monona Co.)								
<u>East Soldier R.</u>								
8.			X					
Mouth (S34, T84N, R42W, Monona Co.) to confluence with Emigrant Cr. (S23, T84N, R41W, Crawford Co.)								
<u>Beaver Cr.</u>								
9.			X					
Mouth (S1, T85N, R41W, Crawford Co.) to confluence with an unnamed tributary (NW 1/4, S9, T85N, R40W, Crawford Co.)								
LITTLE SIOUX R. AND ITS TRIBUTARIES								
<u>Battle Cr.</u>								
10.			X					
Mouth (S26, T87N, R41W, Ida Co.) to confluence with an unnamed tributary (SW 1/4, S24, T88N, R41W, Ida Co.)								
<u>Elk Cr.</u>								
11.			X					
Mouth (S1, T87N, R40W, Ida Co.) to confluence with an unnamed tributary (W 1/2, S36, T88N, R39W, Ida Co.)								
<u>Silver Cr.</u>								
12.			X					
Mouth (S13, T88N, R39W, Ida Co.) to confluence with South Silver Cr. (S16, T88N, R39W, Ida Co.)								
<u>Little Maple R.</u>								
13.			X					
Mouth (SW 1/4, S34, T90N, R39W, Cherokee Co.) to confluence with an unnamed tributary (NE 1/4, S20, T90N, R38W, Buena Vista Co.)								
<u>Maple Cr.</u>								
14.			X					
Mouth (S5, T91N, R39W, Cherokee Co.) to confluence with an unnamed tributary (W 1/2, S1, T91N, R39W, Cherokee Co.)								

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

WESTERN IOWA RIVER BASINS		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - MISSOURI R. AND ITS TRIBUTARIES									
LITTLE SIOUX R. AND ITS TRIBUTARIES									
<u>Brooke Cr.</u>									
25.	Mouth (SW 1/4, S11, T93N, R38W, Buena Vista Co.) to confluence with an unnamed tributary (Center of S 1/2, S24, T92N, R38W, Buena Vista Co.)			X					
<u>Fox Run</u>									
26.	Mouth (SW 1/4, S12, T93N, R38W, Buena Vista Co.) to confluence with an unnamed tributary (NE 1/4, S19, T93N, R37W, Buena Vista Co.)			X					
<u>Willow Cr.</u>									
27.	Mouth (S17, T94N, R36W, Clay Co.) to confluence with an unnamed tributary (NW 1/4, S31, T95N, R37W, Clay Co.)			X					
<u>Montgomery Cr.</u>									
28.	Mouth (S3, T94N, R36W, Clay Co.) to confluence with an unnamed tributary (SE 1/4, S11, T94N, R36W, Clay Co.)			X					
<u>Prairie Cr.</u>									
29.	Mouth (S26, T96N, R36W, Clay Co.) to confluence with an unnamed tributary (S33, T96N, R36W, Clay Co.)			X					
MONONA-HARRISON DITCH AND ITS TRIBUTARIES									
<u>Mud Cr.</u>									
30.	Mouth (S31, T89N, R44W, Woodbury Co.) to confluence with an unnamed tributary (S6, T89N, R44W, Woodbury Co.)			X					
<u>Wolf Cr.</u>									
<u>(aka including Haitz Ditch)</u>									
31.	Mouth (S12, T84N, R45W, Monona Co.) to confluence with East Fork Wolf Cr. (S30, T87N, R43W, Woodbury Co.)			X					

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Iowa Water Quality Standards
Water Use Designations

SOUTHERN IOWA RIVER BASINS

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Southern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Carter Cr. - 5
Middle Silver Cr. - 2
Mud Cr. - 3

North Fabius R. - 4
Silver Cr. - 1
South Wyaconda R. - 6

SOUTHERN IOWA RIVER BASINS		A	B(LW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - NISHNABOTNA R. AND ITS TRIBUTARIES									
W. NISHNABOTNA R. AND ITS TRIBUTARIES									
	<u>Silver Cr.</u>								
1.	Highway 41 to confluence with Little Silver Cr. (S34, T78N, R40W, Shelby Co.)			X					
	<u>Middle Silver Cr.</u>								
2.	Mouth (S31, T74N, R41W, Pottawattamie Co.) to confluence with Little Silver Cr. (S12, T74N, R42W, Pottawattamie Co.)			X					
	<u>Mud Cr.</u>								
3.	Mouth (S31, T73N, R40W, Mills Co.) to confluence with an unnamed tributary (NW 1/4, S14, T73N, R41W, Mills Co.)			X					
MAJOR RIVER - NORTH FABIVS R. AND ITS TRIBUTARIES									
	<u>North Fabius R.</u>								
4.	Iowa-Missouri state line to confluence with an unnamed tributary (Center, S33, T68N, R15W, Davis Co.)			X					
MAJOR RIVER - CARTER CR. AND ITS TRIBUTARIES									
	<u>Carter Cr.</u>								
5.	Iowa-Missouri state line to confluence with an unnamed tributary (NW 1/4, S28, T68N, R14W, Davis Co.)			X					
MAJOR RIVER - SOUTH WYACONDA R. AND ITS TRIBUTARIES									
	<u>South Wyaconda R.</u>								
6.	Iowa-Missouri state line to confluence with an unnamed tributary (NE 1/4, S19, T68N, R13W, Davis Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - LOWER DES MOINES R. AND ITS TRIBUTARIES								
MIDDLE AVERY CR. AND ITS TRIBUTARIES								
<u>Middle Avery Cr.</u>								
3. Mouth (S25, T73N, R15W, Wapello Co.) to confluence with White Ash and Little Avery Crs. (W line, S12, T72N, R16W, Monroe Co.)			X					
<u>North Avery Cr.</u>								
4. Mouth (S34, T73N, R15W, Wapello Co.) to confluence with an unnamed tributary (Center, S34, T73N, R16W, Monroe Co.)			X					
CEDAR CR. AND ITS TRIBUTARIES								
<u>Cedar Cr.</u>								
5. Mouth (S33, T75N, R17W, Mahaska Co.) to confluence with North Cedar Cr. (NE 1/4, S15, T74N, R18W, Marion Co.)		X						
<u>North Cedar Cr.</u>								
6. Mouth (S15, T74N, R18W, Marion Co.) to confluence with Sage Cr. (SE 1/4, S7, T73N, R19W, Monroe Co.)			X					
SOUTH R. AND ITS TRIBUTARIES								
<u>South R.</u>								
7. Mouth (S12, T77N, R22W, Warren Co.) to confluence with Painter Cr. (SE 1/4, S13, T75N, R25W, Warren Co.)			X					
<u>Otter Cr.</u>								
8. Mouth (S34, T76N, R23W, Warren Co.) to confluence with Otter Cr. and South Otter Cr. (NW 1/4, S8, T73N, R23W, Lucas Co.)			X					
MIDDLE R. AND ITS TRIBUTARIES								
<u>Middle R.</u>								
9. Confluence with Flecher Branch (Madison Co.) to confluence with Bush Branch (S8, T75N, R29W, Madison Co.)		X						
<u>Middle R.</u>								
10. Confluence with Bush Branch (S8, T75N, R29W, Madison Co.) to confluence with an unnamed tributary (NE 1/4, S17, T78N, R32W, Guthrie Co.)			X					
<u>Clanton Cr.</u>								
11. Mouth (N 1/2, S28, T76N, R25W, Warren Co.) to confluence with Jones Cr.			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - LOWER DES MOINES R. AND ITS TRIBUTARIES								
MIDDLE R. AND ITS TRIBUTARIES								
<u>Welty Cr.</u>								
12. Mouth (S14, T75N, R29W, Madison Co.) to confluence with Rocky Branch (SE 1/4, S22, T75N, R29W, Madison Co.)			X					
<u>South Fork Middle R.</u>								
13. Mouth (S35, T78N, R32W, Guthrie Co.) to confluence with an unnamed tributary (S33, T78N, R32W, Guthrie Co.)			X					
NORTH R. AND ITS TRIBUTARIES								
<u>Cedar Cr.</u>								
14. Mouth (S9, T76N, R26W, Madison Co.) to confluence with an unnamed tributary (NW 1/4, S26, T76N, R28W, Madison Co.)			X					
<u>Howerdon Cr.</u>								
15. Mouth (S17, T76N, R28W, Madison Co.) to confluence with an unnamed tributary (SW 1/4, S25, T76N, R29W, Madison Co.)			X					
MAJOR RIVER - DES MOINES R. AND ITS TRIBUTARIES								
RACCOON R. AND ITS TRIBUTARIES								
<u>Panther Cr.</u>								
16. Mouth (S16, T78N, R28W, Dallas Co.) to confluence with West & East Panther Cr. (S16, T79N, R28W, Dallas Co.)			X					
<u>West Panther Cr.</u>								
17. Mouth (S16, T79N, R28W, Dallas Co.) to confluence with an unnamed tributary (NW 1/4, S9, T79N, R28W, Dallas Co.)			X					
<u>Bear Cr.</u>								
18. Mouth (S17, T78N, R28W, Dallas Co.) to confluence with an unnamed tributary (SW 1/4, S25, T78N, R29W, Dallas Co.)			X					
<u>Mosquito Cr.</u>								
19. Mouth (S34, T79N, R29W, Dallas Co.) to confluence with an unnamed tributary (S21, T81N, R30W, Guthrie Co.)			X					
<u>Bay Branch</u>								
20. Mouth (S9, T79N, R30W, Guthrie Co.) to dam at Bay Branch Marsh (NW 1/4, S27, T80N, R30W, Guthrie Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(W)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - DES MOINES R. AND ITS TRIBUTARIES								
RACCOON R. AND ITS TRIBUTARIES								
<u>Deer Cr.</u>								
21. Mouth (S15, T78N, R30W, Guthrie Co.) to confluence with an unnamed tributary (NE1/4, NE1/4, S19, T78N, R30W, Guthrie Co.)			X					
<u>North Raccoon River</u>								
22. Sac Co. Road M54 (S24, T88N, R36W, Sac Co.) to confluence with D.D. 101 (S36, T91N, R36W, Buena Vista Co.)		X						
<u>Swan Lake Branch</u>								
23. Mouth (S28, T81N, R28W, Dallas Co.) to west line S4, T80N, R28W, Dallas Co.			X					
<u>Snake Cr.</u>								
24. Mouth (S2, T81N, R29W, Dallas Co.) to north line S26, T82N, R29W, Greene Co.			X					
<u>Greenbrier Cr.</u>								
25. Mouth (S5, T81N, R29W, Dallas Co.) to west line S13, T82N, R31W, Greene Co.			X					
<u>Dead Brier Cr.</u>								
26. Mouth (S36, T82N, R30W, Greene Co.) to confluence with an unnamed tributary (NE1/4, S26, T82N, R30W, Greene Co.)			X					
<u>Buttrick Cr.</u>								
27. Mouth (S26, T83N, R30W, Greene Co.) to confluence with East & West Buttrick Cr. (SE 1/4, S25, T84N, R30W, Greene Co.)			X					
<u>West Buttrick Cr.</u>								
28. Mouth (S25, T84N, R30W, Greene Co.) to confluence with Ditch No. 52 (SE 1/4, S16, T86N, R30W, Webster Co.)			X					
<u>East Buttrick Cr.</u>								
29. Mouth (S25, T84N, R30W, Greene Co.) to confluence with Lost Grove Cr. (SW 1/4, S4, T85N, R29W, Greene Co.)			X					
<u>Hardin Cr.</u>								
30. Mouth (S23, T83N, R30W, Greene Co.) to confluence with Happy Run (SW 1/4, S22, T85N, R31W, Greene Co.)			X					

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Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - DES MOINES R. AND ITS TRIBUTARIES								
RACCOON R. AND ITS TRIBUTARIES								
<u>Cedar Cr.</u>								
31. Mouth (S33, T85N, R32W, Greene Co.) to confluence with an unnamed tributary (NW 1/4, S15, T85N, R32W, Greene Co.)		X						
<u>Cedar Cr.</u>								
32. Confluence with an unnamed tributary (NW 1/4, S15, T85N, R32W, Greene Co.) to confluence with East & West Cedar Crs. (S31, T87N, R31W, Calhoun Co.)			X					
<u>East Cedar Cr.</u>								
33. Mouth (South Line, S31, T87N, R31W, Calhoun Co.) to confluence with Welsh's Slough (Center, S3, T87N, R31W, Calhoun Co.)			X					
<u>Unnamed Cr.</u>								
34. Mouth (S18, T84N, R32W, Greene Co.) to confluence with an unnamed tributary (NE 1/4, S19, T84N, R32W, Greene Co.)			X					
<u>Purgatory Cr.</u>								
35. Mouth (S11, T84N, R33W, Carroll Co.) to confluence with an unnamed tributary (NE 1/4, S17, T86N, R32W, Calhoun Co.)			X					
<u>Marrowbone Cr.</u>								
36. Mouth (S17, T85N, R33W, Carroll Co.) to confluence with an unnamed tributary (NW1/4, S17, T85N, R33W, Carroll Co.)			X					
<u>Elk Run</u>								
37. Mouth (S7, T85N, R33W, Carroll Co.) to confluence with D.D. No. 72 & 81 (S5, T85N, R34W, Carroll Co.)			X					
<u>Lake Cr.</u>								
38. Mouth (S23, T86N, R34W, Calhoun Co.) to East line S12, T86N, R34W, Calhoun Co.		X						
<u>Lake Cr.</u>								
39. East line S12, T86N, R34W, Calhoun Co. to confluence with Ditch Nos. 65, and 9 & 13 (S29, T88N, R32W, Calhoun Co.)			X					
<u>Ditch No. 9 & 13</u>								
40. Mouth (confluence with Ditch No. 65 in S29, T88N, R32W, Calhoun Co.) to the confluence with an unnamed tributary			X					

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Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - DES MOINES R. AND ITS TRIBUTARIES								
RACCOON R. AND ITS TRIBUTARIES								
(SE 1/4, S8, T89N, R32W, Calhoun Co.)								
<u>Indian Cr.</u>								
41.			X					
Mouth (S24, T87N, R36W, Sac Co.) to confluence with an unnamed tributary (N 1/2, SW 1/4, S20, T87N, R36W, Sac Co.)								
<u>Buck Run</u>								
42.			X					
Mouth (SE 1/4, S11, T89N, R36W, Sac Co.) to confluence with an unnamed tributary (E 1/2, S9, T89N, R36W, Sac Co.)								
MAJOR RIVER - UPPER DES MOINES R. AND ITS TRIBUTARIES								
BEAVER CR. AND ITS TRIBUTARIES								
<u>Beaver Cr.</u>								
43.			X					
Mouth (S17, T79N, R24W, Polk Co.) to confluence with an unnamed tributary (S29, T84N, R28W, Boone Co.)								
<u>Little Beaver Cr.</u>								
44.			X					
Mouth (S35, T80N, R25W, Polk Co.) to confluence with an unnamed tributary (SW 1/4, SW 1/4, S29, T80N, R25W, Polk Co.)								
<u>Little Beaver Cr.</u>								
45.			X					
Mouth (S14, T81N, R27W, Dallas Co.) to confluence with an unnamed tributary (SE 1/4, SE 1/4, S29, T82N, R27W, Boone Co.)								
<u>Slough Cr.</u>								
46.			X					
Mouth (S16, T81N, R27W, Dallas Co.) to confluence with an unnamed tributary (NW 1/4, S21, T81N, R27W, Dallas Co.)								
<u>Middle Beaver Cr.</u>								
47.			X					
Mouth (S21, T83N, R28W, Boone Co.) to Hwy 30 (North line, S4, T83N, R28W, Boone Co.)								
BIG CREEK (AKA BIG CR. LAKE OUTLET) AND ITS TRIBUTARIES								
<u>Big Cr.</u>								
48.			X					
Upper end of Big Creek Lake (Polk Co.) to confluence with an unnamed tributary (SE 1/4, S33, T83N, R25W, Boone Co.)								
<u>Wolf Cr.</u>								
49.			X					
Mouth (S36, T81N, R25W, Polk Co.) to North line, S25, T81N, R25W, Polk Co.								
BEAR CR. AND ITS TRIBUTARIES								
<u>Bear Cr.</u>								
50.			X					
Mouth (S29, T83N, R26W, Boone Co.) to								

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Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - UPPER DES MOINES R. AND ITS TRIBUTARIES								
BEAR CR. AND ITS TRIBUTARIES								
confluence with an unnamed tributary (SE 1/4, S24, T83N, R27W, Boone Co.)								
BLUFF CR. AND ITS TRIBUTARIES								
<u>Bluff Cr.</u>								
51. Mouth (S22, T84N, R27W, Boone Co.) to dam/spillway at Don Williams Lake (NE 1/4, SW 1/4, S5, T84N, R27W, Boone Co.)			X					
SKILLET CR. AND ITS TRIBUTARIES								
<u>Skillet Cr.</u>								
52. Mouth (S16, T86N, R27W, Webster Co.) to confluence with an unnamed tributary (NW 1/4, SE 1/4, S14, T86N, R28W, Webster Co.)			X					
BOONE R. AND ITS TRIBUTARIES								
<u>White Fox Cr.</u>								
53. Mouth (S33, T89N, R25W, Hamilton Co.) to confluence with an unnamed tributary (E 1/2, SE 1/4, S36, T91N, R25W, Wright Co.)			X					
<u>Buck Cr.</u>								
54. Mouth (S28, T89N, R25W, Hamilton Co.) to confluence with drainage ditch No. 144 (S11, T88N, R25W, Hamilton Co.)			X					
<u>Eagle Cr.</u>								
55. Mouth (S6, T89N, R25W, Hamilton Co.) to confluence with Little Eagle Cr. (S9, T91N, R25W, Wright Co.)			X					
<u>Prairie Cr.</u>								
56. Mouth (S30, T93N, R26W, Wright Co.) to confluence with D.D. No. 116 (S24, T94N, R28W, Kossuth Co.)			X					
PRAIRIE CR. AND ITS TRIBUTARIES								
<u>Prairie Cr.</u>								
57. Mouth (S35, T88N, R28W, Webster Co.) to confluence with a D.D. No. 29 (S25, T88N, R29W, Webster Co.)			X					
E FK. DES MOINES R. AND ITS TRIBUTARIES								
<u>East Fork Des Moines R.</u>								
58. Confluence with Buffalo Cr. (S20, T97N, R28W, Kossuth Co.) to outlet control structure Tuttle Lake (aka Okamanpeedan Lake) (S14, T100N, R32W, Emmet Co.)		X						

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Iowa Water Quality Standards
Water Use Designations

	A	B(LW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - UPPER DES MOINES R. AND ITS TRIBUTARIES								
E FK. DES MOINES R. AND ITS TRIBUTARIES								
<u>Lotts Cr.</u>								
59. Mouth (S17, T93N, R28W, Humboldt Co.) to confluence with D.D. No. 79 (SE 1/4, S15, T94N, R30W, Kossuth Co.)			X					
<u>Black Cat Cr.</u>								
60. Mouth (S24, T96N, R29W, Kossuth Co.) to North line, S5, T97N, R30W, Kossuth Co.			X					
<u>Plum Cr.</u>								
61. Mouth (S17, T96N, R28W, Kossuth Co.) to confluence with an unnamed tributary S16, T96N, R27W, Kossuth Co.)			X					
<u>Lindsey Cr.</u>								
62. Mouth (S28, T96N, R28W, Kossuth Co.) to confluence with an unnamed tributary (aka D.D. No. 36) (S30, T97N, R27W, Kossuth Co.)			X					
<u>Buffalo Cr.</u>								
63. Mouth (S20, T97N, R28W, Kossuth Co.) to confluence with D.D. No. 48 (S33, T98N, R26W, Winnebago Co.)			X					
<u>Union Slough</u>								
64. Mouth (S9, T97N, R28W, Kossuth Co.) to outlet control structure (aka Des Moines R./ Blue Earth R. basin divide (N 1/2, S14, T98N, R28W, Kossuth Co.)				X				
<u>North Buffalo Cr.</u> <u>(aka Little Buffalo Cr.)</u>								
65. Mouth (S4, T97N, R27W, Kossuth Co.) to confluence with an unnamed tributary (S5, T98N, R26W, Winnebago Co.)			X					
<u>Mud Cr.</u>								
66. Mouth (S1, T97N, R29W, Kossuth Co.) to confluence with an unnamed tributary (North line S3/4, T98N, R29W, Kossuth Co.)			X					
<u>Soldier Cr.</u>								
67. Mouth (S36, T100N, R32W, Emmet Co.) to confluence with D.D. No. 4 (S27, T100N, R32W, Emmet Co.)			X					
PILOT CR. AND ITS TRIBUTARIES								
<u>Pilot Cr.</u>								
68. Mouth (S1, T92N, R31W, Pocahontas Co.) to confluence with an unnamed tributary (SW 1/4,			X					

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Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - UPPER DES MOINES R. AND ITS TRIBUTARIES								
PILOT CR. AND ITS TRIBUTARIES								
S16, T93N, R32W, Pocahontas Co.)								
BEAVER CR. AND ITS TRIBUTARIES								
<u>Beaver Cr.</u>								
69.			X					
Mouth (S36, T93N, R31W, Pocahontas Co.) to confluence with an unnamed tributary (S12, T93N, R32W, Pocahontas Co.)								
PRAIRIE CR. AND ITS TRIBUTARIES								
<u>Prairie Cr.</u>								
<u>(aka Ditch No. 61)</u>								
70.			X					
Mouth (S1, T93N, R31W, Pocahontas Co.) to confluence with an unnamed tributary (S13, T94N, R31W, Palo Alto Co.)								
CYLINDER CR. AND ITS TRIBUTARIES								
<u>Cylinder Cr.</u>								
71.			X					
Mouth (NW 1/4, S28, T94N, R31W, Palo Alto Co.) to confluence with D.D. No. 15 (NW 1/4, S18, T96N, R31W, Palo Alto Co.)								
SILVER CR. AND ITS TRIBUTARIES								
<u>Silver Cr.</u>								
72.			X					
Mouth (S35, T96N, R33W, Palo Alto Co.) to confluence with D.D. No. 62 (S23, T95N, R34W, Palo Alto Co.)								
JACK CR. AND ITS TRIBUTARIES								
<u>Jack Cr.</u>								
73.			X					
Mouth (S35, T97N, R33W, Palo Alto Co.) to Swan Lake outlet structure (S29, T99N, R32W, Emmet Co.)								
MAJOR RIVER - BLUE EARTH R. AND ITS TRIBUTARIES								
BLUE EARTH R. AND ITS TRIBUTARIES								
<u>Blue Earth R.</u>								
<u>(aka Middle Branch Blue Earth R.)</u>								
74.			X					
Iowa-Minnesota state line (S12, T100N, R28W, Kossuth Co.) to confluence with an unnamed tributary aka D.D. #7 (S9, T99N, R27W, Kossuth Co.)								
WEST FORK BLUE EARTH R. AND ITS TRIBUTARIES								
<u>West Fork Blue Earth R.</u>								
<u>(aka West Branch Blue Earth R.)</u>								
75.			X					
Iowa-Minnesota state line (S9, T100N, R28W, Kossuth Co.) to confluence with an unnamed tributary (S30, T100N, R28W, Kossuth Co.)								

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
DES MOINES RIVER BASIN								
MAJOR RIVER - BLUE EARTH R. AND ITS TRIBUTARIES								
UNION SLOUGH DITCH AND ITS TRIBUTARIES								
<u>Union Slough Ditch</u>								
<u>(aka Union Slough Outlet)</u>								
76. Mouth (S9, T100N, R28W, Kossuth Co.) to outlet control structure (aka Des Moines R./ Blue Earth R. basin divide (N 1/2, S14, T98N, R28W, Kossuth Co.))			X					

SKUNK RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Skunk River Basin. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Big Slough - 5	Old South Skunk River Ch - 13	Sugar Cr. - 2
Clear Cr. - 12	Pitman Cr. - 3	Unnamed Cr. - 1
Fish Cr. - 7	Snipe Cr. - 17	Walnut Cr. - 14
Indian Cr. - 11	South Skunk R. - 9	West Branch Sugar Cr. - 4
Long Dick Cr. - 16	South Skunk R. - 10	Wolf Cr. - 8
Mud Cr. - 6	Squaw Cr. - 15	

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
SKUNK RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
UNNAMED CR. AND ITS TRIBUTARIES								
<u>Unnamed Cr.</u>								
<u>(aka Lamalees Cr.)</u>								
1. Mouth (S1, T65N, R5W, Lee Co.) to confluence with an unnamed tributary (E 1/2, S35, T66N, R5W, Lee Co.)			X					
SUGAR CR. AND ITS TRIBUTARIES								
<u>Sugar Cr.</u>								
2. Mouth (S23, T67N, R5W, Lee Co.) to confluence with an unnamed tributary (S 1/2, S16, T69N, R6W, Lee Co.)			X					
<u>Pitman Cr.</u>								
3. Mouth (S29/30 line, T68N, R5W, Lee Co.) to confluence with an unnamed tributary (S21, T68N, R5W, Lee Co.)			X					
<u>West Branch Sugar Cr.</u>								
4. Mouth (S11/14 line, T68N, R6W, Lee Co.) to confluence with an unnamed tributary (S3, T68N, R6W, Lee Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
SKUNK RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
SKUNK R. AND ITS TRIBUTARIES								
BIG SLOUGH AND ITS TRIBUTARIES								
<u>Big Slough</u>								
5. Mouth (S24, T68N, R3W, Lee Co.) to confluence with an unnamed tributary (S18, T68N, R2W, Lee Co.)		X						
SKUNK R. AND ITS TRIBUTARIES								
<u>Mud Cr.</u>								
6. Mouth (S34, T70N, R5W, Henry Co.) to confluence with an unnamed tributary (S12, T70N, R5W, Henry Co.)			X					
<u>Fish Cr.</u>								
7. Mouth (S23, T70N, R6W, Henry Co.) to confluence with an unnamed tributary (S16, T70N, R6W, Henry Co.)			X					
<u>Wolf Cr.</u>								
8. Mouth (S8, T71N, R7W, Henry Co.) to confluence with an unnamed tributary (S1, T71N, R8W, Jefferson Co.)			X					
<u>South Skunk R.</u>								
9. Ames Waterworks Dam (S36, T84N, R24W, Story Co.) to North line S6, T85N, R23W, Story Co.		X						X
<u>South Skunk R.</u>								
10. North line S6, T85N, R23W, Story Co. to confluence with D.D. No. 71 (S11, T86N, R24W, Hamilton Co.)			X					X
<u>Indian Cr.</u>								
11. Mouth (S32, T80N, R20W, Jasper Co.) to confluence with East and West Branch Indian Crs. (S16, T82N, R22W, Story Co.)			X					
<u>Clear Cr.</u>								
12. Mouth (S2, T80N, R21W, Jasper Co.) to confluence with an unnamed tributary (S 1/2, SW 1/4, S28, T82N, R20W, Marshall Co.)			X					
<u>Old South Skunk River Channel</u>								
13. East line S31, T81N, R22W, Polk Co. to South line S33/34, T81N, R22W, Polk Co.					X			
<u>Walnut Cr.</u>								
14. Mouth (S5, T82N, R23W, Story Co.) to confluence with an unnamed tributary (SE 1/4, S34, T83N, R24W, Story Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
SKUNK RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
SKUNK R. AND ITS TRIBUTARIES								
15.			X					
16.			X					
17.			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

IOWA-CEDAR RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Iowa-Cedar River Basin. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | | |
|---------------------------|-------------------------------|------------------------------|
| Asher Cr. - 59 | Honey Cr. - 61 | Running Slough Drain - 3 |
| Baskins Run - 41 | Hoosier Cr. - 46 | Salt Cr. - 52 |
| Bear Cr. - 63 | Knapp Cr. - 47 | School Cr. - 69 |
| Beaver Cr. - 65 | Luicks Cr. - 75 | Sheldon Cr. - 70 |
| Beaver Cr. - 22 | Maynes Cr. - 36 | South Beaver Cr. - 24 |
| Beaver Cr. - 23 | Mill Race - 50 | South Fork Iowa River - 64 |
| Beaver Cr. - 27 | Miller Cr. - 18 | Spring Cr. - 13 |
| Beaver Cr. - 33 | Minerva Cr. - 60 | Spring Cr. - 30 |
| Buffalo Cr. - 38 | Morgan Cr. - 12 | Stein Cr. - 54 |
| Burnett Cr. - 58 | Mud Cr. - 17 | Tipton Cr. - 66 |
| Calmus Cr. - 29 | North Fork Blackhawk Cr. - 20 | Twelvemile Cr. - 15 |
| Clear Cr. - 10 | Otter Cr. - 37 | Unnamed Cr. - 4 |
| Coldwater Cr. - 26 | Otter Cr. - 44 | Unnamed Cr. - 5 |
| Cottonwood Drain - 1 | Pine Cr. - 67 | Unnamed Cr. - 6 |
| Cottonwood Drain - 2 | Pine Cr. - 68 | Unnamed Cr. - 7 |
| Deer Cr. - 56 | Price Cr. - 48 | Unnamed Cr. - 72 |
| Deer Cr. - 43 | Price Cr. - 49 | Unnamed Cr. - 74 |
| Dowd Cr. - 62 | Quarter Section Run - 40 | Unnamed Cr. - 39 |
| Drainage Ditch No. 3 - 73 | Rapid Cr. - 45 | Walnut Cr. - 51 |
| Dry Cr. - 11 | Raven Cr. - 57 | West Branch Wapsinonoc C - 8 |
| Dry Run - 21 | Richland Cr. - 55 | West Fork Iowa River - 76 |
| East Branch Salt Cr. - 53 | Rock Cr. - 16 | Wharam Cr. - 31 |
| East Fork Iowa River - 77 | Rock Cr. - 42 | Willow Cr. - 28 |
| Elk Run - 71 | Rock Falls Cr. - 34 | Winans Cr. - 32 |
| Elk Run - 19 | Rock Run Cr. - 9 | Wolf Cr. - 14 |
| Flood Cr. - 25 | Rose Cr. - 35 | |

IOWA-CEDAR RIVER BASIN

MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES

COTTONWOOD DRAIN AND ITS TRIBUTARIES

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Cottonwood Drain</u>								
1. Mouth (S6, T70N, R1W, Des Moines Co.) to confluence with an unnamed tributary (S13, T71N, R2W, Des Moines Co.)		X						
<u>Cottonwood Drain</u>								
2. Confluence with an unnamed tributary (S13, T71N, R2W, Des Moines Co.) to road crossing (S30, T2N, R1W, Des Moines Co.)			X					
<u>Running Slough Drain</u>								
3. Mouth (S31, T71N, R1W, Des Moines Co.) to confluence with an unnamed tributary (S33, T72N, R1W, Des Moines Co.)		X						

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

IOWA-CEDAR RIVER BASIN		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES									
COTTONWOOD DRAIN AND ITS TRIBUTARIES									
	<u>Unnamed Cr.</u>								
4.	Mouth (SW 1/4, S16, T71N, R1W, Des Moines Co.) to road crossing (E 1/2, NW 1/4, S10, T71N, R1W, Des Moines Co.)			X					
	<u>Unnamed Cr.</u>								
5.	Mouth (NE 1/4, S16, T71N, R1W, Des Moines Co.) to road crossing (W 1/2, NW 1/4, S10, T71N, R1W, Des Moines Co.)			X					
	<u>Unnamed Cr.</u>								
6.	Mouth (S13, T71N, R2W, Des Moines Co.) to Section 7/8 line, T71N, R1W, Des Moines Co.)			X					
	<u>Unnamed Cr.</u>								
7.	Mouth (NE 1/4, NW 1/4, S7, T71N, R1W, Des Moines Co.) to road crossing (N line S5, T71N, R1W, Des Moines Co.)			X					
CEDAR R. AND ITS TRIBUTARIES									
	<u>West Branch Wapsinonoc Cr.</u>								
8.	Confluence with an unnamed tributary (S4, T78N, R4W, Muscatine Co.) to confluence with an unnamed tributary (N 1/2, S32, T79N, R4W, Cedar Co.)			X					
	<u>Rock Run Cr.</u>								
9.	Mouth (S28, T80N, R3W, Cedar Co.) to confluence with an unnamed tributary (S28, T81N, R3W, Cedar Co.)			X					
	<u>Clear Cr.</u>								
10.	Mouth (S2, T81N, R5W, Johnson Co.) to confluence with an unnamed tributary (NW 1/4, NW 1/4, S28, T82N, R4W, Cedar Co.)			X					
	<u>Dry Cr.</u>								
11.	Mouth (S1, T83N, R7W, Linn Co.) to confluence with an unnamed tributary (S15, T84N, R7W, Linn Co.)			X					
	<u>Morgan Cr.</u>								
12.	Mouth (S14, T83N, R8W, Linn Co.) to confluence with an unnamed tributary (SW 1/4, S22, T83N, R8W, Linn Co.)			X					
	<u>Spring Cr.</u>								
13.	Mouth (S27, T87N, R11W, Blackhawk Co.) to confluence with East Branch Spring Cr.			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
CEDAR R. AND ITS TRIBUTARIES								
(S11, T87N, R11W, Blackhawk Co.)								
<u>Wolf Cr.</u>								
14. Mouth of Twelvemile Cr. (S19, T86N, R13W, Tama Co.) to confluence with an unnamed tributary (S25, T86N, R18W, Grundy Co.)			X					
<u>Twelvemile Cr.</u>								
15. Mouth (S19, T86N, R13W, Tama Co.) to confluence with Given Cr. (S24, T86N, R15W, Tama Co.)			X					
<u>Rock Cr.</u>								
16. Mouth (S23, T86N, R14W, Tama Co.) to confluence with an unnamed tributary (S2, T86N, R14W, Tama Co.)			X					
<u>Mud Cr.</u>								
17. Mouth (S13, T87N, R12W, Blackhawk Co.) to upper end of ponded area (S14, T87N, R12W, Blackhawk Co.)			X					
<u>Miller Cr.</u>								
18. Mouth (S35, T88N, R12W, Blackhawk Co.) to confluence with an unnamed tributary (NW 1/4, S7, T87N, R12W, Blackhawk Co.)			X					
<u>Elk Run</u>								
19. Mouth (S6, T88N, R12W, Blackhawk Co.) to confluence with an unnamed tributary (S27, T89N, R12W, Blackhawk Co.)			X					
<u>North Fork Blackhawk Cr.</u>								
20. Mouth (S1, T87N, R15W, Blackhawk Co.) to confluence with an unnamed tributary (S8, T88N, R15W, Grundy Co.)			X					
<u>Dry Run</u>								
21. Mouth (S18, T89N, R13W, Blackhawk Co.) to confluence with an unnamed tributary (S23, T89N, R14W, Blackhawk Co.)			X					
<u>Beaver Cr.</u>								
22. Mouth (S34, T90N, R14W, Blackhawk Co.) to confluence with S. Beaver Cr. (S25, T90N, R17W, Butler Co.)		X						
<u>Beaver Cr.</u>								
23. Confluence with S. Beaver Cr. (S25, T90N, R17W, Butler Co.) to confluence with an			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
CEDAR R. AND ITS TRIBUTARIES								
unnamed tributary (SE 1/4, S29, T90N, R19W, Franklin Co.)								
<u>South Beaver Cr.</u>								
24. Mouth (S25, T90N, R17W, Butler Co.) to confluence with an unnamed tributary (NE 1/4, NE 1/4, S9, T88N, R18W, Grundy Co.)			X					
<u>Flood Cr.</u>								
25. Mouth (S27, T93N, R16W, Butler Co.) to confluence with Beaver Cr. (S36, T95N, R17W, Floyd Co.)			X					
<u>Coldwater Cr.</u>								
26. Mouth (S29, T93N, R16W, Butler Co.) to confluence with an unnamed tributary (S26, T94N, R19W, Cerro Gordo Co.)			X					
<u>Beaver Cr.</u>								
27. Mouth (SW 1/4, S26, T95N, R18W, Floyd Co.) to confluence with L. Beaver Cr. (center S21, T95N, R18W, Floyd Co.)			X					
<u>Willow Cr.</u>								
28. Mouth (S3, T96N, R20W, Cerro Gordo Co.) to confluence with Clear Cr. (S16, T96N, R21W, Cerro Gordo Co.)			X					
<u>Calmus Cr.</u>								
29. Mouth (S34, T97N, R20W, Cerro Gordo Co.) to Cerro Gordo Co. Rd. S34 (W line, S30, T97N, R20W, Cerro Gordo Co.)			X					
<u>Spring Cr.</u>								
30. Mouth (S28, T97N, R20W, Cerro Gordo Co.) to confluence with Blair Cr. (S9, T97N, R20W, Cerro Gordo Co.)			X					
<u>Wharam Cr.</u>								
31. Mouth (S29, T97N, R20W, Cerro Gordo Co.) to confluence with an unnamed tributary (S7, T97N, R20W, Cerro Gordo Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
CEDAR R. AND ITS TRIBUTARIES								
32.			X					
<u>Winans Cr.</u> Mouth (S36, T98N, R22W, Worth Co.) to N/S road crossing S 1/2, S25, T98N, R22W, Worth Co.								
33.			X					
<u>Beaver Cr.</u> Mouth (S34, T98N, R22W, Worth Co.) to confluence with D.D. No. 54 (S25, T98N, R23W, Winnebago Co.)								
34.			X					
<u>Rock Falls Cr.</u> Mouth (S16, T97N, R19W, Cerro Gordo Co.) to confluence with an unnamed tributary (S4, T97N, R19W, Cerro Gordo Co.)								
35.			X					
<u>Rose Cr.</u> (aka Plymouth or Beaver Cr.) Mouth (NW 1/4, S8, T97N, R19W, Cerro Gordo Co.) to confluence with an unnamed tributary (S35, T98N, R20W, Worth Co.)								
36.			X					
<u>Maynes Cr.</u> Mouth (S7, T91N, R17W, Butler Co.) to confluence with an unnamed tributary (S22, T91N, R21W, Franklin Co.)								
37.			X					
<u>Otter Cr.</u> Confluence with Buffalo Cr. (S5, T92N, R20W, Franklin Co.) to confluence with D.D. No. 55 (S24, T93N, R21W, Franklin Co.)								
38.			X					
<u>Buffalo Cr.</u> Mouth (S5, T92N, R20W, Franklin Co.) to N/S road crossing, West line, S10, T92N, R21W Franklin Co.								
39.			X					
<u>Unnamed Cr.</u> (aka D.D. 6) Mouth (S29, T91N, R20W, Franklin Co.) to confluence with an unnamed tributary (S36, T91N, R20W, Franklin Co.)								
40.			X					
<u>Quarter Section Run</u> Mouth (S19, T91N, R13W, Bremer Co.) to confluence with an unnamed tributary (NE								

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(LW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
CEDAR R. AND ITS TRIBUTARIES								
1/4, NW 1/4, S26, T92N, R13W, Bremer Co.)								
<u>Baskins Run</u>								
41. Mouth (S28, T91N, R13W, Bremer Co.) to confluence with an unnamed tributary (S30, T92N, R13W, Bremer Co.)			X					
<u>Rock Cr.</u>								
42. Hwy 9 to confluence with an unnamed tributary (S22, T98N, R18W, Mitchell Co.)			X					
<u>Deer Cr.</u>								
43. Mouth (S23, T99N, R18W, Mitchell Co.) to confluence with an unnamed tributary (E line, S28, T100N, R18W, Worth Co.)			X					
<u>Otter Cr.</u>								
44. Mouth (S21, T100N, R18W, Mitchell Co.) to Iowa-Minnesota State Line			X					
IOWA R. AND ITS TRIBUTARIES								
<u>Rapid Cr.</u>								
45. Mouth (S34, T80N, R6W, Johnson Co.) to confluence with an unnamed tributary (E 1/2, S20, T80N, R5W, Johnson Co.)			X					
<u>Hoosier Cr.</u>								
46. Mouth (S17, T81N, R6W, Johnson Co.) to confluence with South Hoosier Cr. (S25, T82N, R7W, Linn Co.)			X					
<u>Knapp Cr.</u>								
47. Mouth (S34, T81N, R8W, Johnson Co.) to confluence with an unnamed tributary (S16, T81N, R8W, Johnson Co.)			X					
<u>Price Cr.</u>								
48. Mouth (S26, T81N, R9W, Iowa Co.) to mouth of Mill Race (S26, T81N, R9W, Iowa Co.)		X						
<u>Price Cr.</u>								
49. Mouth of Mill Race (S26, T81N, R9W, Iowa Co.) to confluence with an unnamed tributary (NW 1/4, S8, T81N, R9W, Iowa Co.)			X					
<u>Mill Race</u>								
50. Upstream beginning (S27, T81N, R10W, Iowa Co.) to end (S26, T81N, R9W, Iowa Co.)		X						

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
IOWA R. AND ITS TRIBUTARIES								
<u>Walnut Cr.</u>								
51. Mouth (S31, T82N, R12W, Benton Co.) to confluence with an unnamed tributary (NW 1/4, S24, T81N, R15W, Poweshiek Co.)			X					
<u>Salt Cr.</u>								
52. Mouth of E. Salt Cr. (S34, T84N, R13W, Tama Co.) to confluence with an unnamed tributary (S28, T85N, R14W, Tama Co.)			X					
<u>East Branch Salt Cr.</u>								
53. Mouth (S34, T84N, R13W, Tama Co.) to confluence with Stein Cr. (S26, T84N, R13W, Tama Co.)			X					
<u>Stein Cr.</u>								
54. Mouth (S26, T84N, R13W, Tama Co.) to confluence with an unnamed tributary (NE 1/4, S17, T84N, R12W, Benton Co.)			X					
<u>Richland Cr.</u>								
55. Mouth (S13, T82N, R14W, Tama Co.) to confluence with Abes Fork (Center, S20, T82N, R15W, Tama Co.)			X					
<u>Deer Cr.</u>								
56. Mouth (S34, T83N, R15W, Tama Co.) to confluence with an unnamed tributary (NE 1/4, SE 1/4, S23, T84N, R16W, Tama Co.)			X					
<u>Raven Cr.</u>								
57. Mouth (S25, T83N, R16W, Tama Co.) to West line S35, T83N, R16W, Tama Co.			X					
<u>Burnett Cr.</u>								
58. Mouth (S24, T84N, R18W, Marshall Co.) to confluence with an unnamed tributary (SE 1/4, NW 1/4, S13, T84N, R18W, Marshall Co.)			X					
<u>Asher Cr.</u>								
59. Mouth (S27, T84N, R18W, Marshall Co.) to confluence with Chicken Cr. (NW 1/4, NE 1/4, S16, T84N, R18W, Marshall Co.)			X					
<u>Minerva Cr.</u>								
60. Mouth (NW 1/4, S2, T84N, R19W, Marshall Co.) to confluence with an unnamed tributary (S33, T86N, R21W, Hardin Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA-CEDAR RIVER BASIN								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
IOWA R. AND ITS TRIBUTARIES								
<u>Honey Cr.</u>								
61.			X					
	Confluence with an unnamed tributary (S15, T86N, R20W, Hardin Co.) to confluence with D.D. No. 55 (S32, T87N, R21W, Hardin Co.)							
<u>Dowd Cr.</u>								
62.			X					
	Mouth (S2, T85N, R19W, Marshall Co.) to confluence with an unnamed tributary (S1, T85N, R19W, Marshall Co.)							
<u>Bear Cr.</u>								
63.			X					
	Mouth (S9, T86N, R19W, Hardin Co.) to confluence with an unnamed tributary (E 1/2, S3, T86N, R19W, Hardin Co.)							
<u>South Fork Iowa River</u>								
64.			X					
	Confluence with an unnamed tributary (S11, T88N, R22W, Hardin Co.) to confluence with an unnamed tributary (SE 1/4, S35, T90N, R23W, Wright Co.)							
<u>Beaver Cr.</u>								
65.			X					
	Mouth (SE 1/4, S25, T87N, R19W, Hardin Co.) to confluence with S. Beaver Cr. (NE 1/4, S28, T88N, R20W, Hardin Co.)							
<u>Tipton Cr.</u>								
66.			X					
	Mouth (S21, T87N, R20W, Hardin Co.) to confluence with New York Branch (S28, T88N, R22W, Hardin Co.)							
<u>Pine Cr.</u>								
67.		X						
	Mouth (S8, T87N, R19W, Hardin Co.) to dam of Lower Pine Lake (S9, T87N, R19W, Hardin Co.)							
<u>Pine Cr.</u>								
68.		X						
	Upper extent of Lower Pine Lake to dam of Upper Pine Lake (S4, T87N, R19W, Hardin Co.)							
<u>School Cr.</u>								
69.			X					
	Mouth (S28, T89N, R20W, Hardin Co.) to confluence with an unnamed tributary (S16, T89N, R20W, Hardin Co.)							
<u>Sheldon Cr.</u>								
70.			X					
	Mouth (S19, T90N, R22W, Franklin Co.) to N/S road crossing bisecting N 1/2, S24, T90N, R23W, Wright Co.)							

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

IOWA-CEDAR RIVER BASIN		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES									
IOWA R. AND ITS TRIBUTARIES									
<u>Elk Run</u>									
71.	Mouth (S13, T89N, R21W, Hardin Co.) to confluence with an unnamed tributary (S2, T89N, R21W, Hardin Co.)			X					
<u>Unnamed Cr.</u>									
72.	Mouth (SE 1/4, S30, T91N, R22W, Franklin Co.) to confluence with an unnamed tributary (aka D.D. #32) (NW 1/4, S29, T91N, R22W, Franklin Co.)			X					
<u>Drainage Ditch No. 3</u> <u>(aka Wheeler Cr.)</u>									
73.	Mouth (NW 1/4, SE 1/4, S10, T91N, R23W, Wright Co.) to confluence with D.D. No. 5 (W line, S20, T91N, R23W, Wright Co.)			X					
<u>Unnamed Cr.</u> <u>(aka Joint D.D. No.'s 7 & 146)</u>									
74.	Mouth (N line, S4, T91N, R23W, Wright Co.) to confluence with an unnamed tributary (aka Joint D.D. No.'s 4, 118) (SE 1/4, S28, T92N, R23W, Wright Co.)			X					
<u>Luicks Cr.</u>									
75.	Mouth (S31, T93N, R23W, Wright Co.) to confluence with an unnamed tributary (aka Joint D.D. No.'s 3, 111) (NW 1/4, S3, T92N, R23W, Wright Co.)			X					
<u>West Fork Iowa River</u> <u>(aka West Branch Iowa R.)</u>									
76.	Mouth (S19, T93N, R23W, Wright Co.) to confluence with D.D. No. 1 (S2, T95N, R25W, Hancock Co.)			X					
<u>East Fork Iowa River</u> <u>(aka East Branch Iowa R.)</u>									
77.	Mouth (S19, T93N, R23W, Wright Co.) to confluence with Galls Cr. (Hancock Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

NORTHEASTERN IOWA RIVER BASINS

Northeastern Iowa River Basins (Wapsipinicon River, Maquoketa River, North Fork Maquoketa River, Turkey River, Volga River, Yellow River, and Upper Iowa River Subbasins).

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Northeastern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | | |
|----------------------------|-------------------------------|-------------------------------|
| Canoe Cr. - 29 | North Branch Turkey Rive - 20 | Unnamed Cr. - 22 |
| Dibble Cr. - 15 | North Fork Yellow River - 27 | Unnamed Cr. - 26 |
| Dry Branch - 18 | Nutting Cr. - 17 | Volga River - 13 |
| Dry Cr. - 7 | Paint Cr. - 28 | Walton Cr. - 3 |
| East Branch Otter Cr. - 10 | Pine Cr. - 6 | Watsons Cr. - 12 |
| Fitzgerald Cr. - 16 | Plum Cr. - 11 | West Branch Turkey River - 21 |
| Harter Cr. - 8 | Sand Cr. - 4 | Williams Cr. - 25 |
| Heatons Cr. - 2 | Silver Cr. - 1 | Wonder Cr. - 19 |
| Hickory Cr. - 24 | Trout Cr. - 30 | Yellow River - 23 |
| Hunter Cr. - 9 | Trout Cr. - 31 | |
| Little Volga River - 14 | Unnamed Cr. - 5 | |

NORTHEASTERN IOWA RIVER BASINS

MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES
WAPSIPINICON R. AND ITS TRIBUTARIES

A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Silver Cr.</u>							
1.	Mouth (NE 1/4, S13, T87N, R7W, Buchanan Co.) to confluence with an unnamed tributary (NW 1/4, S5, T87N, R6W, Delaware Co.)	X					
<u>Heatons Cr.</u>							
2.	Mouth (S12, T85N, R6W, Linn Co.) to confluence with an unnamed tributary (S1, T85N, R6W, Linn Co.)	X					
<u>Walton Cr.</u>							
3.	Mouth (S20, T86N, R6W, Linn Co.) to confluence with an unnamed tributary (S 1/2, S1, T86N, R7W, Linn Co.)	X					
<u>Sand Cr.</u>							
4.	Mouth (S14, T87N, R8W, Buchanan Co.) to confluence with an unnamed tributary (W 1/2, S15, T87N, R8W, Buchanan Co.)	X					
<u>Unnamed Cr.</u>							
5.	Mouth (SE 1/4, S28, T88N, R8W, Buchanan Co.) to confluence with an unnamed tributary (SE 1/4, NW 1/4, S22, T88N, R8W, Buchanan Co.)	X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

NORTHEASTERN IOWA RIVER BASINS		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES									
WAPSIPINICON R. AND ITS TRIBUTARIES									
	<u>Pine Cr.</u>								
6.	Mouth (S28, T88N, R8W, Buchanan Co.) to confluence with an unnamed tributary (NE 1/4, S20, T89N, R8W, Buchanan Co.)			X					
	<u>Dry Cr.</u>								
7.	Mouth (S21, T88N, R8W, Buchanan Co.) to confluence with an unnamed tributary (W 1/2, S15, T88N, R8W, Buchanan Co.)			X					
	<u>Harter Cr.</u>								
8.	Mouth (S27, T89N, R9W, Buchanan Co.) to confluence with an unnamed tributary (W 1/2, S23, T89N, R9W, Buchanan Co.)			X					
	<u>Hunter Cr.</u>								
9.	Mouth (S6, T89N, R9W, Buchanan Co.) to confluence with an unnamed tributary (Center, S20, T90N, R9W, Buchanan Co.)			X					
	<u>East Branch Otter Cr.</u>								
10.	Mouth (S22, T90N, R9W, Buchanan Co.) to confluence with an unnamed tributary (NE 1/4, S14, T90N, R9W, Buchanan Co.)			X					
	<u>Plum Cr.</u>								
11.	Mouth (S15, T95N, R12W, Chickasaw Co.) to confluence with an unnamed tributary S3, T95N, R12W, Chickasaw Co.)			X					
	<u>Watsons Cr.</u>								
12.	Mouth (S25, T99N, R15W, Mitchell Co.) to confluence with an unnamed tributary (S30, T99N, R14W, Howard Co.)			X					
TURKEY R. AND ITS TRIBUTARIES									
	<u>Volga River</u>								
13.	Confluence with L. Volga R. (S2, T92N, R9W, Fayette Co.) to confluence with an unnamed tributary (NW 1/4, NE 1/4, S24, T93N, R10W, Fayette Co.)			X					
	<u>Little Volga River</u>								
14.	Hwy 150 bridge (S14/23 line, T92N, R9W, Fayette Co.) to confluence with an unnamed tributary (NE 1/4, S36, T92N, R9W, Fayette Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
NORTHEASTERN IOWA RIVER BASINS								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
TURKEY R. AND ITS TRIBUTARIES								
<u>Dibble Cr.</u>								
15. Mouth (S34, T95N, R7W, Fayette Co.) to confluence with an unnamed tributary (S27, T95N, R7W, Fayette Co.)			X					
<u>Fitzgerald Cr.</u>								
16. Mouth (S28, T95N, R7W, Fayette Co.) to confluence with an unnamed tributary (S9, T95N, R7W, Fayette Co.)			X					
<u>Nutting Cr.</u>								
17. Mouth (S19, T95N, R7W, Fayette Co.) to confluence with an unnamed tributary (S2, T95N, R8W, Fayette Co.)			X					
<u>Dry Branch</u>								
18. Mouth (S15, T95N, R8W, Fayette Co.) to confluence with an unnamed tributary (N 1/2, S4, T95N, R8W, Fayette Co.)			X					
<u>Wonder Cr.</u>								
19. Mouth (S19, T97N, R9W, Winneshiek Co.) to confluence with an unnamed tributary (S24, T97N, R10W, Winneshiek Co.)			X					
<u>North Branch Turkey River</u>								
20. Mouth (S31, T99N, R11W, Howard Co.) to confluence with an unnamed tributary (mouth located on left descending bank SE 1/4, S14, T99N, R12W, Howard Co.)			X					
<u>West Branch Turkey River</u>								
21. Mouth (S25, T99N, R12W, Howard Co.) to confluence with an unnamed tributary (E 1/2, NW 1/4, S26, T99N, R12W, Howard Co.)			X					
<u>Unnamed Cr.</u>								
22. Mouth (located on left descending bank SE 1/4, S14, T99N, R12W, Howard Co.) to confluence with an unnamed tributary (SW 1/4, S12, T99N, R12W, Howard Co.)			X					
YELLOW R. AND ITS TRIBUTARIES								
<u>Yellow River</u>								
23. Confluence with N. Fork Yellow R. to confluence with an unnamed tributary (SE 1/4, S8 T96N, R7W, Winneshiek Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
NORTHEASTERN IOWA RIVER BASINS								
MAJOR RIVER - MISSISSIPPI R. AND ITS TRIBUTARIES								
YELLOW R. AND ITS TRIBUTARIES								
<u>Hickory Cr.</u>								
24.			X					
South line of S28, T96N, R5W, Allamakee Co. to confluence with an unnamed tributary (S5, T95N, R5W, Clayton Co.)								
<u>Williams Cr.</u>								
25.			X					
Mouth (S9, T96N, R5W, Allamakee Co.) to confluence with an unnamed tributary (S17, T96N, R5W, Allamakee Co.)								
<u>Unnamed Cr.</u>								
26.			X					
Mouth (S2, T96N, R6W, Allamakee Co.) to confluence with an unnamed tributary (S33, T97N, R6W, Allamakee Co.)								
<u>North Fork Yellow River</u>								
27.			X					
Mouth (S13, T96N, R7W, Winneshiek Co.) to confluence with an unnamed tributary (S3, T96N, R7W, Winneshiek Co.)								
PAINT CR. AND ITS TRIBUTARIES								
<u>Paint Cr.</u>								
28.			X					
Road Crossing (S18, T97N, R4W, Allamakee Co.) to confluence with an unnamed tributary (S15, T97N, R5W, Allamakee Co.)								
UPPER IOWA R. AND ITS TRIBUTARIES								
<u>Canoe Cr.</u>								
29.			X					
West line S8, T99N, R8W, Winneshiek Co. to confluence with an unnamed tributary (E 1/2, S31, T100N, R8W, Winneshiek Co.)								
<u>Trout Cr.</u>								
30.			X					
Confluence with Smith Cr. (aka Trout River) (S21, T98N, R7W, Winneshiek Co.) to confluence with an unnamed tributary (S 1/2, S29, T98N, R7W, Winneshiek Co.)								
<u>Trout Cr.</u>								
31.			X					
Confluence with an unnamed tributary (aka Trout Run) (S27, T98N, R8W, Winneshiek Co.) to confluence with an unnamed tributary (aka Trout Cr.) (S33, T98N, R8W Winneshiek Co.)								

ARC 3747A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment provides that the surviving spouse of a veteran who receives a Veterans' Administration pension subject to limitation of \$90 after the month of entry to a medical institution shall retain \$90 from the pension for personal needs allowance. Current policy provides that a veteran who receives a Veterans' Administration pension subject to limitation of \$90 after the month of entry to a medical institution shall retain \$90 for the personal needs allowance. This policy was due to sunset September 30, 1992. However, Public Law 102-568, section 601, was passed which extended this provision until September 30, 1997, and expanded the policy to cover surviving spouses of veterans effective November 1, 1992. Iowa must adopt this policy to be in compliance with federal law.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 10, 1993.

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

The following amendment is proposed.

Amend subrule 75.16(2), paragraph "a," as follows:

a. Ongoing personal needs allowance. All clients shall retain \$30 of their monthly income for a personal needs allowance with the following exception. If the client is a veteran *or surviving spouse of a veteran* who receives a Veterans' Administration pension subject to limitation of \$90 after the month of entry pursuant to 38 U.S.C. Section 3203 (f)(2), the veteran *or surviving spouse of a veteran* shall retain \$90 from the veteran's pension for ~~the veteran's~~ *their* personal needs allowance beginning the month after entry to a medical institution. The \$90 allowance from a veteran's pension is in lieu of the \$30 allowance from any income, not in addition thereto.

If the client has earned income, an additional \$65 is added to the ongoing personal needs allowance from the earned income only.

ARC 3745A

HUMAN SERVICES
DEPARTMENT[441]

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, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 202, "Foster Care Services," and to rescind Chapter 108, "Child-Placing Agencies," and to adopt a new Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Iowa Administrative Code.

These amendments revise and update policy governing licensing and regulation of child-placing agencies and revise policy on the purchase of independent living services.

Policy governing licensing and regulation of child-placing agencies is revised to provide for authorization to place or supervise youth in independent living placements; modify staff qualifications and duties; expand agency responsibilities and documentation regarding foster care services; expand and delineate the content of the home study; revise and clarify the entire adoption process, making it consistent with practice; specify areas to be assessed in the home study, postplacement supervision; and clarify agency roles and expectations.

Policy governing the purchase of independent living services is revised to increase the number of hours and types of services that can be purchased for youth over 18; minimum standards for an approved living situation are listed and independent living arrangements and required services are described; the minimum age for placement in an independent living situation is lowered from 16 1/2 to 16.

Policy governing licensing and regulation of child-placing agencies has not been revised for many years and policy was not consistent with current practice. Both Departmental and private agency staff have requested additions and changes to policy.

The number of hours that can be purchased for youth over 18 in independent living has increased from 20 hours the first month and 10 hours for any month thereafter, to 40 hours the first month and 20 hours for any month thereafter. This change will offer youth over the age of 18 a greater chance of success in their placements and enable more youths over the age of 18 to be placed in this type of setting. The changes make a clear distinction between an independent living placement and other types of foster care placements and provide safeguards for youth in independent living placements.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 10, 1993.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Cedar Rapids - March 11, 1993 10 a.m.
Cedar Rapids Regional Office
Conference Room - 6th Floor
221 4th Avenue, S.E.
Cedar Rapids, Iowa 52401

Council Bluffs - March 11, 1993 10 a.m.
Council Bluffs Regional Office, Lower Level
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport - March 15, 1993 10 a.m.
Davenport Area Office
Fifth Floor, Bicentennial Building
Conference Room 3
428 Western
Davenport, Iowa 52801

Des Moines - March 11, 1993 10 a.m.
Des Moines Regional Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50314

Mason City - March 11, 1993 9:30 a.m.
Mason City Area Office
Mohawk Square
22 North Georgia Avenue
Mason City, Iowa 52401

Ottumwa - March 12, 1993 10 a.m.
Ottumwa Area Office
Conference Room
120 East Main
Ottumwa, Iowa 52501

Sioux City - March 11, 1993 1 p.m.
Sioux City Regional Office
Suite 624
507 7th Street
Sioux City, Iowa 51101

Waterloo - March 11, 1993 9:30 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 201
1407 Independence Avenue
Waterloo, Iowa 50701

These amendments are intended to implement Iowa Code sections 234.6(6)"b" and 238.4.

The following amendments are proposed.

ITEM 1. Rescind 441—Chapter 108 and insert the following in lieu thereof:

CHAPTER 108

LICENSING AND REGULATION OF CHILD-PLACING AGENCIES

PREAMBLE

This chapter establishes licensing procedures for all child-placing agencies authorized by Iowa Code chapter 238. Included in this chapter are rules relating to: the licensing process, administration and organization; foster care services; adoption services; and independent living services.

441—108.1(238) Definitions.

"Administrator" means the person who is designated to have day-to-day responsibility for the administration of a

child-placing agency; and who ensures that the mission of the agency and laws relating to the welfare and protection of children are carried out.

"Adoptive applicant" means the person who has requested approval for placement of a child for adoption from a licensed child-placing agency.

"Adoptive family" means an approved person or persons who have a child placed in their home for the purpose of adoption and are being supervised by the agency or who have a child in their home who has been legally adopted and is entitled to the same benefits as a child born to the parents.

"Approved living arrangement" means that the living situation shall be located so as to provide reasonably convenient access to schools, places of employment, or services required by the youth, comply with applicable state and local zoning, fire, and sanitary regulations, and be reasonably priced so as to fit within the youth's budget.

"Caseworker" means the person who works directly with children, their families, and other relevant individuals and who has primary responsibility for the development, implementation, and review of the agency's service plans for the child and parents; or who completes foster care or adoptive family home studies or supervises foster family or adoptive placements; or who supervises children placed in approved independent living arrangements.

"Casework supervisor" means the person who supervises the caseworker or workers.

"Child" shall mean the same as defined by Iowa Code section 234.1.

"Child-placing agency" means an agency organized within the state of Iowa for the purpose of receiving minor children for placement, supervision, or both in private family homes for foster care; or for adoption; or the placement, supervision, or both of children who are 16 years of age and older living in approved independent living placements.

"Department" means the department of human services.

"Independent living placement" means the placement of a child who is at least 16 years of age in an approved living arrangement which provides an environment in which the child can experience living in the community with minimum supervision.

"Parent" means custodial and noncustodial parent.

"Sibling" means two or more persons having at least one common parent.

"Volunteer" means any nonpaid person who donates time to an agency, either in working with an individual or groups of clients. A volunteer may also be a student intern.

441—108.2(238) Licensing procedure.

108.2(1) Right to apply. Any person or agency has the right to make application for a child-placing license. When applying for a child-placing license, the applicant shall indicate the services for which licensure is being requested.

108.2(2) Application. An agency or person applying for a license shall complete Form SS-3105-0, Application for License or Certificate of Approval. The application shall be completed and signed by the administrator or the appropriate officer and submitted to the department.

a. The applicant shall report withdrawal of an application to the department within 30 days of the withdrawal decision.

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

b. Each application shall be evaluated by the department to ensure that all requirements are met.

c. The applicant shall provide requested reports and information relevant to the licensing determination to the department.

108.2(3) Applications for renewal. Applications for renewal shall be made to the department at least 30 but no more than 90 days before expiration of the license.

108.2(4) Notification. Agencies shall be notified of approval or denial within 90 days of application or reapplication.

108.2(5) Certificate of license. Form SS-3304, Certificate of License, shall be issued or renewed by the department on an annual basis, without cost, to any child-placing agency which meets the minimum requirements applicable to child-placing agencies as defined by Iowa Code chapter 238 and this chapter of administrative rules. The license shall be posted in a conspicuous place on the licensed premises.

108.2(6) Provisional license. A provisional license may be issued to an agency which does not meet all licensing requirements when the failure to meet all licensing requirements does not pose a danger to the health, safety, or well-being of the children being served. It is issued until the agency meets all requirements, up to a maximum time period of one year. A provisional license is issued when the applicant has signed a written statement which includes the following:

a. The deficiencies necessitating the provisional license, including the specific requirements which are not met.

b. A plan for correcting the deficiencies.

c. The date by which the requirements will be met.

108.2(7) Suspension of a license. The suspension of a child-placing license prohibits the agency from engaging in any child-placing activities during the period of the suspension. The department shall suspend a license when the agency's failure to meet the requirements pose a danger to the health, safety, or well-being of the children being served. The suspension of a license shall not extend beyond 12 months, and the existence of the condition requiring suspension shall be corrected within a year and documented in the agency's record.

The agency shall submit a written statement for approval by the department. The statement shall include the following:

a. The deficiencies necessitating the suspended license, including the specific requirements which are not met.

b. A plan for correcting the deficiencies.

c. The date by which the requirements will be met.

108.2(8) Completed corrective action. When the corrective action plan is completed on or before the date specified on the provisional license or notice of suspension, a full license shall be issued for the remainder of the licensing period.

108.2(9) Denial or revocation of a license. The department shall deny an application or reapplication for a license or revoke a license when the applicant fails to meet the licensing requirements or when any of the following conditions exist:

a. The agency is operating without due regard to the health, safety, and well-being of the children being served.

b. A provisional license is not approved.

c. The recipient of a provisional license fails to complete the corrective action plan within the time allowed.

d. An agency with a suspended license fails to complete the corrective action plan on time and a provisional license is not appropriate.

e. The agency misuses public funds.

f. The agency refuses to cooperate with child protective investigations involving children placed by the agency.

g. The agency continuously and significantly violates licensing requirements.

108.2(10) Method and content of notice. The notice of denial, revocation, or suspension shall be sent by restricted certified mail and shall include the following:

a. A specific description of the condition requiring the suspension, denial or revocation.

b. The specific laws or rules violated.

c. The effective date of denial, revocation or suspension.

108.2(11) Right to appeal. Any agency which disagrees with the department's licensing decision may appeal to the department. The appeal shall be filed within 30 days of receipt of the licensing decision.

441—108.3(238) Administration and organization.

108.3(1) Statement of purpose. The agency shall have a written statement of its child-placing philosophy, purpose, and program. The statement shall contain a description of services and methods for service delivery and a description of the persons for whom the services will be provided. The statement shall be available to the public.

108.3(2) Governing board. The agency shall have a governing board which, together with the executive, shall be responsible for making policy and for financing and general management of the agency. The governing board may be either the board of directors or the owners of the agency. If the governing board is a board of directors, the following rules shall apply:

a. The agency shall provide for continuity of board membership.

b. The board shall meet regularly for the purpose of ensuring the proper operation of the agency and fulfilling its responsibilities.

c. The minutes of each meeting of the board shall be kept and made a part of the permanent record of the agency.

108.3(3) Annual report. A child-placing agency shall require the administrator to submit a written annual report of the agency's activities. The report shall include fiscal and statistical sections indicating receipts and disbursements, number of clients served, and programs. The annual report shall be available to the department.

108.3(4) Table of organization. A table of organization, including the identification of lines of responsibility and authority for policy making and service to clients, shall be available to agency staff and to the department.

108.3(5) Finances. The licensee shall:

a. Annually develop and implement a plan of financing which is necessary for the operation of the agency in carrying out its programs, ensuring proper care for children, and meeting requirements for licensing.

b. Obtain an audit of all financial accounts. Audits shall be conducted annually by an independent certified public accountant not administratively related to the agency.

108.3(6) Employment of administrator. The agency shall employ a qualified administrator and shall delegate to the administrator the responsibility for the administration of the agency. The administrator shall ensure that the

HUMAN SERVICES DEPARTMENT[441](cont'd)

mission of the agency and laws relating to the welfare and protection of children are carried out.

108.3(7) Office space, equipment and supplies. The agency shall provide and maintain sufficient office space, equipment, and supplies to ensure delivery of services.

441—108.4(238) Staff qualifications. An agency employee or volunteer shall be a person of good character, emotional stability, and have necessary ability, experience, and education to perform the duties assigned. An employee or volunteer shall not have a criminal record or founded child abuse report, unless the department has evaluated the crime or founded report and concluded that the crime or report does not merit prohibition of employment or licensure.

108.4(1) Contracted employees. A child-placing agency which contracts for services shall ensure that contracted employees meet the same qualifications, supervision, training, and evaluation requirements as those of workers in employed positions. A child-placing agency is responsible for the services provided by contracted providers as well as volunteers and agency employees.

108.4(2) Qualifications of administrator. An agency administrator shall possess one of the following:

a. A master's degree in social work, sociology, psychology, guidance and counseling, a related area of human services, education, business administration, or public administration and two years of experience in a public or private social services agency.

b. A bachelor's degree in social work, sociology, psychology, guidance and counseling, a related area of human services, education, business administration, or public administration and four years of experience in a public or private social services agency.

108.4(3) Qualifications of casework supervisor. A casework supervisor shall possess one of the following:

a. A master's degree in social work and one year's experience in a public or private social services agency.

b. A master's degree in sociology, psychology, social work, guidance and counseling, or a related area of human services and two years' experience in a public or private social services agency.

c. A bachelor's degree in sociology, psychology, social work, guidance and counseling or a related area of human services and four years' experience in a public or private social services agency.

108.4(4) Qualifications of a caseworker. A caseworker shall possess a bachelor's degree with a major in sociology, psychology, social work, guidance and counseling, or a related area of human services.

108.4(5) Person filling more than one position. A person functioning in more than one position specified by these rules shall meet the requirements for each of the positions the person fills.

441—108.5(238) Staffing requirements.

108.5(1) Number of staff. The agency shall employ a sufficient number of competent staff to perform duties as required by licensing rules for those programs operated by the agency. This shall include the following:

a. Administration of services offered by the agency.

b. Selection and appointment of qualified staff.

c. Supervision of social service staff.

d. Provision for staff training.

108.5(2) Supervisory duties. The ratio of casework supervisors to caseworkers shall not exceed 1 supervisor to each 8.5 caseworkers who are employed full time. The

casework supervisor shall schedule at least two face-to-face meetings per month with caseworkers who are employed or contracted by the agency. The purpose of these meetings shall be to provide supervision and direction of casework activities, to address any problem areas, and to exchange information regarding cases assigned the caseworker.

108.5(3) Staffing caseload. The agency shall develop a written policy regarding a staffing ratio based on the workload necessary to provide services in accordance with the agency's program statements. The staffing ratio shall take into consideration all of the following:

a. Qualifications of the caseworkers.

b. Types of children served and their special needs.

c. Types and intensity of services to be provided.

d. Distances involved in provision of services.

e. Other functions or responsibilities of the caseworkers.

441—108.6(238) Personnel administration.

108.6(1) Personnel policies. Personnel policies shall be in writing and shall identify the rights and responsibilities of the organization and staff. The policies shall specify hours of work, grievance procedures, sick leave, vacation, and all other benefits. A copy of these policies shall be made available to the employee at the time of hiring.

108.6(2) Job description. There shall be a job description for each employed, volunteer, and contracted position identifying duties, qualifications, education, training requirements, and lines of authority. A copy shall be made available to the employees and contracted workers.

108.6(3) Performance evaluations. There shall be a written evaluation of the employee's or contracted worker's performance within six months of being hired or contracted and annually thereafter.

108.6(4) Training. The agency shall provide initial and ongoing staff training for employed, volunteer, and contracted casework supervisors and caseworkers related to their responsibilities as outlined in their job descriptions. Initial orientation shall include the agency's purpose, policies, and procedures. Within six months of hiring, the agency shall make two hours of training available relating to the identification and reporting of child abuse to all personnel, whether employed, volunteer, or contracted, who are designated as mandatory reporters of child abuse in accordance with Iowa Code section 232.69. Training in child abuse reporting shall be repeated every five years thereafter.

108.6(5) Volunteers. An agency which utilizes volunteer or student intern staff to work directly with a particular child or group of children shall have a written plan for using these volunteers. This plan shall be given to all volunteer staff and shall indicate that all volunteers are:

a. To be supervised directly by a paid staff member.

b. To be trained and oriented in the philosophy of the agency, the needs of the clients being served, and the methods of meeting these needs.

c. To be subject to the character and reference disclosure and checks required of employed and contracted applicants and employees.

d. To be subject to the same confidentiality rules as paid or contracted staff.

e. To assist and supplement paid staff only, and not replace them.

108.6(6) Personnel records. A confidential personnel record shall be maintained for each employee, contracted

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agent, and volunteer. The record shall contain all of the following information:

- a. Name and address.
- b. Record of training sessions attended, including dates and content of training.
- c. Record of criminal convictions (other than minor traffic violations) and the department's evaluation of same.
- d. Record of founded child abuse reports and the evaluation of same.

441—108.7(238) Foster care services.

108.7(1) Program statement. An agency authorized to place children in foster care shall have a current written program statement. This statement shall be made available to all agency foster parents, foster children, their parents, referring agencies, and all persons making formal inquiry regarding foster care. The program statement shall include all of the following:

- a. Types of foster care provided.
- b. Types of children accepted for foster care.
- c. Types of services provided to the children, their families, and their foster families.
- d. Fees and application costs, if any.
- e. A statement informing applicants of the right to appeal the agency's decision regarding nonapproval of the family for placement of a child for foster care.

108.7(2) Agency's authorization to place. The agency shall obtain a signed placement agreement from the child's custodial parent or legal custodian within 48 hours of placement.

108.7(3) Preplacement documentation. Except for emergency placements, a child shall be placed in the agency's foster care program only after the agency determines that its foster care program is an appropriate resource.

108.7(4) Placement of siblings. Preference shall be given to placing children from the same family together. If this is not in the best interest of the child, the reasons shall be documented in the child's record.

108.7(5) Consideration of racial and cultural identity. Consideration shall be given to placing a child with a family of the same racial and cultural identity. If this is not in the best interest of the child, the reasons shall be documented in the child's record.

108.7(6) Placement preparation. An agency shall document the preparation for each child placed in foster care. Preparation shall be appropriate to the child's age, individual needs, the circumstances requiring placement, and the special problems presented. Preparation activities shall, when possible, include:

- a. Face-to-face visits.
- b. A description provided to the child of the foster family.
- c. A description of the child's strengths and needs provided to the foster family.
- d. Any other activities deemed significant.

108.7(7) Initial placement outline. If a placement outline is not in the child's case permanency plan, a brief outline documenting all of the following shall be entered in the child's case record within five working days after placement:

- a. Name, birthdate, sex, race, and other significant identifying information.
- b. Date of placement.
- c. Name and address of parents or legal guardian.
- d. Names and whereabouts of siblings.

e. Religious preference.

f. Immediate and significant health needs including the child's physical and emotional state at the time of placement.

g. The circumstances leading to the need for foster care.

h. Known previous out-of-home placements.

i. The immediate needs of the child and parents and services to be provided to meet these needs.

j. The name, address, and telephone number of the referring agent or worker.

108.7(8) Education. Within ten school days of placement, provisions shall be made by the agency for enrollment of each child of school age into a school program.

108.7(9) Clothing. An agency shall make provisions for adequate and individualized clothing for each child admitted into foster care.

108.7(10) Monthly visit. Each child in care shall be personally visited by the assigned caseworker at least once a month.

108.7(11) Parent and child contact. Provisions for contact between parents and children shall be made except where the parental rights have been terminated or where the court has determined that visits or contact are detrimental to the child. The parents and child shall be informed of the contact plan in a manner consistent with their capacity to understand.

108.7(12) Health and dental program. An agency shall provide for a complete health and dental program for each child. An agency shall have a written procedure for handling medical emergencies on a 24-hour basis. A copy of the procedure shall be given to each foster home.

a. The agency shall obtain written authorization from the parent or legal guardian to provide medical, psychiatric, dental, anesthesia, immunization, substance abuse evaluation, and emergency surgical treatment. Only the parent or legal guardian shall consent to nonemergency surgery, unless ordered by court. If the child's parent prohibits medical examination, immunization, or treatment based on religious grounds, the agency shall obtain a signed statement from the parent that specifies the prohibitions. In potentially life-threatening situations, the agency shall refer the child's care to appropriate medical and legal authorities.

b. A child shall have a physical examination at least annually. This shall be performed by a licensed physician, physician's assistant or licensed nurse practitioner.

c. A child shall have current immunizations as required by the department of public health. If documentation of prior immunization is unavailable, immunizations shall begin within 30 days of placement, unless contraindicated and unless a statement from a physician to that effect is included in the child's medical record. A statement from physician, referring agency, parent, or guardian indicating immunizations are current is sufficient documentation of immunizations.

d. An agency shall provide for dental examinations and treatment; the initial referral at 12 months, the next at 24 months, then every 6 months.

e. A health record shall be maintained for each child and shall include all of the following:

- (1) Authorization for medical care.
- (2) A medical history and copies of required physical examinations.
- (3) A record of medical and dental care, treatment and prescribed medication, immunizations, accidents requiring medical treatment, and hospitalizations. At the time

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of discharge from agency foster care, a summary of this record shall be provided to the legal custodian. Information about drug evaluation or treatment, venereal disease tests, HIV tests, and pregnancy tests shall be excluded.

108.7(13) Development of service plans. Service plans shall be developed in consultation with the child, family, foster parents, and referral source, unless documented to be contraindicated. Each plan shall designate the persons responsible for coordinating and implementing it. An initial service plan shall be recorded within 30 working days following initial placement into foster care. Periodically, but not less than every six months after the initial service plan, an updated service plan shall be recorded for the child and parents. Copies of all service plans shall be provided to the child's parent, the child, and the referring agency.

a. **Content of initial service plan.** The initial service plan shall include information on the child's emotional and physical development, the family situation, and an evaluation of the past experiences and problems of the child to determine the placement and services best suited to meet the child's needs.

The service plan shall include an assessment of the parents' needs as they relate to the care of the child, the parents' role while the child is in placement, and goals in respect to the return of the child and time frames for meeting the goals. The parents shall be informed of the service plan and of their rights and responsibilities in the care of their child. For a child whose permanency plan is not family reunification, the service plan shall include specific services to address the permanency plan goal.

The plan shall include a projection of the expected length of stay in foster care and the anticipated next placement. It shall identify the child's needs, specific goals, and projected time frames for meeting the goals in all of the following areas, as appropriate to the individual case:

- (1) Social services.
- (2) Family visitation.
- (3) Discipline and child-handling techniques.
- (4) Education.
- (5) Health.
- (6) Self-help skill training.
- (7) Psychological, psychiatric, and mental health services.
- (8) Preparation of independence for youth aged 16 and older.
- (9) Frequency of worker visitation.

b. **Content of updated service plan.** Periodically, but not less than every six months, the previous plan shall be reviewed and progress shall be recorded. The service plan shall be updated as necessary and shall include reassessment of the projected length of stay and the anticipated next placement.

108.7(14) Information for foster parents. At the time of placement, an agency shall provide foster parents with all of the following if known:

- a. Name of the child, agency caseworker, and referring agency.
- b. Information about the child's known behavioral characteristics, needs, and plans for the child and family.
- c. Written consent to obtain routine, nonsurgical medical care and to authorize emergency medical and surgical treatment, anesthesia, and immunizations for each child placed in the foster home.
- d. A copy of the child's current physical examination and medical history when completed.

As this information becomes available to the agency, foster parents shall be informed immediately.

108.7(15) Religious policy. The agency shall have a written policy on religious participation and training for foster children. The agency shall provide the policy to parents and foster parents and shall ensure that the policy is adhered to in each foster home.

108.7(16) Mail. There shall be a written policy which ensures that foster children are permitted to send and receive mail, unless documented that this practice is contraindicated.

108.7(17) Allowance policy. An agency shall have a written policy addressing payment of and accounting for personal allowances for foster children.

108.7(18) Reporting hospitalization or death of child. Any serious injury or illness requiring hospitalization of a child in care shall be reported to the parent and the responsible agency as soon as possible. Efforts to notify parents and responsible agency staff shall be documented in the child's record. The death of a child shall be reported immediately to the parent or next of kin and to the referring agency.

108.7(19) Foster care records. The agency shall maintain confidential individual records for each child placed in a foster home. The record shall include:

- a. The initial placement outline. (Refer to subrule 108.7(7).)
- b. All legal documents pertaining to the child.
- c. The child's health record, including psychological and psychiatric reports.
- d. The summary narrative which reflects the dates and content of the caseworker's contact regarding the child.
- e. Educational records and reports.
- f. All service plans developed by the agency.
- g. Case permanency plans developed by the referring agency.

h. A record of foster placements made by the agency including foster parents' names and addresses and dates of placements.

108.7(20) Termination of foster care. When a foster care placement is terminated, all of the following information shall be documented in the child's record within 30 days:

- a. Reason for termination.
- b. Current location of the child, unless the child was placed for adoption. In that case the record shall state only that the child was placed for adoption and shall not disclose the identity of the adoptive family unless the adoptive family agrees to disclosure of identity prior to finalizing of adoption.
- c. Steps remaining to achieve permanency plan goal.
- d. Provisions for follow-up, if any.
- e. For unplanned terminations, a summary explaining the circumstances.

441—108.8(238) Foster home studies. The agency shall provide information to prospective foster parents about foster care, agency policies, licensing requirements for foster care, the children needing foster care, the licensing process and the reimbursement rates.

108.8(1) Licensing procedures.

a. **Availability of applications.** The agency may provide Form SS-2101, Application for a License to Operate a Foster Family Home, to anyone requesting to be licensed.

b. **Licensing study.** The agency may complete a licensing study of the family.

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c. New applications. If the child-placing agency decides to complete the initial licensing study, the agency shall submit to the department all documents and information required by 441—Chapter 113 pertaining to the licensing and regulation of foster family homes. This shall include a narrative evaluation of the foster family home which reflects a thorough study of each foster family. The narrative shall document at least two face-to-face interviews with the prospective foster family and at least one face-to-face interview with each member of the household before the placement of a child. At least one interview shall take place in the applicant's home. The narrative summary of the family study shall assess all of the following:

- (1) Motivation for foster care.
- (2) Family's and extended family's attitude toward accepting foster children.
- (3) Family's attitude toward foster children's parents.
- (4) Emotional stability, physical health, and compatibility of foster parents, and ways they cope with change and stress.
- (5) Adjustment of own children, if any.
- (6) Assessment of the child-caring skills, including disciplinary techniques used.
- (7) Strengths and weaknesses of each member of the household.
- (8) Types of children desired.
- (9) Type of children, if any, for whom placement with the family would be appropriate.
- (10) Recommendation as to the number, age, sex, characteristics, and special needs of children best served by this family.
- (11) Assessment of the need for training and a plan for providing the needed training.
- (12) Any other pertinent information that might assist the agency in making the licensing recommendation.
- (13) Evaluation of child abuse and criminal history record checks. The evaluation of the family shall include a child abuse registry check using Form SS-1606-0, Request for Child Abuse Information, to determine if a founded abuse report exists and a criminal records check by the department of public safety using Form 595-1396, Non-Law Enforcement Record Check, to determine if a conviction or violation under the law in Iowa exists. A foster care applicant with a record of founded child abuse or a criminal violation shall not be licensed as a foster home, unless evaluation of the founded abuse or crime indicates that a placement be made. Form 470-2310, Record Check Evaluation, completed by the applicant, shall be used to assist in the evaluation. The agency shall evaluate each founded abuse or criminal conviction, the nature and seriousness of the founded abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the founded abuse or crime was committed, the degree of rehabilitation and the number of founded abuses or crimes committed by the person. The agency shall notify the applicant in writing whether or not the family is approved, giving reasons for the denial if the family is not approved due to record checks.

(14) Health of foster parents and impact of medical conditions on their ability to foster a child.

(15) Income information.

(16) Documentation that at least three references have been received and the responses reviewed.

108.8(2) Licensing decision. The department shall make the licensing decision and notify the applicant and the child-placing agency within 30 days of the licensing

decision. In no case shall a child be placed in a foster home before licensing approval.

a. A full license shall be issued to foster families meeting all necessary criteria for a full licensure.

b. A provisional license may be issued for up to one year if the foster family fails to meet all requirements for licensure. When an agency recommends, because of rule violation, that a foster home receive a provisional license at the time the license is issued or renewed, the agency shall document the violation in the foster home file, and shall send the following to the department:

(1) A copy of the assessment of the rule violation and recommendation.

(2) A copy of the foster home's plan to achieve rule compliance within stipulated time frames.

c. When an agency recommends that a foster home license be denied or revoked, the agency shall send the following documents to the department:

(1) A copy of the assessment of rule compliance and the foster family's reaction to the assessment.

(2) The agency's recommendation and supporting rationale.

(3) Other appropriate documents supporting the findings.

108.8(3) Reapplications. At least 30 days before the expiration of the license, the agency shall submit all documents and information required by 441—Chapter 113 pertaining to the licensing and regulation of foster family homes. This shall include an update of the narrative noting any changes that may have occurred in the foster family's living arrangement or life style and any other pertinent information that might assist in making the licensing decision, including an assessment of the foster family's ability to provide foster care.

108.8(4) Unannounced visits. The agency shall conduct at least one annual unannounced visit to each licensed foster family home the agency inspects to meet the requirements of Iowa Code section 237.7.

108.8(5) Complaints. When an agency receives a complaint which may indicate possible violation of the foster care licensing rules, the agency shall, within five working days of receiving the complaint, either conduct an investigation to assess compliance with applicable rules or refer the complaint to the department for investigation. If the agency conducts the investigation, the agency shall submit a written report of the investigation to the department within ten working days of receiving the complaint with a statement of rule violation and a recommendation regarding the license of the foster family home. The written report shall be filed in the foster parents' file.

108.8(6) Foster family training. The agency shall ensure that each foster home recommended for foster family license has complied with the training requirements in 441—113.8(237).

Within one year of licensure and every five years thereafter, each foster parent shall obtain mandatory reporter training relating to identification and reporting of child abuse.

108.8(7) Placement agreement. When a child is placed with a foster family, the agency shall have a signed agreement with each foster family home including the expectations and responsibilities of both the agency and the foster family, the services to be provided, and the financial arrangements for children placed in the home.

108.8(8) Foster family home records. The agency shall keep separate records for each foster family home. The

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agency shall begin the record at the time of application. Foster family home records shall contain:

- a. The application.
- b. Family assessment.
- c. Most recent medical reports on foster family members.
- d. Summary of dates and content of worker's contacts relating to licensing or relicensing.
- e. Reference letters.
- f. Annual assessment of strengths and weaknesses of the foster family relative to the care of individual children placed with them.

441—108.9(238) Adoption services.

108.9(1) Program statement. An agency licensed to place children for adoption shall have a current written program statement which shall include all of the following:

- a. Types of children to be placed.
- b. Eligibility requirements for adoptive families.
- c. Services provided during the adoption process.
- d. Postrelinquishment services to the birth parents.
- e. Postadoption services to adoptive families, if offered.
- f. Fees and application costs.
- g. A statement that payment of fees does not ensure adoption approval.
- h. A statement informing applicants of the right to appeal the agency's decision regarding nonapproval of the family for placement of a child for adoption, or other adverse decisions.

The program statement shall be made available to referring agencies and to all persons making formal inquiry regarding adoption.

108.9(2) Services to birth families. An agency which offers services to birth parents who are considering relinquishing a child for adoption shall make counseling available to the parents. The purpose of the counseling shall be to assist the parents in making an informed decision regarding their child's adoption, consistent with the child's best interest. This shall be documented in a service plan format.

a. Intake process. When an agency agrees to provide services to the birth parents, intake interviews shall be conducted, including provision of information to the birth parents regarding the adoption process and their rights and role.

b. Background information. A collection of information about the birth parents and the child shall include, but need not be limited to:

- (1) The child's legal status, or due date if unborn.
- (2) The child's physical description, medical and mental health history, developmental information, and other pertinent information necessary for a child study.
- (3) Identification of any specific needs of the child and the type of family to be considered for adoptive placement.
- (4) The birth parents' strengths and needs.
- (5) The involvement of the birth parents and significant others in the child's care.
- (6) The birth family's physical description, medical and mental health history, educational level, any problematic areas including substance and alcohol abuse.
- (7) An affidavit signed by the birth parents regarding wishes for the court to reveal, or not reveal, their names to the child pursuant to Iowa Code chapter 600.

(8) Any additional information the birth family wishes to have included in the child's adoption record.

108.9(3) Preparation of child for adoptive placement. Preparing a child, especially an older child, includes activities designed to enable a child to make a transition to an adoptive placement. The activities shall include, but are not limited to:

- a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.
- b. Preparation of a life book.
- c. Provision of age-appropriate information regarding community resources available, such as children's support group to assist the child in the transition and integration into the adoptive family.

108.9(4) Services to adoptive applicants.

a. Application process. Before proceeding with an adoptive home study, the agency shall have received an application for adoption from the person or persons wishing to adopt a child. The application form shall include information about the applicant's intent to become an adoptive parent, and the basic data about the applicant's family, home, financial status, health, and references.

b. Explanation of the adoption process. The agency shall provide the applicant an explanation of the entire adoption process, including the legal procedures, the agency policies and procedures regarding placement of children, and the children available for adoption.

c. Adoptive home study. The home study consists of a family assessment which shall include at least two face-to-face interviews with the applicant and at least one face-to-face interview with each member of the household. At least one interview shall take place in the applicant's home. The assessment shall include, but need not be limited to, the following:

- (1) Motivation for adoption and whether the family has biological, adopted or foster children.
- (2) Family and extended family's attitude toward accepting an adopted child, and plans for discussing adoption with the child.
- (3) The attitude toward adoption of the significant other people involved with the family.
- (4) Emotional stability; marital history, including verification of marriages and divorces; assessment of marital relationship; and compatibility of the adoptive parents.
- (5) Ability to cope with problems, stress, frustrations, crises, separation and loss.
- (6) Medical, mental, or emotional conditions which may affect the applicant's ability to parent a child.
- (7) Ability to provide for the child's physical and emotional needs and respect the child's cultural and religious identity.
- (8) Adjustment of biological and previously adopted children, if any, including their attitudes toward adoption, relationship with others, and school performance.
- (9) Capacity to give and receive affection.
- (10) Statements from at least three references provided by the family and other unsolicited references that the agency may wish to contact.
- (11) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.
- (12) Income information, ability to provide for a child, and a statement as to the need for adoption subsidy for a special needs child, or children.
- (13) Disciplinary practices that will be used.
- (14) History of abuse by family members and treatment.

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(15) Assessment of, commitment to, and capacity to maintain other significant relationships.

(16) Substance use or abuse by members of the family and treatment.

(17) Recommendations for type of child, number, age, sex, characteristics, and special needs of children best parented by this family.

d. Record checks. The evaluation of the family shall include a child abuse registry check using Form SS-1606-0, Request for Child Abuse Information, to determine if a founded abuse report exists and a criminal records check by the department of public safety using Form 595-1396, Non-Law Enforcement Record Check, to determine if a conviction or violation under the law in Iowa exists. An adoptive applicant with a record of founded child abuse or a criminal violation shall not be approved for an adoptive placement unless evaluation of the founded abuse or crime indicates that the placement should be made. Form 470-2310, Record Check Evaluation, completed by the applicant, shall be used to assist in the evaluation. The agency shall evaluate each founded abuse or criminal conviction, the nature and seriousness of the founded abuse or crime, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the founded abuse or crime was committed, the degree of rehabilitation and the number of founded abuses or crimes committed by the person. The agency shall notify the applicant in writing whether or not the family is approved, giving reasons for the denial if the family is not approved due to record checks.

e. Written report. The agency shall prepare a written report of the family assessment, known as the adoptive home study, which shall be used to approve or deny a family as an appropriate placement for a child. The family shall be notified by the agency in writing no later than 30 days after completion of the home study of the agency's decision. If the family is denied, reasons for denial shall be stated. The adoptive home study shall be dated and signed by the agency worker and supervisor. A copy of the home study shall be provided to the family. An agency shall not place a child in an adoptive home before the family is approved, or before a placement agreement is signed by the family and the agency.

A home study update is required if the adoptive home study was written more than one year previously, in accordance with Iowa Code section 600.8. The preplacement assessment update shall be conducted by completing the following:

(1) The child abuse and criminal record checks shall be repeated.

(2) A minimum of one home visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) A written report of the assessment and updated adoptive home study shall be completed, dated, signed by the worker and the supervisor, and provided to the adoptive family.

108.9(5) Services to adoptive families.

a. Preparation of the family includes activities designed to prepare the adoptive family for the placement of a particular child. These activities shall assist the adoptive family in expanding its knowledge and understanding of the child and enhance the family's readiness to accept the child into their family and encourage their commitment. The activities shall include, but not be limited to:

(1) Providing background information on the child and the birth family, including a child study that includes past experiences such as foster and adoptive placements.

(2) Providing information regarding the special needs and characteristics of the child.

(3) Providing information regarding an older child's anticipated behavior.

(4) Discussing the impact that adding a new member to their family may have on all current family members.

(5) Discussing the issues of separation, loss, grief, anger, and guilt that adoptive children experience at various developmental stages.

(6) Providing the family with community resources that are available, such as support groups.

b. Preplacement services include the preplacement visits of the child and approved family and any activities necessary to plan, conduct, and assess these transitional visits before the placement of the child in the adoptive family's home for the purpose of adoption.

c. Postplacement services include postplacement supervision, support, crisis intervention, and required reports to the court. The postplacement services are provided from the time the child is placed with an approved adoptive family until finalization of the adoption occurs.

A minimum of three face-to-face postplacement visits are required, or if the family is experiencing problems, as many as are necessary to support the placement. At least two of the visits shall be in the adoptive home. At a minimum the first visit shall be completed within 30 days after placement; the second visit within 90 days after placement; and the final visit before granting consent to adopt.

Observations made during the home visits shall be recorded in the family's adoption file and used by the agency in making written recommendations to the court regarding finalization of the adoption.

Postplacement supervision should focus on the following:

(1) Integration and interaction of the child with the family.

(2) Changes in the family functioning which may be due to the placement.

(3) Social, emotional adjustment of the child and school adjustment of a child who is attending a school.

(4) Child's growth and development since placement with the adoptive family.

(5) Changes that have occurred in the family since the placement.

(6) Family's method of dealing with testing behaviors and discipline.

(7) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

d. Postadoption services. The agency shall provide postadoption services to adoptive parents and adoptees, or shall refer adoptive parents and adoptees to other community resources for the services.

108.9(6) Placement of siblings. Preference shall be given to placing children from the same family together. If this is not possible, or is not in the best interest of the children, the reasons shall be documented in the record. Efforts shall be made to provide continued contact between siblings after finalized adoptions if the siblings are not placed together.

108.9(7) Ethnic background. Preference shall be given to placing children with families of the same ethnic background. If this is not possible, or is not in the best in-

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terest of the child, the reasons shall be documented in the record.

108.9(8) Religious policy. There shall be a written policy on religious participation for prospective placing parents, adoptive parents, and adoptees. The policy shall be made available to referral sources as well.

108.9(9) Adoption records. The agency shall keep separate records for each prospective, approved, or active adoptive family. Contents of these records shall be as follows:

- a. The application.
- b. The adoptive home study.
- c. Current medical records.
- d. All references.
- e. All legal documents pertaining to the adoption.
- f. Birth family information and background report, including physical descriptions, medical and mental health history, educational level, developmental history, problem areas such as substance or alcohol abuse.
- g. Summary narrative on the placement decision and the preplacement and postplacement contacts with the adoptive family and child.
- h. Information pertaining to the child, including but not limited to: physical, medical, and mental health; problem areas, including verification of the child's special needs; and whether or not a referral was made to the department for adoption subsidy.
- i. In the event a family is not approved for placement of a child, the narrative shall clearly indicate the reason.
- j. In the event a family is approved, but no child is placed with them, the narrative shall clearly indicate the reason.

108.9(10) Right to appeal. An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

108.9(11) Disposition of records. When an adoption has occurred, the agency must maintain all records regarding the child, the birth family, and the adoptive family or families, forever. Any subsequent information received following the adoption finalization shall be placed in the adoption record. If the agency closes, all adoption records shall be forwarded to the department.

441—108.10(238) Independent living placement services. An agency seeking to obtain a child-placing license which authorizes the agency to place or supervise children in independent living placements shall meet the standards in rules 108.2(238) to 108.6(238).

108.10(1) Program statement. An agency authorized to place or supervise children in independent living placements shall have a current written program statement which includes all of the following:

- a. A description of the types of living arrangements approved by the agency.
- b. The eligibility requirements for the children who may be placed in an independent living placement.
- c. The means of financial support for the children.
- d. The expectations the agency has for children while placed in an independent living placement.
- e. Services provided to the children.
- f. Provisions for emergency medical care.

This program statement shall be provided to all children placed in independent living.

108.10(2) Basis for placement. Before placing a child in independent living, an agency shall document all of the following:

- a. The child is at least 16 years of age.
- b. An initial assessment has been made that identifies the child's strengths and needs as these pertain to the child's ability to live independently.
- c. The child has the capacity to function outside the structure of a foster family or group care setting.
- d. The selection of an independent living placement is the most appropriate placement for the child.
- e. The child shall be involved in school or other educational or vocational program, work, or a combination thereof on a full-time basis, as indicated in the child's individual care plan.
- f. The child has entered into a mutually agreed-upon written contract with the agency which specifies the responsibilities of the agency and the child. This contract shall be reviewed quarterly.

g. It has been determined, through a visit to the living arrangement, that the minimum standards for approval have been met.

108.10(3) Services provided. The following services are required:

- a. Ongoing assessment that identifies child's strengths and needs as these pertain to the child's ability to live independently.
- b. The development of an individual service plan within 30 days of placement. The service plan shall be developed in consultation with the child and referring agent. The individual service plan shall include projection of the expected length of stay in supervised independent living and shall address the activities necessary to achieve independence and the services needed to be provided to the child. The individual service plan shall be updated quarterly.
- c. At least weekly face-to-face contacts with the child for the first 60 days of placement and at least bimonthly face-to-face contact thereafter. Frequency of visits shall be based on the needs of the individual child.
- d. Personal observation by the agency worker that the living situation provides safe and suitable social, emotional, and physical care.
- e. Maintenance of a means by which the youth can contact agency personnel 24 hours a day, seven days a week.

108.10(4) Record. An agency shall maintain a record for each child in an independent living placement. The record shall contain all of the following:

- a. The name, date of birth, sex, and address of the child and information on how the child can be contacted.
- b. Documentation of financial support sufficient to meet the child's housing, clothing, food, and miscellaneous expenses.
- c. Name, address, and phone number of guardian, if applicable, and referring agent.
- d. Medical records.
- e. Educational and employment records.
- f. All of the individual service plans and updated reviews.
- g. Documentation of visits.

108.10(5) Staffing requirements. Each child in an independent living placement shall receive an agreed-upon number of hours of casework services per month. This shall be recorded in the child's individual care plan.

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

These rules are intended to implement Iowa Code chapter 238.

ITEM 2. Amend subrules 156.12(1) and 156.12(2) as follows:

156.12(1) Maintenance. When a child, at least aged 16 ~~1/2~~ but under the age of 20 is living in an independent living situation, an amount not to exceed \$400 may be paid to the child or another payee, other than a department employee, for the child's care.

156.12(2) Service. When foster care services for a child under the age of 18 in independent living are purchased, the total maintenance and service payment per month shall not exceed the maximum monthly payment rate for foster group care service components and number of hours purchased shall be specified by the service worker in the child's case permanency plan. When foster care services for a child aged 18 or older in independent living are purchased, the total number of hours purchased shall not exceed 20 40 hours for the first month of placement into independent living, and 10 20 hours for any month thereafter.

ITEM 3. Amend rule 441—202.9(234) as follows:

Amend the introductory paragraph and subrules 202.9(1) and 202.9(2) as follows:

441—202.9(234) Independent living. An independent living arrangement shall be used to provide a child with an environment in which the child can experience living independently in the community with minimum supervision. This arrangement shall prepare the child for self-support and care self-care. It is an arrangement where the child lives in an apartment unit, shops for food, prepares individual meals, and manages time for cleaning and laundry. It is not a structured living arrangement where independent living skills are learned through simulated financial transactions such as rent, utility payments or grocery shopping that prepare the child for real-life expenditures and situations.

202.9(1) Eligibility.

a. To be eligible for independent living placement a child shall meet all of the following conditions:

(1) Be at least 16 ~~1/2~~ years old. If aged 18 or older, meets the definition of a child in Iowa Code section 234.1 and has been in foster care or state institutional placement immediately prior to reaching the age of 18, and has continued in foster care or a state institution since reaching the age of 18. A person aged 18 or over, who has received a high school diploma or a high school equivalency diploma, is not eligible for the independent living program.

(2) If under the age of 18, must either be working (or in work training) full-time or be attending high school or be attending general equivalency diploma (GED) classes part-time and working (or in work training) part-time. If aged 18 or older, be attending high school or GED classes full-time and making satisfactory progress toward completion of the high school or GED program and working (or in work training) part-time.

(3) Need foster care placement and services, based on an assessment completed according to rule 441—202.2(234) and subrule 202.6(5).

(4) Participate actively with the department caseworker in the development of the case plan and comply with its provisions.

(5) Refrain from involvement in any illegal behavior and from including using controlled substances or alcohol.

(6) Have demonstrated capacity to function outside the structure of a foster family or foster group care setting.

Prior to placement an assessment shall be made that reviews all available information on the child to identify the needs, strengths, and resources of the child, especially as they pertain to the child's ability to live independently.

(7) Have the ability potential to be financially and emotionally independent upon discharge from foster care.

(8) Have an approved living situation which shall meet the following minimum standards:

1. Be located so as to provide reasonably convenient access to schools, places of employment, or services required by the youth.

2. Comply with applicable state and local zoning, fire, sanitary and safety regulations.

3. Be reasonably priced so as to fit within the youth's budget.

(9) Have the approval of the regional area administrator of the region area where the child resides.

(10) No other community resources are available to meet the child's identified needs.

b. Exceptions to the work (or work training) requirement may be allowed with the prior approval of the chief, office of field services area administrator, if the child can demonstrate involvement in some alternative daily activity and the exception is in the child's best interest.

202.9(2) Services to be provided.

a. Required services. The following activities are required:

(1) Assessment activities to review all available information on the child to identify the needs, strengths and resources of the child, especially as they pertain to the child's ability to live independently.

(2) A case plan developed with the child (and family when appropriate), which demonstrates that the child can be independent upon leaving foster care and which describes the activities necessary to achieve the goal of independence and the services to be provided to the child. Services shall be provided in a manner promoting maximum responsibility and independence for the child.

(1) Through visits to the living situation, documentation that: There is no reasonable cause for believing that the child's mode of life or living situation presents any unacceptable risks to the child's health or safety; the living situation is maintained in a reasonably safe condition; the child is receiving any necessary medical care; and the current program plan provides appropriate and sufficient services.

(3) (2) Supervision to assist the child in developing the needed structure to live in this setting and in locating and using other needed services. It shall include a minimum of weekly face-to-face contacts with the child for the first month, semimonthly contacts during the second month, and monthly 60 days of placement and twice a month face-to-face contacts with the child thereafter. Supervision may include guidance, oversight, and behavior monitoring.

(3) Ongoing assessment activities directed toward monitoring the progress being made in the child's ability to live independently and evaluating the effectiveness of the services being provided to reach this goal.

(4) If purchased, visits by the department to the child according to subrule 202.11(2).

(5) If purchased, compliance by the provider with all reporting requirements in 441—Chapter 150, including requirements for the individual service plan, quarterly reports, and a discharge summary.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(6) A review of the case and case plan every six months, in accord with subrules 202.6(4) and 202.6(5).

(7) Termination activities to review information prior to the discontinuation of one or more service components and to develop a summary of service delivery and service outcome.

b. Optional services. The following may be provided to a child ~~under the age of 18~~ depending on the needs, objectives and services described in the child's individual case permanency plan. ~~An exception to allow the provision of optional service to a child aged 18 or older may be allowed with the prior approval of the chief, office of field services, if the exception is necessary for the child to complete high school or a GED.~~

(1) Counseling services to reduce stress and severe social, emotional, or behavioral problems that affect the child's stability or ability to function independently, or to enhance the child's self-esteem and self-confidence. Activities undertaken through this service may include individual or group therapy, counseling, and treatment.

(2) Leisure time and recreational services to enhance the child's ability to develop recreational, social, leisure time or hobby, and cultural skills.

(3) Parent skill development services to train or educate youth who are parents or prospective parents to enable them to meet the needs of their children. These activities include parenting classes, in-home instruction and in-home role modeling of appropriate parenting functions. Information to be introduced through these activities includes parenting methods, age-appropriate discipline, reasonable expectations of children, techniques of caring for children with special needs, and effective ways of communicating and problem solving.

(4) Basic living skills services to enable or train the child to maintain a safe, healthy, and stable home. These include, but are not limited to, counseling, instruction, or role modeling in such skills as money management, *credit*, home management, consumer skills, health care, nutrition, *transportation*, and legal and insurance issues.

(5) Educational *tutoring* and vocational services to enable the child to secure and maintain paid employment. These may include, but are not limited to, activities to enable the child to seek or obtain a high school diploma, or GED, to improve job-seeking skills, and to improve employability and job-maintenance skills.

(6) Community involvement services to enable the child to access community resources and to develop support systems. These may include, but are not limited to, activities to improve the child's awareness and experience with community resources and activities to improve the child's interpersonal and social skills.

Rescind subrule 202.9(3) and insert the following in lieu thereof:

202.9(3) Independent living arrangements.

a. There are two types of independent living arrangements as follows:

(1) Scattered site arrangements have no specific site or building which houses the program. Clients are assisted by staff people in locating apartments scattered throughout the community. Up to three youths may reside in apartments located in one building. Youths living in such an arrangement shall be able to contact supervising agency staff 24 hours a day, seven days a week.

(2) Cluster arrangements are those in which four to six youths reside in apartments located in one building. Cluster arrangements shall provide supervision on a 24-hour-a-day basis. Youths shall reside in a cluster ar-

angement no more than six months. When more than six youths reside in one building, it shall be considered a foster group care facility.

b. There shall be no provision of a meal or meals, either individually or as congregate dining, by the landlord as an inherent part of the living arrangement.

c. If an agency rents an apartment to the youth, there shall be a signed lease between both parties that includes, but is not limited to:

(1) Amount to be paid for rental unit.

(2) Term of lease with both a beginning and ending date.

(3) Rights and responsibilities of tenant.

(4) Rights and responsibilities of landlord.

(5) Conditions under which lease can be terminated.

Amend subrule 202.9(4), paragraph "a," as follows:

a. Independent living services may be provided directly by the department or may be purchased from a licensed child-placing or child-caring agency. If purchased, department staff shall be responsible to determine the specific ~~services~~ service components and the ~~quantity of services~~ number of hours to be provided. The department case permanency plan shall specify what services are being purchased.

Further amend subrule 202.9(4) by adding the following new paragraph "d":

d. If purchased, each youth who receives services in a group shall be charged as one equal portion of the whole group for billing purposes. Purchase of service contracts shall specify a unit rate for group services separate from other services defined in the contract.

Amend subrule 202.9(5), paragraph "c," subparagraph (2), as follows:

(2) Each case plan and service plan for independent living services initiated prior to the effective date of this chapter shall undergo a special review by the department, client, and the service provider. This review shall take place within two months of the effective date of this rule ~~or prior to the child's eighteenth birthday, if the birthday would otherwise have resulted in the termination of independent living foster care services for the child.~~ The review shall result in case plan and service plan changes necessary to ensure compliance with this rule before the end of the three-month transition period.

Amend subrule 202.9(6), paragraph "a," subparagraph (2), as follows:

(2) No longer meets the work (or work training) requirement ~~if the child is under age 18.~~

ARC 3749A

LABOR SERVICES DIVISION[347]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, "General In-

LABOR SERVICES DIVISION[347](cont'd)

dustry Safety and Health Rules," Iowa Administrative Code.

The amendment relates to permit-required confined spaces for general industry.

If requested by March 9, 1993, a public hearing will be held on March 11, 1993, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed amendment. Written data or arguments to be considered in adoption may be submitted by interested persons no later than March 11, 1993, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that this Notice of Intended Action may have an impact on small business. This amendment will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

The Division will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than March 10, 1993, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

Amend rule 347—10.20(88) by inserting at the end thereof:

58 Fed. Reg. 4549 (January 14, 1993)

ARC 3763A

NATURAL RESOURCE COMMISSION[571]

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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

These amendments give the seasons for hunting deer by nonresidents and include season dates, bag limits, possession limits, season limits, shooting hours, areas open to hunting, license quotas, licensing procedures, means and method of take and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed amendments prior to March 11, 1993. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on March 11, 1993, at 10 a.m. in the auditorium 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 amendments.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.48.

The following amendments are proposed.

ITEM 1. Amend rule 571—94.1(483A), introductory paragraph, to read as follows:

571—94.1(483A) Licenses. Every hunter must have in possession a valid ~~1992~~ 1993 deer license and a ~~1992~~ 1993 habitat stamp when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person. No person shall obtain more than one nonresident deer hunting license.

ITEM 2. Amend rule 571—94.2(483A) to read as follows:

571—94.2(483) Season dates. Deer may be taken in ~~1992-1993~~ 1993-1994 only during the following periods.

94.2(1) Bow season. Deer may be taken by bow and arrow only in accordance with the type, tenure, and zone of license issued from October 1 through December 4 3, ~~1992~~ 1993, and December ~~21~~ 20, ~~1992~~ 1993, through January 10, ~~1993~~ 1994.

94.2(2) Regular gun season. Deer may be taken with gun only in accordance with the type, tenure, and zone of license issued, from December ~~5~~ 4 through December 9 8, or from December ~~12~~ 11 through December ~~20~~ 19, ~~1992~~ 1993.

94.2(3) Special muzzleloader season. Deer may be taken by muzzleloader only in accordance with the type, tenure, and zone of license issued from December ~~21~~ 20, ~~1992~~ 1993, through January 10, ~~1993~~ 1994.

ITEM 3. Amend rule 571—94.8(483A) to read as follows:

571—94.8(483A) Application procedures. All applications for regular gun season deer hunting licenses for ~~1992~~ 1993 deer hunting season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. Applications for nonresident deer hunting licenses must be accompanied by the appropriate license fee. The nonresident license fee shall be \$110. Party applications with no more than four individuals will be accepted. ~~Applications will be received and accepted only from June 15 through July 17, 1992, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. Applications received in the natural resources office in Des Moines, Iowa, by 4:30 p.m. on May 14, 1993, will be processed. If applications received are in excess of the license quota for any hunting~~

NATURAL RESOURCE COMMISSION[571](cont'd)

zone, a drawing will be conducted to determine which applicants shall receive licenses. If licenses are still available in any zone, licenses will be issued as applications are received until quotas are filled or June 18, 1993, whichever occurs first. Any incomplete or improperly completed application, or any application not meeting the above conditions, or any application received prior to the application period will not be considered as a valid application. Applications will be accepted and licenses will be issued in the order in which they are received.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, ~~481A.49~~ 483A.1 and ~~483A.2~~ 483A.8.

ARC 3753A

PERSONNEL DEPARTMENT[581]

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 19A.9, the Iowa Department of Personnel hereby gives Notice of Intended Action to amend Chapter 1, "Definitions," Chapter 3, "Classification," Chapter 4, "Pay," Chapter 5, "Recruitment, Application and Examination," Chapter 8, "Appointments," Chapter 10, "Promotion, Transfer, Temporary Assignment and Voluntary Demotion," Chapter 11, "Separations, Disciplinary Actions and Reduction in Force," Chapter 13, "Performance Planning and Evaluation," Chapter 14, "Leave," and Chapter 15, "Benefits," Iowa Administrative Code.

The purpose of these amendments is to:

1. Remove redundant language concerning reinstatement.
2. Restrict phased retirement participants from returning to state employment.
3. Provide for reassignments between state departments with the approval of both appointing authorities.
4. Require that layoffs in units smaller than a division must first be approved by the director of personnel.
5. Give higher credit for above satisfactory performance in calculating reduction in force points.
6. Restrict bumping and recall into collective bargaining exempt classes to persons laid off from collective bargaining exempt jobs.
7. Require all persons recalled to serve a probationary period.
8. Increase the response time to a notice of recall to five calendar days following receipt and require that the notice be sent by certified mail—restricted delivery.
9. Modify the open enrollment periods for deferred compensation and make other clarifying changes to the administration of that program.
10. Distinguish the rights of persons hired for temporary projects.

11. Establish the criteria for determining the proper job classification for mixed positions.

12. Establish the standard of evidence to be used by the classification appeal committee.

13. Clarify the procedure for sharing performance plans with employees.

Interested persons may submit written comments on these proposed amendments on or before March 9, 1993, to the Assistant to the Director, Iowa Department of Personnel, Grimes State Office Building, Des Moines, Iowa 50319-0150.

There will be a public hearing on March 9, 1993, at 10 a.m. in the Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa (room number will be posted in the Department's reception area on the first floor). 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 Assistant to the Director by 4:30 p.m. at least one day prior to the date of the public hearing in order to be scheduled for an appearance.

These amendments are intended to implement Iowa Code chapter 19A.

The following amendments are proposed.

ITEM 1. Amend rule 1.1(19A) by adding the following definitions in alphabetical order:

"Reassignment" means the movement of an employee, at the direction of the appointing authority, from a position in a class to another position in the same class, or the movement of an employee and the position occupied to another organizational unit, or the movement of an employee to another position in a class in the same pay grade.

"Transfer" means the movement of an employee from a position in a class to another position in the same class at the request of the employee.

ITEM 2. Amend subrule 3.2(1), unnumbered paragraph, as follows:

Classification descriptions are not intended to be all-inclusive. That some duties performed by an incumbent are or are not on the classification description is in no way to be construed as an indication that a position is or is not assigned to the proper job classification. *Position classification decisions shall be based upon the preponderance of duties assigned to the position.*

ITEM 3. Amend rule 581—3.4(19A) as follows:

581—3.4(19A) Position classification reviews.

3.4(1) The director shall decide the job classification of all positions in the executive branch of state government except those specifically provided for by law.

3.4(2) *Position classification decisions shall be based on documented evidence of the performance of a specific kind and level of work over 50 percent of the time that is attributed to a particular job classification.*

3.4(3) The director may initiate specific or general position classification reviews. An appointing authority ~~or an incumbent~~ may also submit a request to the director to review a specific position's classification. Reviews shall be completed and a tentative decision issued within 90 calendar days after the request is received. If additional information is required by the department, it shall be submitted within 30 calendar days following the date of the written request. Until the requested information is received by the department, the 90-calendar-day review pe-

PERSONNEL DEPARTMENT[581](cont'd)

riod may be suspended by the department. Upon receipt of the additional information, the review period shall resume.

3.4(3 4) Notice of the position classification review decision shall be given to the incumbent ~~requesting the review~~ and to the appointing authority. The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration. The request for reconsideration shall be in writing, state the reasons for the request, including the specific ~~class job classification~~ requested, and must be received in the department within 30 calendar days following the date the decision was issued. The final position classification decision in response to a request for reconsideration shall be issued within 30 calendar days following receipt of the request.

3.4(4 5) The maximum time periods at any step in the position classification review process may be extended when mutually agreed to in writing and signed by both parties.

3.4(5 6) Following a final position classification decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based. A new position description questionnaire must be prepared and all new duties must be identified as such on the new questionnaire.

3.4(6 7) The position classification review process is not a contested case.

ITEM 4. Amend subrule 3.5(4) as follows:

3.5(4) The classification appeal committee hearing shall be scheduled within 30 calendar days following receipt of the request for a hearing unless otherwise mutually agreed to in writing and signed by the parties. The hearing shall be held at the Grimes State Office Building during the regular business hours of the department. *The appellant shall carry the burden of proof to show by clear and convincing evidence that the duties of the requested job classification are performed over 50 percent of the time.* The committee shall affirm or deny the job classification requested, or remand the request to the director for review as provided for in rule 581—3.4(19A). The committee's decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any posthearing submissions. Further appeal shall be in accordance with this rule.

ITEM 5. Amend rule 581—4.1(19A) as follows:

581—4.1(19A) Preparation and adoption of pay plans.

4.1(1) The director shall prepare pay plans that apply to all classes and positions in the executive branch of state government, except those under *the jurisdiction of the board of regents.*

4.1(2) The following are the general types of pay plans:

a. Pay plans that have established step amounts and apply to classes and positions that are eligible for collective bargaining under Iowa Code chapter 20 and for which collective bargaining agreements have been negotiated and are in effect.

b. Pay plans that have no established step amounts and apply to classes and positions that are eligible for collective bargaining under Iowa Code chapter 20, ~~but and~~ for which collective bargaining agreements ~~have not~~ may or *may not* have been negotiated.

c. Pay plans that have no established step amounts and apply to classes and positions that are excluded from collective bargaining under Iowa Code section 20.4.

4.1(3) When used in these rules, the word "step" refers to those pay plans described in subrule 4.1(2), paragraph "a," and the classes and positions assigned to them. When used in these rules, the words "percent" or "percentage" refer to those pay plans described in subrule 4.1(2), paragraphs "b" and "c," and the classes and position assigned to them.

4.1(4) The commission shall ~~hold~~ *conduct* a public hearing prior to the director's adoption or revision of pay plans.

ITEM 6. Amend subrule 4.4(1) as follows:

4.4(1) The director shall assign classes to pay plans and *pay grades.* Pay decisions shall be at the discretion of the appointing authority, unless otherwise ~~mandated required~~ *in this chapter or by the director.* Employees shall be paid either at one of the established steps in the pay grade or at a rate of pay between the minimum and maximum salary in the pay grade for their class or position, except as provided for elsewhere in these rules or by the director.

Unless otherwise specifically provided *for* in the Iowa Code *or these rules,* the following employees may be paid any amount that is within the range designated for the employee's class or position and shall not be subject to the provisions of subrule 4.5(2): the staff of the governor; full-time board or commission members whose appointments are provided for by law; department heads, independent agency heads and others who by law are appointed by the governor; deputy directors and division administrators. The pay of all other employees shall be subject to the provisions of this chapter or applicable collective bargaining agreement provisions.

ITEM 7. Amend subrule 4.5(1), introductory paragraph, as follows:

4.5(1) Pay rates. When appointed, employees shall be paid the minimum rate for the class ~~unless otherwise provided for in these rules,~~ except for the following advanced appointment rates:

ITEM 8. Amend paragraph 4.5(1)"e" as follows:

e. Pay upon recall. A permanent employee who has been laid off or who was terminated due to a long-term disability or a job-related illness or injury and who is subsequently recalled shall be either: (1) paid the same rate of pay the employee was paid at the time of separation or the nearest rate of pay ~~to that is no less than the employee's rate of pay which was paid~~ at the time of separation, including any class series, pay grade, or other pay adjustments for which the employee would have been eligible while on the recall list; (2) paid ~~the nearest~~ *at* a rate of pay within the pay grade ~~that is no less than that is nearest to the employee's rate of pay at the time of separation~~ if recalled to a class covered by a different pay plan with steps; (3) paid the entrance rate of pay for the class if the rate of pay at the time of separation was less than that of the class to which recalled; or (4) ~~paid~~ *paid* the maximum rate of pay for the class if the employee's rate of pay at the time of separation ~~exceeds~~ *exceeded* the maximum rate of pay for the class to which recalled.

A permanent employee who ~~changed classes bumped~~ in lieu of layoff, and *who* is subsequently recalled to the class held prior to the layoff shall continue to be paid at

PERSONNEL DEPARTMENT[581](cont'd)

the ~~current~~ *same* rate of pay except in the following instances:

(1) If the employee's current pay is less than that received at the time of the reduction in force, the employee's pay shall be increased to ~~that the former~~ rate including any class series, pay grade, or other pay adjustments for which the employee would have been eligible.

(2) If recalled to a class covered by a different pay plan with steps, the employee shall be paid ~~at a rate that is the nearest rate of pay within the pay grade that is no less than to~~ the employee's current rate of pay ~~in the new pay grade~~.

(3) If the employee's current rate of pay is less than the minimum rate of pay for the class to which recalled, the employee's pay shall be increased to that minimum.

(4) If the employee's current rate of pay exceeds the maximum rate of pay for the class to which recalled, the employee's pay shall be reduced to that maximum.

When recalled, the employee's previous pay increase eligibility date shall be reinstated, but adjusted to a later date with credit given for previous time served, except that a new pay increase eligibility date shall be set if the employee is recalled to a class under circumstances requiring that the employee be given at least a one-step or 5 percent increase in pay in order to be paid the minimum rate of pay for the class ~~or to be paid on step~~.

The pay increase eligibility date for employees who ~~accepted a change in class bumped~~ in lieu of layoff and who are recalled to the class held prior to the reduction in force shall not change, except that a new pay increase eligibility date shall be set if the period of time until the pay increase eligibility date in the previous class exceeds the period of time required for progression on the new step or if the employee is recalled to a class under circumstances requiring that the employee be given at least a one-step or 5 percent increase in pay in order to be paid the minimum rate of pay for the class ~~or to be paid on step~~.

ITEM 9. Amend paragraph 4.5(1)"i" as follows:

i. ~~Pay upon change in class in lieu of layoff bumping.~~ A permanent employee who ~~changes class bumps~~ in lieu of layoff shall either:

(1) Continue to be paid the same rate of pay the employee was paid at the time of the reduction in force; or

(2) Be paid ~~the nearest at~~ a rate of pay within the pay grade that is ~~nearest to no less than~~ the employee's current rate of pay if the change is to a class covered by a different pay plan; or

(3) Be paid the entrance rate of pay for the class if the employee's current rate of pay is less than the entrance rate for the new class; or

(4) Be paid in accordance with subrule 4.5(17); if the employee's current pay exceeds the maximum rate of pay for the new class.

The employee's pay increase eligibility date shall ~~not change be changed~~ except in the following instances:

1. If the period of time until the employee's eligibility date in the previous class exceeds the period of time required for progression on the new step, a new pay increase eligibility date shall be set;

2. If the employee's pay is increased to the minimum rate of pay for the class and the increase is at least one step or 5 percent, a new pay increase eligibility date shall be set;

3. If the new step requires a longer period of time for progression, the employee's pay increase eligibility date shall be adjusted to a later date, but credit shall be given for the time already served.

ITEM 10. Amend paragraphs 4.5(4)"b" and "c" as follows:

b. An employee promoted to a class covered by a pay plan with steps ~~shall may~~ be given a one-step increase in pay or brought to the entrance rate of pay in the new pay grade, whichever is greater.; ~~if the promotion is between classes with one or two pay grade difference. For promotions between classes with a three or more pay grade difference, the employee shall be given a two-step increase in pay or be brought to the entrance rate of pay in the new pay grade, whichever is greater.~~ Promotional pay for employees receiving leadworker pay shall be in accordance with subrule 4.5(5), paragraph "d."

c. An employee promoted to a class covered by a pay plan provided for in subrule 4.1(2), paragraph "b," "c," or subrule 4.4(1) may be given ~~an any~~ increase in pay not to exceed ~~the maximum of the new grade as long as it is at least at the minimum of the new grade. 10 percent of the employee's base pay before the promotion or be brought to the entrance rate of pay in the new pay grade, whichever is greater.~~ Promotional pay for employees receiving leadworker pay shall be in accordance with subrule 4.5(5), paragraph "d."

ITEM 11. Amend subrule 4.5(8) as follows:

4.5(8) Pay upon change to the classification plan or the pay plans. When an employee's current pay exceeds the maximum pay of the pay grade to which the class is assigned as a result of a change to the classification plan or the pay plans, or the employee's pay was previously red-circled, the pay shall be administered in accordance with subrule 4.5(17). When the current pay does not exceed the maximum pay, neither the employee's pay nor the pay increase eligibility date shall change except in the following instances, *all of which are subject to the prior approval of the director*:

a. If the change results in the employee being paid from a different pay plan with steps, the employee's pay ~~shall may~~ first be adjusted to the nearest step in the new pay plan that is no less than the current pay.

If the change results in the employee being paid from the same pay plan with steps, but the employee's pay is not on step, the employee's pay ~~shall may~~ first be adjusted to the nearest step in the new pay plan that is no less than the employee's current pay. If applicable, the employee's pay ~~shall may~~ be further adjusted in accordance with this subrule.

b. If the employee's current pay is less than the entrance rate of pay for the new class or pay grade, the employee's pay ~~shall may~~ be increased to the new entrance rate. The pay of an employee covered by a pay plan provided for in subrule 4.1(2), paragraph "b" or "c," may be further adjusted in accordance with paragraph "d" of this subrule.

c. If the change results in the employee being paid in a higher pay grade and the class is covered by a pay plan provided for in subrule 4.1(2), paragraph "a," the employee may be given a one (~~1~~)-step increase in pay, unless previously adjusted in accordance with paragraph "b" of this subrule.

d. If the change results in the employee being paid in a higher pay grade and the class is covered by a pay plan provided for in subrule 4.1(2), paragraphs "b" or "c," the employee may be given up to a 5 percent increase in pay. An increase in pay given in accordance with paragraph "b" of this subrule shall be included when determining the increase in pay provided by this paragraph.

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e. Pay increase eligibility dates shall change in the following instances:

(1) If the employee receives an increase in pay in accordance with paragraph "b" of at least one step or 5 percent or in accordance with paragraph "c" or "d" of this subrule, a new pay increase eligibility date shall be set. An employee who does not receive at least one step or 5 percent shall retain the current eligibility date, except that if the period of time until the employee's eligibility date exceeds the period of time required for progression, a new pay increase eligibility date shall be set. *Periods of service already spent at a pay rate in the old pay grade need not be credited toward pay increase eligibility dates.*

(2) If the employee does not receive an increase in pay in accordance with paragraph "b" or "c" of this subrule, but the change results in the employee being paid from a step requiring a longer period of time for progression, the employee's pay increase eligibility date shall be adjusted, but credit shall be given for the time spent on the previous step. If the period of time until the employee's current pay increase eligibility date exceeds the new period of time required for progression, a new pay increase eligibility date shall be set.

(3) If an employee is either at or red-circled above the maximum pay established for the pay grade and the pay grade or range is subsequently adjusted upward, the employee shall have the time spent at the maximum pay or at the red-circled rate credited toward the time interval required for progression in the new pay grade or range.

(4) The director may provide for changes to pay increase eligibility dates or intervals when economic or other pay adjustments are made to the classification plan or the pay plan plans.

ITEM 12. Amend subrule 4.5(9) as follows:

4.5(9) Pay upon ~~transfer~~ reassignment. When an employee's pay exceeds the maximum pay for the class to which assigned as a result of a ~~transfer~~ reassignment, the employee's pay shall be administrated in accordance with subrule 4.5(17). When the employee's pay does not exceed the maximum pay, the employee's pay shall not change except in the following instances:

a. If the ~~transfer~~ reassignment results in the employee being paid from a different pay plan with steps, the employee's pay ~~shall~~ may first be adjusted to the nearest step in the new pay plan that is no less than the employee's current pay. If applicable, the employee's pay shall be further adjusted in accordance with paragraph "b" or "c" of this subrule.

b. If the employee's pay is less than the entrance rate of pay for the new class, it ~~shall~~ may be increased to that rate.

c. If the ~~transfer~~ reassignment is for the convenience of the appointing authority and involves a change in duty station beyond 25 miles, the director may approve a one-step or 5 percent increase in pay for the employee. An increase in pay given to an employee as a result of a change in duty station beyond 25 miles may be granted even if it would cause the employee's base pay to exceed the maximum pay for the pay grade. Rules pertaining to red-circling in subrule 4.5(17) apply to employees covered by this subrule, except for those provisions pertaining to expiration. Employees are entitled to any pay adjustments for which they would otherwise be eligible. Subsequent changes in the location of the duty station may justify a request to the director to remove the extra pay previously granted under this paragraph.

d. If an employee is ~~transferred~~ reassigned from a nonsupervisory to a supervisory class in the same pay grade, the employee may be given a pay increase in accordance with subrule 4.5(4)"c."

e. Pay increase eligibility dates shall not change except in the following instances:

(1) If the employee receives either an increase in pay in accordance with paragraph "b" of at least one step or 5 percent, or an increase in pay in accordance with paragraph "d" of this subrule, a new pay increase eligibility date shall be set.

(2) If the employee only receives an increase in pay in accordance with paragraph "c" of this subrule, but the change results in the employee being paid at a step with a different period of time for progression to the next step, the employee's pay increase eligibility date shall be adjusted, but with credit given for the time spent on the previous step.

(3) If the employee does not receive an increase in pay but the ~~transfer~~ reassignment results in the employee being paid at a step requiring a longer period of time for progression to the next step, the employee's pay increase eligibility date shall be adjusted, but with credit given for the time spent on the previous step. If the period of time until the employee's current pay increase eligibility date exceeds the period of time required for progression, a new pay increase eligibility date shall be set.

ITEM 13. Amend subrule 4.5(10) as follows:

4.5(10) Pay upon reclassification. When a position is reclassified, the employee's pay and pay increase eligibility date shall be set in accordance with these rules governing pay upon promotion, demotion, or ~~transfer~~ reassignment, whichever is applicable.

When a position is reclassified downward and the reclassification is neither disciplinary, voluntary, nor the result of a reduction in force, it shall not be considered a demotion, but the employee's pay shall be handled as provided for in subrule 4.5(7).

ITEM 14. Rescind subrule 4.5(18).

ITEM 15. Amend subrule 5.2(4), paragraph "b," by adding the following new subparagraph (8):

(8) Previous permanent employees who resigned from state employment in good standing may, within 60 calendar days following their termination date, make application to be included on nonpromotional lists for classes for which they were on promotional lists at the time of their termination.

ITEM 16. Amend rule 581—8.3(19A) as follows:

581—8.3(19A) Project appointment. The director may approve a project appointment to ~~an unauthorized~~ a position when a particular ~~job~~; project, grant, contract, or ~~other employment similar~~ situation is of ~~limited temporary~~ duration or funding, ~~provided funds are available~~. Certification shall be in accordance with 581—Chapter 7 when applicable. Persons ~~hired~~ appointed shall be given either ~~probationary, intermittent, statutory, temporary, or permanent status according to the provisions of these rules and shall be subject to these rules, as they pertain to the rights of temporary employees, and shall acquire benefits in accordance with the status assigned number of hours worked.~~ The initial appointment of an individual to any one particular project will be approved for no more than one year. ~~If requested, the~~ The director may extend the appointment. At the expiration of the appointment an em-

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~~ployee with permanent status may be transferred, demoted, or promoted to an established position or to another project appointment. Otherwise, an employee covered by merit system provisions shall be subject to a reduction in force; an the employee not covered by merit system provisions shall be terminated without right of appeal.~~

ITEM 17. Amend 581—8.6(19A), first and second unnumbered paragraphs, as follows:

~~An employee who has participated in the phased retirement program shall not be eligible for reinstatement to permanent employment for hours in excess of those worked at the time of retirement. An employee who has participated in the early retirement or early termination program retired from state employment shall not be eligible for reinstatement to any state employment.~~

~~A permanent employee occupying a position covered by merit system provisions that has been changed to be not covered by merit system provisions shall be eligible for reinstatement to a merit system covered position while in the position not covered and for a period equal to the period of the continuous state employment, not to exceed two (2) years, following separation from the position for other than just cause.~~

ITEM 18. Amend 581—10.2(19A) as follows:

~~581—10.2(19A) **Transfer Reassignment.** An appointing authority may transfer reassign an employee. Transfers Reassignments may be intra-agency or interagency, and may be voluntary or involuntary. Interagency reassignments require the approval of both the sending and the receiving appointing authorities. The employee must meet the current minimum qualifications for the class if the position to which transferred reassigned is covered by merit system provisions. Transfer Reassignment of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 581—9.5(19A).~~

~~An employee who refuses an agency directed transfer reassignment may be disciplined discharged in accordance with rule 581—11.2(19A), except as provided for in the second unnumbered paragraph of this rule. If the discipline results in the employee's employee is discharge discharged, and if the employee had permanent status, and if the transfer reassignment would have been in excess of 25 miles, the employee shall have recall rights in accordance with subrule 11.3(6), paragraph "c."~~

~~An appointing authority may not transfer reassign an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.~~

ITEM 19. Amend 581—Chapter 10 by adding a new rule as follows:

581—10.6(19A) Transfer. An employee may request to be transferred. The decision to grant the request is the appointing authority's. Transfers may be intra-agency or interagency. The employee must meet any selective certification requirements for the position if the position to which transferring is covered by merit system provi-

sions. Transfer of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 581—9.5(19A).

An employee who requests a transfer from a position covered by merit system provisions to a position not covered by merit system provisions must provide a written acknowledgment regarding the change in merit system coverage. A copy of the acknowledgment letter shall be forwarded by the appointing authority to the director.

ITEM 20. Amend subrule 11.1(3), paragraph "h," as follows:

h. Employees who participate in this program are not eligible to accept any further employment with the state of Iowa, either bona fide or as an independent contractor, professional corporation, or similar entity. ~~with the state of Iowa or a political subdivision of the state.~~ This prohibition does not apply to a program participant who is later elected to public office.

ITEM 21. Amend 581—11.3(19A) as follows:

581—11.3(19A) Reduction in force. A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked by permanent merit system covered employees in a class, except as provided in subrule 11.3(1).

~~At the discretion of the appointing authority, and with the prior approval of the director, permanent employees and positions not covered by merit system provisions may be included in a reduction in force and, if so, those employees shall be covered by this rule and they shall have the same rights as those extended to employees in positions covered by merit system provisions.~~

11.3(1) The following agency actions shall not constitute a reduction in force nor require application of these reduction in force rules:

a. An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.

b. Interruptions in the employment of school term employees during breaks in the academic year, or during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.

c. The promotion; or reclassification of an employee to a class in a higher pay grade.

d. The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, a class or series revision, or the gradual evolution of changes in the duties of the position.

e. When a change in the classification of an employee's position; or the appointment of an employee to a vacant position in a class in a lower pay grade is the result of a disciplinary or voluntary demotion of an employee to a class in a lower pay grade.

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

g. A reduction in the number of positions or hours worked by permanent employees not covered by merit system provisions.

11.3(2) The agency's reduction in force shall conform to the following provisions:

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a. Reduction in force shall be by class.

b. The reduction in force unit may be by agency organizational unit or agencywide ~~as approved by the director~~. *If the agency organizational unit is smaller than a division, it must first be approved by the director.*

c. An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit as well as those who have probationary status *in the same class*.

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date ~~requested~~. *The plan must be approved by the director before it can become effective.* The plan shall include the ~~reasons~~ *reason(s)* for and the date of the reduction in force, the reduction in force unit(s), the reasons for choosing the unit(s) if smaller than a division including specific information as to why employees in the unit are not interchangeable with other units, the number of employees to be eliminated or reduced in hours by class, the cutoff date for the crediting of retention points, and any other information requested by the director. If determined by the appointing authority to be applicable, the plan shall also include exemptions from *the* reduction in force or the effects of bumping resulting from the reduction in force where special skills or abilities are required.

e. The appointing authority shall post each *approved* reduction in force plan for *60 calendar days* in conspicuous places throughout the reduction in force unit. The posting shall include the total retention points of affected ~~all permanent employees within in each affected job class~~ in the reduction in force unit. ~~that are not covered by a collective bargaining agreement~~. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's ~~total~~ retention point computation worksheet shall also be furnished *to the employee*. These official notifications shall be made at least 20 working days prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director.

f. The appointing authority shall notify the affected employee, in writing, of the options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days from the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

11.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and *points for performance* computed to the nearest hundredth (.01) decimal place. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. The *cutoff* date shall be no less than 60 nor more than 90 days prior to the effective date of the reduction in force. Length of service and performance evaluation points shall be calculated as follows:

a. Credit for length of service shall be given at the rate of one point for each month of employment (including employment credited toward the probationary period). More than 15 calendar days shall be considered one month. When computing length of service points, the ap-

pointing authority shall include all continuous state service in the executive branch from the ~~original~~ *most recent* date of hire to the cutoff date, except that employees who separated and returned to employment prior to November 10, 1970, shall be allowed to count prior service ~~credit~~ if credit was granted when reemployed. Length of service credit shall ~~be minus~~ *not include* the following periods:

(1) Emergency, internship, intermittent, trainee, seasonal or other temporary types of appointments if not credited toward the probationary period;

(2) Suspensions without pay. *The number of days of suspension without pay shall be totaled and subtracted from the total credit for length of service. More than 15 days shall be considered one month;*

(3) Documented leaves of absence without pay in excess of 30 calendar days except for military leave, workers' compensation leave and employer directed educational leave with or without pay;

(4) Board of regents, nonexecutive branch or nonstate service unless Acts of the general assembly require otherwise;

(5) Layoffs in excess of 30 calendar days; and

(6) Long-term disability periods in excess of 30 calendar days.

A former employee who was laid off, or who applied for or received long-term disability payments, and subsequently returned to state employment ~~after more than two years from following~~ the date of separation, shall ~~not be eligible for prior service credit given a new date of hire~~. A former employee who was laid off and who subsequently lost recall rights due to *recall* declination, or who was reemployed but subsequently terminated, ~~is not eligible for prior service credit shall be given a new date of hire if later reemployed other than by recall during the same two-year period~~.

Length of service credit for all periods of part-time service ~~in excess of 30 calendar days~~ shall be calculated ~~on a~~ pro rata on the basis of the number of hours worked per pay period. *Eighty hours per pay period is considered full time.*

b. Performance evaluation credit commencing on July 1, 1969, until a date ~~four~~ five years prior to the reduction in force cutoff date shall be calculated *for periods of time corresponding to the periods credited for length of service and shall be* at the rate of two points for each month of a performance evaluation period rated as competent or above using ~~a the~~ performance evaluation ~~plan approved by the director~~ system adopted in accordance with Chapter 13 of these rules. No points shall be given for any months where performance was evaluated as less than competent.

For the ~~four~~ five-year period prior to the reduction in force cutoff date an employee shall receive ~~three~~ five points for each month rated one or more levels above competent, two points for each month rated as competent and no points for any months rated as less than competent.

When calculating performance evaluation points the following shall apply:

(1) A performance evaluation period rated as competent shall be an "overall sum of ratings" of at least 3.00 but less than 4.00;

(2) A performance evaluation period which is rated one or more levels above competent shall be an "overall sum of ratings" equal to or greater than 4.00; and

(3) A performance evaluation period rated as less than competent shall be an "overall sum of ratings" less than 3.00.

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All employees shall be evaluated for performance at least annually in accordance with subrule 13.2(2). If not evaluated, or if not evaluated in accordance with subrule 13.2(2), that period shall be calculated as though competent. A performance evaluation shall be ~~used for valid for use~~ in calculating retention points only if it is completed, signed, and dated by the supervisor within 60 days following the end of the evaluation period. If the period covered on the evaluation exceeds 12 months, the rating shall only apply to the most recent 12 months of the period. Time spent on approved military leave, workers' compensation leave, or educational leave *with or without pay* required by the appointing authority shall be counted as competent performance. Performance evaluation credit for all periods of part-time service ~~in excess of 30 consecutive calendar days~~ shall be calculated ~~on a~~ pro rata ~~on the~~ basis of the number of hours worked per pay period. Eighty hours per pay period shall be considered full time. Periods of state employment excluded from length of service credit shall also be excluded from performance evaluation credit. More than 15 calendar days in a performance evaluation period shall be considered one month.

During the period between the cutoff date and the effective date of the reduction in force, only performance evaluations that were due during that period shall be used for crediting retention points prior to the cutoff date, unless special performance evaluations are done on all employees affected by the layoff. Otherwise, the rating received on the last valid performance evaluation for the previous rating period shall be brought forward for the current period not evaluated. If no valid performance evaluation exists for the previous rating period, both periods shall be counted as competent performance. In no instance shall performance evaluation points be credited beyond the cutoff date.

c. The total reduction in force retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance evaluation points.

11.3(4) Order of reduction in force. Employees in the approved reduction in force unit shall be placed on a list by class beginning with the employee having the highest total retention points in the class in the unit. Reduction in force shall be made from the list in inverse order regardless of full-time or part-time status. If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

a. The employee with the highest total performance evaluation points; and then, *if still tied*,

b. The employee with the lower last four digits of the social security number.

An agency may request exemption from the reduction in force for employees in positions that require special skills and/or abilities. ~~This must be Exemptions will be~~ limited to situations where it is essential for the employees to possess those *required special skills or abilities requirements* in order to competently perform the duties of the position, and where there is no other employee possessing those *required special skills or abilities requirements* who has more retention points than the employee who is being exempted and who would otherwise be displaced. Selection for exemption shall be in retention point order.

11.3(5) *Bumping* (Class class change in lieu of layoff (~~bumping~~)). Employees who are affected by a reduction in

force may, in lieu of layoff, elect to exercise bumping rights.

a. Employees who choose to exercise bumping rights must do so to a position in the *applicable* reduction in force unit. Bumping may be to a lower class in the same series or to a formerly held class (or its equivalent if the class has been retitled) in which the employee had non-temporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. *Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force.* Bumping shall be only to positions covered by merit system provisions ~~unless nonmerit positions or employees, or both, have been included in the reduction in force by the appointing authority.~~ The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required.

b. ~~If When bumping as set forth in paragraph "a" of this subrule, would require an employee to move from a merit system covered position to a position not covered by merit system provisions, the employee may decline movement to that position and may exercise other bumping rights. In all other instances, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.~~

Bumping to another *noncontract* class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points. If bumping occurs, the employee with the least total retention points in the class shall *then* be subject to reduction in force.

Bumping to another class in lieu of layoff from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall only occur if the move can be accomplished in accordance with the reduction in force order (retention points or seniority date) governing the class into which the employee moves.

Pay upon bumping shall be in accordance with 581—subrule 4.5(1), paragraph "i."

11.3(6) Recall. Eligibility for recall shall be for one year ~~from following~~ the date of the reduction in force or the medical release to return to work, and shall be based on the employee's total retention points. If two or more employees have the same number of retention points, preference shall be in accordance with subrule 11.3(4), paragraphs "a" and "b."

a. The following employees or former employees are eligible to be recalled:

(1) Former employees who have been laid off.

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- (2) Employees who have bumped in lieu of layoff.
- (3) Employees whose hours have been reduced.
- (4) ~~Former employees whose employment was terminated for medically related reasons and whose long-term disability benefits have been terminated and who have been medically released to return to work. Former employees currently on long-term disability who have a medical release to return to work in a capacity other than the job previously held.~~
- (5) ~~Former employees who have exhausted their vacation leave, sick leave, and compensatory leave due to a job-related illness or injury and who have been terminated for medically related reasons or current employees who are unable to return to their former class because of a job-related illness or injury. Employees and former employees covered in this subrule must have been medically released to return to work. Former employees whose long-term disability benefits have been terminated and who have a medical release to return to work.~~
- (6) ~~Former employees who were terminated for medically related reasons due to a job-related illness or injury and who have a medical release to return to work.~~
- (7) ~~Current employees who are unable to return to their former class because of a job-related illness or injury and who have a medical release to return to work.~~
- The medical release referred to in (4), (5), (6) and (7) above must be obtained to be on recall lists on a class-by-class basis. Another medical release addressing the employee's ability to perform the essential functions of the specific position to which recalled must be obtained prior to actually starting work.
- b. Current employees listed in subrule 11.3(6), paragraph "a," subparagraphs (2) and (3), shall only be on the recall list for the class and layoff unit *occupied* at the time of the reduction in force.
- c. Former employees covered in paragraph "a," subparagraphs (1), (4); and (5), and current employees covered in paragraph "a," subparagraph (5), may be on the recall list for the following classes and under the following conditions:
- (1) Class (or equivalent if retitled) held at the time of the reduction in force or termination;
- (2) Any classes (or equivalent if retitled) held prior to the reduction in force ~~of~~ or termination, except classes from which voluntarily or disciplinarily demoted; *and*
- (3) Other classes for which the employee qualifies that are at the same or lower pay grade in relation to the class from which laid off *or terminated*.
- The following provisions ~~shall govern apply to the~~ selection of recall classes:
1. The total number of classes for which the employee is eligible for recall, including the employee's layoff class and formerly held classes, ~~may~~ shall not exceed 26.
2. Employees may not designate particular agencies to which they will or will not accept recall.
3. Nonsupervisory employees may only select classes for which qualified that are nonsupervisory.
4. ~~Only employees in collective bargaining exempt classes at the time of layoff shall be eligible for recall to such classes.~~
4. 5. Employees listed in subrule 11.3(6), paragraph "a," subparagraphs (4) and (5), may be required to furnish copies of their notification of termination of long-term disability benefits or their medical release to return to work.

5. 6. ~~Employees recalled to a class not previously held~~ Recalled employees shall be required to serve a six-month probationary period during which time, *if it is found that the employee is not able to perform the assigned duties satisfactorily*, the employee may be terminated without right of appeal and the employee's original recall record restored to the recall list for the remainder of the one year recall eligibility period.

6. 7. Requests to change classes or conditions of recall availability must be submitted in writing to the department.

d. The following provisions shall apply to the issuance and use of recall certificates:

(1) *Recall certificates shall only be issued for merit system covered positions.*

(1) (2) When one or more names are on the recall list for a class in which a vacancy exists, the agency filling that vacancy must first offer the position to former employees on that list who were laid off by that agency. Recall offers shall be in descending order according to total retention points. If no ~~one~~ *such former employee* is available, ~~on such a recall certificate~~, the agency filling the vacancy shall next request the recall certificate provided for in 11.3(6)"d"(2).

(2) ~~An agency shall next consider recalling former employees on the recall list who were laid off by other agencies other than the one filling the vacancy.~~ If no one from such a recall certificate is selected, the agency shall justify that decision to the director before the position may be filled ~~otherwise by other methods~~.

(3) Recall alternatives ~~shall~~ *must* be exhausted before other eligible lists may be used to fill vacancies.

Former employees listed in subrule 11.3(6), paragraph "a," subparagraphs (4) and (5), ~~having who have~~ received a medical release to ~~perform the duties of a position return to work~~, shall be considered and their medically related work restrictions shall be *reasonably accommodated taken into account when determining the individual's ability to perform the essential functions of the position*.

e. Recall shall be by class without regard to an employee's status *at the time of layoff* (full-time or part-time) ~~or position type (merit or nonmerit system covered)~~.

An employee may remain on the recall list for the same status ~~and type of position~~ as that held at the time of layoff after having declined recall ~~once~~ to a position with a different status ~~or position type~~. However, the employee will be removed for the status ~~or position type~~ declined.

f. One failure to accept appointment to a non-temporary position with the same status ~~and position type~~ as that held prior to the reduction in force or termination for purposes of long-term disability or job-related illness or injury shall negate all further rights to recall.

g. An appointing authority may refuse to recall employees who do not possess the special ~~qualifications skills or abilities~~ required ~~of~~ for a position, with the *prior* approval of the director.

h. *Notice of recall shall be sent by certified mail—restricted delivery.* Employees must respond to an offer of recall within five calendar days following the ~~notice of recall date the notice was received~~. A notice that is *undeliverable to the most recent address of record* will be considered a *declination of recall*. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

PERSONNEL DEPARTMENT[581](cont'd)

i. Vacation accrual and accrued sick leave of recalled employees shall be in accordance with subrule 14.2(2), paragraph "l," and subrule 14.3(10), respectively.

j. An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

k. Employees on the recall list who are reemployed other than by recall, and who subsequently leave state employment for any reason, shall be removed from the recall list. Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

l. Pay upon recall shall be in accordance with 581—subrule 4.5(1), paragraph "e."

11.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of Iowa Code chapter 19A, or these rules governing ~~reclassifications~~ *reclassification*, disciplinary ~~demotions~~ *demotion*, or ~~discharges~~ *discharge*. Actions alleged to be in noncompliance with this rule may be appealed in accordance with Chapter 12 of these rules.

11.3(8) Employees covered by a collective bargaining agreement shall be governed by the terms of that contract for reduction in force purposes.

ITEM 22. Amend subrule 13.2(1) as follows:

13.2(1) Performance plan. The performance plan shall be based on the responsibilities assigned by the supervisor during the evaluation period and shall include the standards required for performance to be considered competent. The performance plan shall be given to and discussed with the employee ~~at the beginning of the evaluation period.~~ Significant changes in responsibilities or standards that occur during the evaluation period shall be included in the performance plan, and a *revised* copy given to and discussed with the employee.

ITEM 23. Amend subrule 14.2(2) by adding the following new paragraph "o":

o. If on June 1 an employee has a balance of 160 or more hours of accrued annual leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on a separate warrant on the pay day which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules. This paragraph applies only to employees not covered by a collective bargaining agreement.

ITEM 24. Amend subrule 14.3(10) as follows:

14.3(10) All accrued sick leave shall expire on the date of separation and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 79.1. However, if an employee is laid off and is reemployed by any state agency within one year following the date of layoff, or if an employee who was terminated due to an on-the-job injury or illness and is reemployed by any state agency within one year following the date of medical release, the employee's unused accrued sick leave shall be restored ~~unless the employee received a payout of some or all accrued sick leave.~~

ITEM 25. Amend rule 581—14.15(19A) as follows:

581—14.15(19A) Absences due to emergency conditions. When an appointing *a proper management* authority closes a state office or building or directs employees to

vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

ITEM 26. Amend rule 581—14.17(19A) as follows:

581—14.17(19A) Examination and interviewing leave.

14.17(1) Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

14.17(2) Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, *region*, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, *region*, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

~~**14.17(3)** Employees shall not be granted vacation leave or compensatory leave for taking examinations or attending interviews outside their scheduled work hours.~~

~~**14.17(4)** The use of state vehicles, mileage reimbursement, or per diem shall not be authorized for employees taking examinations or for attending interviews.~~

~~**14.17(5)** Appointing authorities shall post and make known to employees the provisions of this rule.~~

ITEM 27. Rescind rule 581—15.6(19A) and insert the following in lieu thereof:

581—15.6(19A) Deferred compensation.

15.6(1) Administration. The director is authorized by the executive council of Iowa to administer the deferred compensation program for employees of the state of Iowa.

15.6(2) Definitions. The following definitions shall apply when used in this rule:

"Agreement" means the deferred compensation agreement signed by the employer and the participating employee.

"Company" means any company which issues a policy under the deferred compensation plan authorized by Iowa Code section 509A.12.

"Employee" means a nontemporary employee of the state of Iowa, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of the general assembly are considered employees.

"Employer" means the state of Iowa.

"Normal retirement age" means 70½ years of age.

"Participating employee" means an employee participating in the plan.

PERSONNEL DEPARTMENT[581](cont'd)

"Plan" means the deferred compensation plan authorized by Iowa Code section 509A.12.

"Plan administrator" means the designee of the director who is authorized to administer the deferred compensation plan.

"Plan year" means on a calendar-year basis.

"Policy" means any retirement annuity, insurance policy or variable annuity, or combination thereof provided for in the agreement.

15.6(3) Eligibility.

a. Initial eligibility. Any nontemporary executive, judicial or legislative branch employee who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are eligible provided deductions meet the requirements of paragraph 15.6(6)"c." Final determination on eligibility shall be decided by the plan administrator.

b. Eligibility after terminating deferral of compensation. Any employee who terminates the deferral of compensation may choose to re-enroll in the plan in accordance with paragraphs 15.6(4)"a" and "b," and 15.6(6)"b."

15.6(4) Enrollment and termination.

a. Enrollment. Employees may enroll in the deferred compensation plan at any time. The original company application form and the department's required enrollment forms shall be submitted to the plan administrator for approval in accordance with subrule 15.6(11). All satisfactorily completed enrollment forms must be received no later than the first day of a calendar month in order for deductions to begin with the first paycheck of the following month. The premiums shall be deducted from the employee's paycheck beginning no sooner than the first paycheck of the following month. The company policy shall become effective on the first day of the month following the beginning of payroll deductions. Agencies are responsible for timely submission of payroll documents to initiate the salary deductions. Enrollment is permitted for elected officials-elect and elected members-elect of the general assembly according to these rules.

b. All completed and approved enrollment forms shall be processed by the plan administrator. Notification of the approved application will be provided to the employee's department ten days prior to the first payroll deduction. Within five calendar days following the first day of the pay period in which the first deduction is to be made, the employing agency shall provide the plan administrator with all applicable enrollment forms. Any deduction form received after that date will not be processed and the effective date of the deduction will be changed to reflect the first payroll deduction of the following month.

c. Termination of participation in the plan. A participating employee may terminate participation in the plan provided notification is received by the employee's department ten days prior to the employee's first deduction of the month. Termination of plan participation does not provide for the disbursement of funds unless done in accordance with subrule 15.6(8).

d. Availability of forms. It is the responsibility of each employee interested in participating in the program to obtain the necessary forms from the agency of employment. It is the responsibility of each agency to inform its employees where and how they may obtain the necessary forms. The forms shall be prescribed by the plan adminis-

trator, and agencies shall be advised as to their availability.

15.6(5) Tax status.

a. FICA and IPERS. The amount of compensation deferred under the agreement shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. Federal and state income taxes. The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRS Code section 457(1954) as amended. The six states adjoining Iowa have agreed to allow their residents who are employees of the state of Iowa to defer compensation for state income tax purposes.

15.6(6) Deductions from earnings.

a. When deducted. Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month or the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals cannot be deducted from the third paycheck of a month.

b. Changing deferral amounts. Participating employees may increase or decrease their monthly deferral amount twice during the calendar year by giving not less than 30 days prior written notice to the plan administrator. The deferred compensation change request form, as provided for in paragraph 15.6(11)"d," and the employee deduction information form must be submitted to the plan administrator by the employee's agency within the first five calendar days after the first day of the pay period in which the first deduction is to be made. The first premium shall be deducted from the employee's paycheck beginning with the first paycheck of the second month following satisfactory completion of the prescribed form. Contributions cannot be changed to permit additional deferral from employees who are collecting vacation payout, sick leave payout, back pay, arbitration awards, or any other type of lump sum pay for accrued benefits while employed by the state of Iowa.

c. Maximum deferral limits. Employees' deferrals may not exceed 25 percent of their annual gross salary minus Internal Revenue Code (I.R.C.) § 125 pretax and dependent care deductions, with a maximum limitation of \$7500 per calendar year. Compensation calculations will be based on the FICA taxable wages. A nontemporary part-time employee's 25 percent maximum shall be determined by using the employee's full-time equivalency.

d. Minimum amount deferred. The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25.

e. Contribution catch-up. A participating employee may elect to catch-up contributions during the employee's last three tax years before reaching the age of 70½. This catch-up provision, which may be in addition to the maximum amount that is allowed in paragraph 15.6(6)"c," shall not be greater than the lesser of one of the following:

- (1) Seven thousand five hundred dollars, or
- (2) Twenty-five percent of the employee's previous calendar year's gross salary minus I.R.C. § 125 pretax deduc-

PERSONNEL DEPARTMENT[581](cont'd)

tions and minus the amount actually deferred during that employee's previous tax year.

During this catch-up period, the participating employee shall:

1. Have participated for 12 months during the previous tax year.

2. Not exceed the ceiling of \$15,000 per calendar year according to the United States Treasury Regulation § 1.457-2(f).

If the participating employee does not utilize this provision during the first of the three catch-up years, the "lost" catch-up amount shall not be added to either the second or third year of the catch-up period. If the participating employee does not utilize this provision during the first two years of the catch-up period, the "lost" catch-up amount shall not be added to the third year of the catch-up period.

The amount to be deferred shall remain constant from the previous calendar year unless a change request is submitted in accordance with paragraph 15.6(6)"b." This cannot be changed to permit additional deferral from employees who are collecting vacation payout, sick leave payout, back pay, arbitration awards, or any other type of lump sum pay for accrued benefits while employed by the state of Iowa, in accordance with the United States Treasury Regulations §§ 1.457-1 and 1.457-2.

15.6(7) Companies.

a. Identification number. Each participating company shall be assigned an identification number by the plan administrator. Each company must initially have a minimum of 30 applications in order to participate in the plan. After satisfying this criterion, companies with less than 30 applications may continue to participate in the plan following approval by the director.

b. Time of payment. Payments shall be transmitted by the plan administrator to the companies within ten calendar days after the last workday of each month.

c. Annual status report. An annual status report stating the value of each participant's policy shall be provided by each company to both the participating employee and the department as of June 30 each year. This shall be continued even after the participating employee terminates or cancels participation in the program. These annual reports are required as long as a value exists in the contract or any activity occurs during the year. The report must include, in addition to the June 30 value, all contributions, earnings, and payouts for the preceding 12-month period.

d. Method of payment. Each company shall be paid by one warrant each month regardless of the number of individual accounts with the company. Companies must minimize crediting errors and provide reasonable credit resolution.

e. Solicitation. There shall be no solicitation of employees by companies at the employee's workplace during the employee's working hours.

f. Dividends. The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. Quality standards. To participate, a company must have:

(1) A minimum credit rating from one or more of the following rating systems: A.M. Best, Standard & Poor's, Moody's, or Duff and Phelps.

(2) A minimum number of years in existence greater than 12.

h. Removal from participation. Failure to comply with the provisions of these rules will result in permanent re-

moval as a participating company and may also require the surrender of all affected policies, as determined by the director.

15.6(8) Disposition of funds.

a. Death of employee. When a participating employee dies, the following information shall be provided by the next of kin to the plan administrator: participating employee's name, social security number, and a copy of the death certificate. On receipt of the above information, the plan administrator shall initiate procedures so that the proceeds of the policy may be distributed as provided in the agreement, unless an irrevocable election has been made by the beneficiary to defer benefits to no later than the deceased employee's normal retirement date.

b. Death of former employee. When a former participating employee dies, the following information shall be provided by the next of kin to the plan administrator: former employee's name, social security number, and a copy of the death certificate. On receipt of the above information, the plan administrator shall initiate procedures so that the proceeds of the policy may be distributed as provided in the agreement unless an irrevocable election is made by the beneficiary to defer benefits in accordance with the former employee's election.

c. Termination of employment. An employee who has terminated state employment (including retirement) may defer or withdraw funds under any option available in the agreement and policy. The employee shall, within 30 calendar days after termination, make an irrevocable decision on a form provided by the plan administrator. If funds are not withdrawn, payment shall commence by the time the former employee reaches the age of 70½. The former employee shall indicate on the appropriate form when and under what options funds are to be paid. If election is not made within the time required, the funds shall be withdrawn by the plan administrator and paid to the former employee. The decision of the former employee is irrevocable when filed with the plan administrator. If an employee elects to start receiving benefits at the normal retirement age, the amount withdrawn each year shall equal or exceed 67 percent of the expected return multiple as defined by the actuarial table provided by the Internal Revenue Service for one life, and shall be a settlement option that will begin to reduce the principal. If an employee works beyond the age of 70½, the employee shall notify the plan administrator of the selected retirement options within 30 days after termination of employment on the appropriate forms.

d. Financial hardship. A participating employee may request that the plan administrator allow the withdrawal of funds from the policy based on financial hardship. The plan administrator shall decide if the employee's request meets the definition of a financial hardship as provided for in United States Department of the Treasury-Internal Revenue Service Regulation 457-2.

e. Transfer to a new employer. Terminating employees who have accepted employment with a city or county within the state of Iowa may transfer ownership of their policies to their new employer provided the new employer accepts the policies and funds are placed in a like plan in accordance with I.R.C. § 457.

f. Method of payment. Payments will not be ordered by the state until at least 31 calendar days have elapsed after termination. For convenience in making payments under the agreement, the employer requires the company, as agent for the state, to make payments directly to the former employee or to the employee's beneficiary, in sat-

PERSONNEL DEPARTMENT[581](cont'd)

isfaction of the employer's continuing obligation. This shall not, however, give the employee or beneficiary any right to demand payment from the company.

g. Federal and state withholding taxes. It shall be the responsibility of the company, when making payment directly to former employees, to withhold the required federal and state income taxes, to remit them to the proper government agency on a timely basis, and to file all necessary reports as required by federal and state regulations, including W-2s, with copies to the plan administrator.

15.6(9) Group plans.

a. Availability. Iowa Code chapter 509A provides that a governing body may approve group policies for employees. The governing body for state employees is the executive council of Iowa.

b. Approval of plans. All group plans must be approved by the executive council of Iowa before any group policies may be sold.

c. Size of group. One or more employees shall constitute a group under this program.

15.6(10) General.

a. Orientation and information meetings. Agencies may hold orientation and information meetings for the benefit of their employees but there shall be no solicitation of employees by companies allowed at these meetings. The presence of the representative of a company will be interpreted as solicitation.

b. Location of policies. The company shall send the original policy to the plan administrator. Failure to do so may result in cancellation of further participation. All original policies shall be kept by the plan administrator at the department. Participating employees may review their own policy during normal work hours, but may under no circumstances remove the policy from the department. The company shall furnish each participating employee with a copy of the policy for informational purposes only, and shall clearly mark that it is not an original policy. The employer shall hold the original policy until the proceeds are disbursed under the terms of the agreement.

c. Number of companies. Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies authorized to do business in Iowa may sell policies under the plan, provided they agree to perform specified administrative functions under the plan.

d. Company changes/transfers. If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 15.6(4)"a." The new company policy shall be effective on the first day of the month following the initial month of payroll deduction. With the approval of the plan administrator, the funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy. The appropriate forms, as prescribed in subrule 15.6(11), shall be provided to the plan administrator prior to requesting the surrender of a contract from a company. An employee may request only once during a calendar year to transfer accumulated funds from one company to another. An employee may change companies any time during the calendar year. However, if two changes in the deferral amount have occurred in the same calendar year, the amount being deferred must remain the same as of the effective date of the second change. After termination of employment, former employees may change companies only once. Former employees must take a distribution from that company

based on the distribution date selected by the employee at the time of separation.

e. Change in beneficiary. A participating employee may change the beneficiary shown in the supplement to the compensation agreement by providing the plan administrator with written notice of the change on forms prescribed by the plan administrator. The beneficiary on the policy shall be the state of Iowa.

f. Deferred compensation or tax sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax sheltered annuities shall be allowed to participate in one or the other of the programs, but not both. If, in the same calendar year, an eligible employee changes from a deferred compensation plan to a tax sheltered annuity plan or vice versa, the maximum deferral for that calendar year for both plans combined may not exceed \$7500, and all deferrals made in that calendar year, regardless of which plan, must be included when determining the remaining amount that can be deferred in that calendar year.

g. Employee termination from a tax sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax sheltered annuity participation under I.R.C. § 403(b), no further tax sheltered annuity deductions will be allowed.

h. In accordance with applicable I.R.C. § 403(b) regulations, tax sheltered annuity participants are allowed only one change in deferral amount per calendar year. Participating employees' monthly deferrals may not exceed 25 percent of their monthly gross income minus I.R.C. § 125 pretax and dependent care deductions, with a maximum deferral of \$9500 per calendar year. Monthly compensation calculations will be based on the participating employee's FICA taxable wages.

15.6(11) Forms. The administration of the deferred compensation program shall be accomplished through the forms described in this subrule, used in accordance with this rule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

a. Authorization to deduct. This form shall authorize the plan administrator to make a stated deduction from the participating employee's compensation as part of an I.R.S. 457 plan.

b. Deferral amount change. This form shall authorize the plan administrator to change the amount of deduction from the participating employee's compensation.

c. Distribution of funds. This form shall be used when a participating employee desires to have the employer surrender the policy for a cash refund or the employee wishes to start drawing retirement benefits.

d. Change of beneficiary. This form shall be used when a participating employee wishes to change the designated beneficiary named in the supplemental agreement.

e. Deferred compensation agreement. This form is the agreement between the employer and the participating employee.

f. Application for policy. A policy application form shall be supplied by the company to which the participating employee elects to defer compensation. The completed form shall be approved by the plan administrator along with the state of Iowa's required enrollment forms. The completed company application form shall show the owner and beneficiary of the policy to be the state of Iowa and the relationship of the state of Iowa to the participating employee as "employer." The completed forms shall

PERSONNEL DEPARTMENT[581](cont'd)

be forwarded to the Deferred Compensation Plan Administrator, Iowa Department of Personnel, Grimes State Office Building, Des Moines, Iowa 50309-0150, with a self-addressed, stamped envelope to be used to return the approved application form to the company agent.

g. Deferred compensation replacement/rollover. This form shall be used when a participating employee wishes the employer to transfer funds from one eligible company to another eligible company.

h. Deferred compensation acknowledgment. This form is for employees to acknowledge that they are aware of and familiar with the plan's provisions.

ITEM 28. Amend 581—15.9(19A) as follows:

581—15.9(19A) Interviewing and moving expense reimbursement.

15.9(1) Interviewing expenses. If approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to the interview at the same rate at which an employee is would be reimbursed for expenses incurred during the performance of state business.

15.9(2) Moving expenses for transferred reassigned employees. A state employee who is transferred reassigned shall be reimbursed for allowable moving and related expenses and up to seven thousand five hundred dollars (\$7,500) in allowable incidental expenses in accordance with the policies of the director. Eligibility for payment shall occur when all of the following conditions exist:

a. The employee is transferred reassigned at the direction of the appointing authority;

b. The transfer reassignment constitutes a permanent change in duty station beyond 25 miles;

c. The transfer reassignment results in the employee changing the place of residence in order to be living within beyond twenty-five (25) miles of the new duty station, unless prior approval otherwise has been obtained from the director; and

d. The transfer reassignment is not primarily for the benefit of the employee.

15.9(3) Moving expenses for newly hired employees. If approved by the appointing authority, a person newly hired may be reimbursed for moving and related expenses incurred at the same rate provided for the transfer reassignment of a current employee. Reimbursement shall not occur until the employee is on the payroll.

ARC 3771A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY 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 section 147.76, the Board of Physical and Occupational Therapy Examin-

ers hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," Iowa Administrative Code.

The proposed amendments raise the fee for the physical therapy and physical therapist assistant examinations. This is necessary due to an increase in the fee charged to the Board by the Professional Examination Service (PES).

Any interested person may make written comments on the proposed amendments not later than March 9, 1993, addressed to Marilyn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code chapter 147.

The following amendments are proposed.

ITEM 1. Amend subrule 200.9(1) as follows:

200.9(1) The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is \$55. The examination fee is an additional \$100 \$110.

ITEM 2. Amend subrule 202.10(1) as follows:

202.10(1) The application fee for a license to practice as a physical therapist assistant issued upon the basis of examination or endorsement is \$45. The examination fee is an additional \$90 \$110.

ARC 3751A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 40, "Determination of Net Income," and Chapter 41, "Determination of Taxable Income," Iowa Administrative Code.

The Department of Revenue and Finance has taken the position that pensions and annuities received by nonresidents of Iowa are subject to Iowa income tax to the extent the pensions and annuities were earned through personal services of the nonresidents in Iowa. Rule 701—40.44(422) clarifies when nonresidents must pay state income tax to Iowa on their pension and annuity incomes for tax years beginning before January 1, 1992, and for tax years beginning on or after that date when there was a legislative change to correct a problem in the statute. This problem had a bearing on the taxation of nonresidents' pensions and annuities prior to 1992. This rule sets out how claims for refund should be filed in situations where taxpayers paid income tax on pensions or annuities for tax years when the pensions were partially exempt.

Finally, rule 701—40.44(422) mentions how the portion of the pension that is taxable to Iowa should be com-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

puted in situations where the pension or annuity was earned in Iowa and in one or more other states.

Rules 701—41.11(422) and 41.12(422) describe a provision for reduction of a portion of a taxpayer's itemized deduction for certain high-income taxpayers which is also applicable for Iowa. These rules describe how the provision is administered on the Iowa return by using the Itemized Deduction Worksheet (Form 41-107) to determine the amount of federal itemized deductions that may be claimed on the Iowa return.

The new rules in Chapter 41 describe a problem with Form 41-107 for 1991 that may have resulted in some taxpayers taking fewer itemized deductions than they were entitled to claim.

These rules also indicate how amended returns may be filed to claim refunds of the amount of tax paid in error.

Rule 701—41.12(422) describes a reduced Iowa deduction for mortgage interest by taxpayers that have a mortgage interest credit that reduced their mortgage interest deduction on the federal return.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than March 9, 1993, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed rules on or before March 19, 1993. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, at (515)281-4250 or at Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 12, 1993.

The rules are intended to implement Iowa Code sections 422.3, 422.7, 422.8 and 422.9.

The following new rules are proposed.

ITEM 1. Amend 701—Chapter 40 by adding the following new rule:

701—40.44(422) Taxation of nonresidents' pensions and annuities. Generally, nonresidents' pensions and annuities are subject to Iowa income tax to the extent the pensions and annuities were earned through employment or self-employment in Iowa. The amount of pension or annuity income subject to Iowa income tax is usually the same amount that is taxable for federal income tax pur-

poses. The portion of the pension or annuity that is attributable to contributions of the employee is not taxable to the employee unless the employee has received a tax benefit for the contribution. The following subrules clarify how nonresident pension and annuities are taxed for tax years beginning before January 1, 1992, and how nonresident pension and annuities are taxed for tax years beginning on or after January 1, 1992.

40.44(1) Taxation of nonresidents' pensions and annuities for tax years beginning prior to January 1, 1992. For tax years beginning prior to January 1, 1992, nonresidents living in a state without an income tax are subject to Iowa income tax on pensions and annuities they receive which are attributable to personal services in Iowa. States without an income tax as of January 1, 1992, were Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming. For example, a resident of Florida is receiving Iowa Public Employees Retirement System (IPERS) benefits for long-term employment in Iowa for the state of Iowa. The IPERS benefits are taxable to Iowa to the same extent the benefits are taxable on the individual's federal return.

Residents of other states that have an income tax who receive pension or annuity incomes attributable to personal services in Iowa are taxable on those incomes, if the states in which they reside also tax nonresident pension and annuity incomes. However, to the extent those states have partial exemptions for pension and annuity benefits received by nonresidents of the states, these partial exemptions will also apply to Iowa's taxation of pension and annuity benefits of residents of those states which were earned from personal services of the individuals in Iowa. For example, taxpayer A is a resident of state X and receives a pension that was earned from employment in Iowa. State X taxes nonresidents' pensions that were earned from employment in state X. State X has an income tax exemption for up to \$5,000 in pension and annuity benefits for all taxpayers, including nonresident taxpayers. Thus, if Iowa is taxing the pension or annuity income of a resident of state X, Iowa must allow an exemption of up to \$5,000 in its taxation of the pension and annuity income.

In the instance of states and the District of Columbia that have an income tax and exempt pensions and annuity incomes of nonresidents of those states that were earned from personal services in those states, pensions and annuities of residents of those states are exempt from Iowa income tax to the extent the pensions and annuities were earned from personal services in Iowa.

In situations where nonresidents of Iowa have paid Iowa income tax on pensions and annuities that would be exempt or partially exempt on the basis of criteria set out in this subrule, refund claims should be filed with the department within the statute of limitations for refund provided in Iowa Code subsection 422.73(2). In most cases a refund claim for a tax year must be filed within three years of the due date of the return.

The criteria set out for taxation of nonresident pensions and annuities outlined in this subrule conforms generally to an attorney general's opinion which was issued January 30, 1992.

40.44(2) Taxation of nonresidents' pensions and annuities for tax years beginning on or after January 1, 1992. For tax years beginning on or after January 1, 1992, all pensions and annuities received by nonresidents of Iowa which were earned from employment or self-employment in Iowa are taxable to Iowa except for pensions and an-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

nunities received by nonresidents of Iowa who earned the retirement benefits from personal services in Iowa at the time the nonresidents were Illinois residents covered by the Iowa-Illinois reciprocal tax agreement. For purposes of the Iowa-Illinois reciprocal agreement, pensions and annuities are considered to be included in "compensation earned from personal services." See 701—subrule 38.13(1) for additional information about the Iowa-Illinois reciprocal tax agreement.

EXAMPLE A: A Missouri resident received \$10,000 in pension benefits in 1992 which was earned from employment in Iowa, while the individual was a resident of Illinois. The \$10,000 in pension benefits is not taxable to Iowa, since the benefits were considered to be part of the taxpayer's compensation which was earned under the Iowa-Illinois reciprocal agreement. Thus, the pension benefits would be taxable to Illinois since the pension was considered to have been earned in Illinois under the reciprocal agreement, assuming Illinois would tax the pension benefits.

EXAMPLE B: A resident of Minnesota received \$10,000 in pension benefits in 1992 which was earned from employment in Iowa. The pension was funded solely from contributions from the individual's employer. The Minnesota resident is taxable to Iowa on the \$10,000 in pension benefits received in 1992.

40.44(3) Taxation of nonresident's pensions and annuities earned in Iowa and one or more other states. In a situation where an individual's pension or annuity was earned from employment in Iowa and in one or more other states, only a prorated amount of the pension income that is taxable on the federal return is taxable for Iowa income tax purposes. Thus, if a resident of Nebraska is receiving a pension or annuity from company X that was earned from ten years of employment for company X in Nebraska and ten years of employment for company X in Iowa, half of the pension or annuity income that was taxable on the taxpayer's federal return would be taxable on the taxpayer's Iowa return. The following formula should be used to compute the portion of a nonresident taxpayer's pension or annuity that is taxable for Iowa individual income tax purposes when the nonresident employee worked in Iowa and one or more other states for an employer.

$$\begin{matrix} \text{Amount of Pension} \\ \text{or Annuity Taxable} \\ \text{on Federal Return} \end{matrix} \times \frac{\begin{matrix} \text{Time Worked for} \\ \text{Employer in Iowa} \\ \text{Total Time Worked} \\ \text{for Employer} \end{matrix}}{\begin{matrix} \text{Taxable} \\ \text{Pension} \\ \text{for Iowa} \end{matrix}} = \text{Amount of}$$

For example, a resident of Minnesota worked for one employer (company Y) for 30 years. The Minnesota resident is receiving a \$20,000-a-year pension from company Y. All the pension is taxable on the former employee's federal return since the pension was funded entirely from contributions of the employer. Of the 30-year period of employment with company Y, 18 years were spent in Iowa. The computation of the taxable amount of the pension for Iowa income tax purposes is shown below:

$$\$20,000 \times \frac{18}{30} = \$12,000$$

If a taxpayer believes that the formula provided in this subrule does not reasonably allocate the portion of the taxpayer's pension or annuity that is taxable to Iowa, the taxpayer may request use of an alternate formula for the allocation. The request for an alternate formula must be filed no later than 60 days before the due date of the re-

turn, considering that the due date may be extended if 90 percent of the tax liability for the return was paid by the original due date (April 30 for the taxpayers filing on a calendar-year basis).

The request for an alternate formula should be filed with the Policy Section, Technical Services Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternate formula for allocation of the portion of the pension and annuity that is taxable to Iowa. In addition, the request must give reasons why the alternate formula is more reasonable than the formula given in this subrule. The burden of proof is on the taxpayer to show that the alternate formula is more reasonable for allocation of the taxable portion of the pension than the formula given in this subrule.

If the department agrees that the alternate formula is more reasonable in allocation of the pension or annuity to Iowa than the formula in this subrule, the taxpayer can use the alternate formula on returns for subsequent tax years as long as the factors relating to allocation of the pension or annuity income do not change.

If the department rejects the taxpayer's use of the alternate formula, the taxpayer may file a protest within 60 days of the date of the department's letter of rejection. The taxpayer's protest of the department's rejection of the alternative formula must be made in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.

ITEM 2. Amend 701—Chapter 41 by adding the following new rules:

701—41.11(422) Reduction in state itemized deductions for certain high-income taxpayers. For tax years beginning after December 1991 but before January 1, 1996, the itemized deductions for certain high-income taxpayers are reduced for federal income tax purposes by the lesser of (a) 3 percent of the excess of adjusted gross income (AGI) over the applicable amount, or (b) 80 percent of the amount of itemized deductions otherwise allowable for the taxable year. For 1991, the applicable amount is \$100,000 (\$50,000 in the case of a married person filing a separate federal return). The applicable amount is to be increased each tax year to reflect inflation in the taxable years after 1991. For example, for 1992 the applicable amount is \$105,250 (\$52,625 in the case of a married person filing a separate return). This reduction in itemized deductions for certain high-income taxpayers applies for Iowa individual income tax purposes for the same tax years that the provision applies for federal income tax purposes. The following subrules clarify how the reduction in itemized deductions is to be determined on the Iowa individual income tax return:

41.11(1) Itemized deduction worksheet (Form 41-107). High-income taxpayers who are itemizing deductions on the Iowa income tax return and whose itemized deductions for federal income tax purposes were subject to reduction because their federal adjusted gross incomes exceeded certain amounts (\$100,000 for joint filers in 1991) must complete Itemized Deduction Worksheet (Form 41-107) to determine the amount of federal itemized deductions that can be claimed on the Iowa income tax return. In the case of high-income taxpayers who are itemizing deductions on the Iowa return and are using federal Schedule A to support the itemized deductions claimed, these taxpayers are to complete Part I of Form 41-107 to determine the federal itemized deductions that

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

can be claimed on the Iowa return. Part I of Form 41-107 is shown below. The line references on the form are to federal Schedule A for 1992 and to the IA 1040 for 1992. Similar line references will apply on Part I of Form 41-107 for the tax years 1993, 1994, and 1995.

- 1. Enter the amount from line 26 of your federal Schedule A1. _____
2. Enter the amount of Iowa income tax that is included on line 5 of your federal Schedule A2. _____
3. Subtract line 2 from line 13. _____
4. Enter the total of lines 4, 11, and 17, plus any gambling losses included on line 25 of the federal Schedule A4. _____
5. Enter the larger of lines 3 or 4 here and on line 39 of the IA 10405. _____

Those high-income taxpayers that use Part I of Form 41-107 for 1992 are to enter the total on line 5 of the form on line 39 of IA 1040 for 1992. The total from line 5 would be entered on a similar line on the IA 1040 return forms for tax years 1993, 1994, and 1995.

Those high-income taxpayers that use the Iowa Schedule A to support the itemized deductions claimed are to complete Part II of Form 41-107. Part II of Form 41-107 is shown below: All the line references and form references are to 1992 forms. Similar line references and form references will apply for Part II of Form 41-107 for 1993, 1994, and 1995.

- 1. Add the amounts on IA Schedule A, lines 3, 7, 11, 15, 16, 17, 22 and 231. _____
2. Iowa income tax paid in 19922. _____
3. Add lines 1 and 23. _____
4. Add the amounts of IA Schedule A lines 3, 10, and 16, plus any gambling losses included on line 234. _____
5. Subtract line 4 from line 3. If the result is zero, STOP HERE. Enter the amount from line 1 above on line 24, IA Schedule A5. _____
6. Multiply line 5 by 80%6. _____
7. Enter the amount from federal Form 1040 line 327. _____
8. Enter \$105,250 (\$52,625 if married filing separately for federal tax purposes)8. _____
9. Subtract line 8 from line 79. _____
10. Multiply line 9 by 3% (.03) 10. _____
11. Enter the smaller of lines 6 or 10 11. _____
12. Subtract line 11 from line 3 12. _____
13. Iowa income tax paid in 1992 13. _____
14. Subtract line 13 from line 12 14. _____
15. Enter the larger of line 14 or line 4 here and on line 24, IA Schedule A ... 15. _____

41.11(2) Possible problems with itemized deduction worksheet for 1991 returns. The department has determined that some high-income taxpayers who used the itemized deduction worksheet (Form 41-107) for 1991 may have claimed less itemized deductions than the taxpayers were entitled to claim. For federal income tax purposes, medical and dental expenses, investment interest, casualty and theft losses, and gambling losses are not subject to reduction for high-income taxpayers whose itemized deductions are reduced by 3 percent to the extent that the taxpayers' federal adjusted gross incomes exceed cer-

tain amounts (\$100,000 or \$50,000 for a married taxpayer who files a separate federal return). Therefore, if a high-income taxpayer completed Form 41-107 for 1991 and claimed a total of itemized deductions that was less than the aggregate of the taxpayer's medical and dental expenses, investment interest, casualty and theft losses, and gambling losses for 1991, the taxpayer should file an amended return for 1991 and claim the aggregate of the mentioned itemized deductions instead of the amount claimed on the original return. An amended return for 1991 must be filed on or before April 30, 1995, in order to be a valid claim for refund.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

701-41.12(422) Reduced state deduction for home mortgage interest for taxpayers with mortgage interest credit. Taxpayers who qualified for the mortgage interest credit on their federal return which reduced their deduction for home mortgage interest are subject to the same reduced deduction for mortgage interest for Iowa income tax purposes. The mortgage interest credit is provided in Section 25 of the Internal Revenue Code. For example, a taxpayer paid \$6,000 in home mortgage interest in the tax year and qualified for a mortgage interest credit of \$900. Thus, the taxpayer had a federal mortgage interest deduction in the tax year of \$5,100. The Iowa mortgage interest deduction for the tax year is also \$5,100 instead of \$6,000.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

ARC 3776A

TREASURER OF STATE[781]

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 12C.21(2)"d," the Treasurer of State hereby gives Notice of Intended Action to rescind Chapter 3, "Deposit and Security of Public Funds," and adopt a new Chapter 3, "Deposit and Security of Public Funds in Savings and Loans," Iowa Administrative Code.

The new chapter clarifies and updates the rules applicable to the deposit of public funds in savings and loans and restricts the security for such deposits to letters of credit. Also, references to Iowa Code chapter 453 have been changed to 12C to conform with the renumbering of the 1993 Iowa Code.

Any interested person may make oral or written suggestions or comments on the proposed amendments on or before March 11, 1993. Comments should be directed to the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319-0005, telephone (515)281-5084.

There will also be a public hearing on March 11, 1993, at 10 a.m. in the office of Treasurer of State located on the first floor of the State Capitol, Des Moines, Iowa.

TREASURER OF STATE[781](cont'd)

Persons may present their views at this meeting either orally or in writing.

These rules are intended to implement Iowa Code chapter 12C.

These rules were also Adopted and Filed Emergency and are published herein as ARC 3775A. The content of that submission is incorporated by reference.

ARC 3773A

TREASURER OF STATE[781]

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 12C.21(2)"d," the Treasurer of State hereby gives Notice of Intended Action to rescind Chapter 14, "Deposit and Security of Public Funds in Credit Unions," and adopt a new Chapter 14, "Deposit and Security of Public Funds in Credit Unions," Iowa Administrative Code.

The revised chapter has eliminated language permitting credit unions to secure public deposits through the pledge of securities. The rules limit savings and loans to securing deposits of uninsured public funds only through the use of letters of credit. Also, references to Iowa Code chapter 453 have been changed to 12C to conform to the renumbering of the 1993 Iowa Code.

Any interested person may make oral or written suggestions or comments on the proposed amendments on or before March 11, 1993. Comments should be directed to the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319-0005, telephone (515)281-5084.

There will also be a public hearing on March 11, 1993, at 10 a.m. in the office of Treasurer of State located on the first floor of the State Capitol, Des Moines, Iowa. Persons may present their views at this meeting either orally or in writing.

These rules are intended to implement Iowa Code chapter 12C.

These rules were also Adopted and Filed Emergency and are published herein as ARC 3774A. The content of that submission is incorporated by reference.

**NOTICE—PUBLIC FUNDS
INTEREST RATES**

In compliance with Iowa Code chapter 74A and section 12C.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Richard Bueneke, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for February 2 is 8.75%.

**INTEREST RATES FOR PUBLIC
OBLIGATIONS AND ASSESSMENTS**

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

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

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

New official state interest rates, effective February 2, 1993, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7 - 31 days Minimum 2.20%
- 32 - 89 days Minimum 2.40%
- 90 - 179 days Minimum 2.60%
- 180 - 364 days Minimum 2.80%
- One year Minimum 3.00%
- Two years or more Minimum 4.00%

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

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

ARC 3762A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF [261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 54, "Targeted Small Business Procurement Program," Iowa Administrative Code.

The amendments implement revisions made to Iowa Code section 73.18 by 1992 Iowa Acts, chapter 1244, section 36. The statutory changes remove the requirement that educational institutions notify IDED prior to the release of solicitations for bids or request for proposals, authorize such institutions to consult a directory of certified targeted small businesses prepared by IDED in lieu of notifying the agency and permit IDED to charge a reasonable fee to cover the cost of the directory. The amendments reflect these legislative modifications.

In compliance with 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because the amendments to the rules merely reflect what is already required by statute.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on January 29, 1993, upon filing with the Administrative Rules Coordinator. These amendments confer a benefit on the public by bringing the administrative rules into compliance with legislative requirements.

These amendments are intended to implement Iowa Code section 73.18.

These amendments became effective on January 29, 1993.

The following amendments are adopted.

Amend 261—54.10(73) as follows:

261—54.10(73) Notice of solicitation for bids.

~~54.10(1) Notice to IDED. The director of each agency or department releasing a solicitation of bids that includes TSB goals shall notify the IDED director prior to or upon release of the solicitation. An education institution shall notify the department of education which shall notify IDED prior to or upon release of the solicitation. Directory consulted. The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of economic development that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The department of economic development may charge the department, agency, area education agency, community college, or school district, a reasonable fee to cover the cost of producing, distributing, and updating the directory.~~

54.10(2) Contents of notice solicitation or request for proposal. The notice to ~~IDED~~ TSBs of the release of a re-

quest for proposal or solicitation for bid shall, at a minimum, include the:

- a. Description of the item to be bid;
- b. Date the bid is to be open and the closing date for submission; and
- c. Contact person in the soliciting agency, department, or education institution.

54.10(3) TSB directory. IDED compiles, and updates on a quarterly basis, a TSB directory. The TSB directory contains a listing of targeted small businesses that have been certified by DIA for participation in the TSB procurement program. The directory also includes a list of TSBs which have been decertified. ~~IDED will use the TSB directory to notify a soliciting agency, department or education institution of certified TSBs who may be qualified to bid. IDED may charge users a reasonable fee to cover the costs of the TSB directory.~~

[Filed Emergency 1/29/93, effective 1/29/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3770A

REAL ESTATE COMMISSION [193E]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 117.9* and 117.18*, the Iowa Real Estate Commission hereby amends Chapter 1, "Business Conduct," and Chapter 2, "Administrative Procedure," Iowa Administrative Code.

These amendments reflect comments and recommendations from the Administrative Rules Review Committee and are intended to further clarify amendments that were effective January 27, 1993, and to set a definite time limit in which to comply with subrules 1.24(2) and 1.32(6). The amending of rule 2.1(117) reflects a legislated change in commission responsibility, in effect.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable as public comments were received at a hearing held October 21, 1993, on the amendments effective January 27, 1993, and at the Administrative Rules Review Committee meeting held January 6, 1993, and recommendations were incorporated in these amendments.

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments made effective upon filing with the Administrative Rules Coordinator because they confer a benefit to the licensees and the public by additional clarification, by setting definite time limits in which compliance is required, and by not causing a delay in the January 27, 1993, effective date of amendments to this chapter.

Item 1 requires the broker to promptly take corrective action on advertisements within ten calendar days.

Item 2 makes a correction to read "final judgment of the court" and expands the language to be consistent with intent and include property management.

* Iowa Code chapter 117 renumbered as 543B in 1993 Iowa Code

REAL ESTATE COMMISSION[193E](cont'd)

Item 3 expands the language to be consistent with the intent and include reference to "Mobile Home Parks Residential Landlord and Tenant Law."

Item 4 requires a suspended or revoked broker to remove or cover all advertising within ten calendar days after the effective date of the order.

Item 5 changes language in rule 2.1(117) to comply with legislation in effect to place responsibility to inspect subdivided land with the Commission.

These amendments will become effective January 29, 1993.

These amendments are intended to implement Iowa Code sections 117.9 and 117.18.

The following amendments are adopted.

ITEM 1. Amend subrule 1.24(2) as follows:

1.24(2) All advertising shall be conducted under the supervision of the broker. The broker shall ensure the accuracy of the information and upon becoming aware of a material error or an advertisement which is in violation of this chapter or Iowa Code chapter 117, the broker shall promptly take corrective measures *within ten calendar days by the next business day.*

ITEM 2. Amend subrule 1.27(7) as follows:

1.27(7) No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties, except in accordance with this rule. In the event of a dispute over the return or forfeiture of any earnest money or escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until:

1. The broker is in receipt of a written release from all parties consenting to the disposition of the deposit; or
2. The broker is in receipt of a final judgment of the court ~~course~~ directing the disposition of the deposit; or
3. There is a final decision of a binding alternative dispute resolution process; or
4. A civil action is filed by one or more of the parties to determine the disposition of the deposit, at which time the broker may seek court authorization to pay the deposit into court.
 - a. to c. No change.
 - d. The dispute must be legitimate; if a buyer or a seller, or a lessee or lessor, demands the return of an the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.
 - e. to g. No change.

ITEM 3. Amend subrule 1.30(6) as follows:

1.30(6) If any of the unobligated funds held by the property manager under the terminated agreement represent tenants' conditionally refundable deposits received from current tenants, the property manager:

a. May not expend any tenant's conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreements, and

b. If any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the licensee shall complete any final accounting, inspection or other procedure required by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Act, Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement, unless the owner directs otherwise in writing.

ITEM 4. Amend subrule 1.32(6) as follows:

1.32(6) A suspended or revoked broker is prohibited from advertising real estate in any manner as a broker. All advertising must be removed or covered, including but not limited to signs, *within ten calendar days after the effective date of the suspension or revocation.*

The office business telephone must not be answered in any manner to indicate the broker is active in the real estate business.

ITEM 5. Amend rule 193E—2.1(117), introductory paragraphs, as follows:

193E—2.1(117) Mission of the commission. The mission of the Iowa real estate commission is to protect the public through the examination, licensing, and regulation of real estate brokers, salespersons, and firms pursuant to Iowa Code chapter 117, "Real Estate Brokers and Salespersons"; to administer Iowa Code chapter 117A, "Sales of Subdivided Land Outside of Iowa"; and to administer Iowa Code chapter 557A, "Iowa Time-Share Act."

Out-of-state subdivided land developers file plats, records, and other legal documents with the board pursuant to Iowa Code chapter 117A. The commission refers the filings to the attorney general's office for review. When the attorney general's office reports to the commission the filed information is complete, the commission will accept the filing and filing fee. If accepted, the subdivider may then advertise and sell the registered property in the state of Iowa. The commission refers complaints filed by the public concerning sale in Iowa of unregistered subdivided land to the consumer protection division of the attorney general's office for investigation, enforcement and prosecution, if necessary.

The commission is a policy-making body with authority to promulgate rules for the regulation of the real estate industry consistent with all applicable statutes. Rules promulgated by the commission are published under agency number 193E—Iowa Administrative Code. Administrative support services are furnished by the professional licensing and regulation division of the department of commerce and by the office of administrative services of the department of commerce. The administrator of the professional licensing and regulation division appoints and supervises an executive secretary and staff to carry out the duties assigned by the commission. ~~The department of inspections and appeals furnishes support services in the following areas: review broker trust accounts, investigate complaints against licensees, conduct appeals and hearings, and inspect subdivided land outside of Iowa pursuant to Iowa Code section 117A.4.~~ Disciplinary hearings are held under the guidance of a hearing officer assigned by the department of inspections and appeals. *The commission or duly authorized representative may inspect subdivided land outside of Iowa pursuant to Iowa Code section 117A.4.*

[Filed Emergency 1/29/93, effective 1/29/93]

[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3775A**TREASURER OF STATE[781]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 12C.21(2)"d," the Treasurer of State hereby rescinds Chapter 3, "Deposit and Security of Public Funds," and adopts a new Chapter 3, "Deposit and Security of Public Funds in Savings and Loans," Iowa Administrative Code.

The new chapter clarifies and updates the rules applicable to the deposit of public funds in savings and loans and restricts the security for such deposits to letters of credit. Also, references to Iowa Code chapter 453 have been changed to 12C to conform to the renumbering of the 1993 Iowa Code.

In compliance with Iowa Code section 17A.4(2), the Treasurer of State finds that notice and public participation are impracticable and contrary to the public interest as it is unclear whether the pledging program currently in place is adequate to ensure the safety of public funds in savings and loans.

The Treasurer of State finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules be made effective on February 15, 1993, because they confer a benefit on the public by ensuring the safety of public funds deposits in savings and loans.

The Treasurer will attempt to notify those institutions and public units affected by these changes so that they can comply with these rules within the time frame specified.

These rules are also published herein under Notice of Intended Action as ARC 3776A to allow for public comment.

The rules are intended to implement Iowa Code section 12C.9.

The rules became effective February 15, 1993.

The following chapter is adopted.

Rescind 781—Chapter 3 and adopt the following new chapter:

CHAPTER 3**DEPOSIT AND SECURITY OF PUBLIC FUNDS IN SAVINGS AND LOANS****781—3.1(12C) Scope and transition.**

3.1(1) Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans and credit unions. This chapter contains rules which shall apply to the system for securing deposits of public funds in savings and loans or federal savings banks. Rules pertaining to securing public funds in credit unions are contained in 781—Chapter 14. Rules pertaining to the securing of public funds in banks are contained in 781—Chapter 13.

3.1(2) A savings and loan shall secure its existing public deposits through the use of a letter of credit as required in this chapter by March 31, 1993. Any new deposits by a public unit in a savings and loan after February 15, 1993, shall be secured according to the requirements of these rules.

781—3.2(12C) Definitions. As used in this chapter:

"Federal Home Loan Bank" means the Federal Home Loan Bank of Des Moines, Iowa.

"Letter of credit" means an irrevocable, non-transferable, standby letter of credit (Form 655-0198) issued directly to the public unit by the Federal Home Loan Bank.

"Public units." The state of Iowa, its cities, counties, school districts and all other political subdivisions of the state are public units under this chapter including but not limited to the following entities:

1. Cities.
2. Transit authorities.
3. Municipal utilities, including jointly owned.
4. Public libraries, city and regional.
5. Municipal housing programs.
6. Solid waste agencies.
7. Water works.
8. City cemeteries.
9. County offices including treasurers, recorders, clerks of court, sheriffs and auditors.
10. Townships.
11. County fair boards.
12. Regional planning agencies.
13. County care facilities.
14. County hospitals.
15. County conservation boards.
16. Sanitary districts.
17. Treasurer of state.
18. Iowa beer and liquor control department.
19. Iowa department of transportation.
20. Judicial district department of correctional services.
21. Iowa finance authority.
22. Iowa family farm development authority.
23. Iowa railway finance authority.
24. State board of regents.
25. State fair board.
26. State commerce commission.
27. State racing commission.
28. Iowa college aid commission.
29. Iowa higher education loan authority.
30. School districts.
31. Area education agencies.
32. Community action programs.
33. Community colleges

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance, are not public units.

"Savings and loan" means a savings and loan as defined in Iowa Code subsection 12C.1(2).

"Treasurer" as used in this chapter shall mean the treasurer of the state of Iowa.

"Uninsured public funds" or "uninsured public deposits" means the funds of a public unit deposited in a savings and loan which are not federally insured, together with any accrued interest thereon.

781—3.3(12C) Forms. The following forms shall be utilized by savings and loans in connection with the operation of this chapter:

1. (Form 655-0198) Letter of Credit.
2. (Form 655-0204) Deposit Agreement.

781—3.4(12C) Uninsured public deposits in savings and loans. Uninsured public deposits in a savings and

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loan shall be secured by a letter of credit (Form 655-0198) and a deposit agreement (Form 655-0204) between the public unit and the savings and loan. The savings and loan will only be allowed to aggregate funds deposited by the same public unit. Prior to accepting an uninsured public deposit, a savings and loan must secure the deposit according to requirements contained in this chapter.

781—3.5(12C) Securing uninsured public deposits in savings and loans using a letter of credit.

3.5(1) A savings and loan shall secure the uninsured public time deposits of a public unit with a letter of credit as defined in these rules and Iowa Code section 12C.16.

3.5(2) The public unit shall have in its possession prior to or simultaneously at the time of deposit of uninsured public deposits in a savings and loan, a letter of credit issued by the Federal Home Loan Bank to the public unit in an amount that is not less than 110 percent of the amount of public funds deposits to be secured thereby. The letter of credit shall have an expiration date which is at least ten business days later than the maturity date of the time deposit.

3.5(3) The public unit shall keep the letter of credit in a vault or a safe deposit box in a financial institution other than the savings and loan until such time as the letter of credit expires or is presented for payment to the Federal Home Loan Bank.

3.5(4) In the event that the public unit decides to extend the maturity of its deposit after the issuance of the letter of credit, the public unit shall obtain a new letter of credit from the Federal Home Loan Bank that taking into account the extended maturity date of the time deposit and the amount of the time deposit complies with the requirement of subrule 3.5(2). The new letter of credit must be obtained by the public unit prior to the original maturity date of the deposit.

781—3.6(12C) Termination of savings and loan's federal insurance. In the event that a savings and loan's applicable federal deposit insurance is suspended or terminated, the savings and loan must notify the public unit immediately and shall immediately return all deposits to the public unit with accrued interest.

781—3.7(12C) Sale or merger of a savings and loan. The responsibility of a savings and loan to secure uninsured public deposits by a letter of credit shall not be altered by any merger, takeover or acquisition, except to the extent that such duty is assumed by the successor entity. A savings and loan shall immediately notify the public unit, in writing, of its merger, takeover or acquisition by a successor entity.

781—3.8(12C) Procedures upon default.

3.8(1) The acceptance of public funds deposits by a savings and loan constitutes consent by the savings and loan to assessments by the treasurer to cover losses of public funds in other savings and loans in accordance with Iowa Code section 12C.23 and the rules contained in this chapter.

3.8(2) The treasurer, upon notification from a public unit that a public unit has not been completely repaid its principal and interest for a deposit and upon notification that such principal and interest is not available from a letter of credit securing such deposit, shall assess all savings and loans in the state with public deposits as provided in Iowa Code section 12C.23.

3.8(3) A savings and loan and any security given for the public funds in its possession are liable for payment if the

savings and loan fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if in failing to pay the savings and loan acts contrary to the terms of an agreement between the savings and loan and the public body treasurer or, if the savings and loan fails to pay an assessment, by the treasurer of state when due.

These rules are intended to implement Iowa Code chapter 12C.

[Filed Emergency 1/29/93, effective 2/15/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3774A**TREASURER OF STATE[781]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 12C.21(2)"d," the Treasurer of State hereby rescinds Chapter 14, "Deposit and Security of Public Funds in Credit Unions," and adopts a new Chapter 14, "Deposit and Security of Public Funds in Credit Unions," Iowa Administrative Code.

The revised chapter has eliminated language permitting credit unions to secure public deposits through the pledge of securities. The rules limit savings and loans to securing deposits of uninsured public funds only through the use of letters of credit. Also, references to Iowa Code chapter 453 have been changed to 12C to conform to the renumbering of the 1993 Iowa Code.

In compliance with Iowa Code section 17A.4(2), the Treasurer of State finds that notice and public participation are impracticable and contrary to the public interest as it is unclear whether the pledging program currently in place for credit unions is adequate to ensure the safety of public funds in credit unions.

The Treasurer of State finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules be made effective February 15, 1993, because they confer a benefit on the public by ensuring the safety of public funds deposits in credit unions.

The Treasurer will attempt to notify affected institutions and public units of these changes prior to the date the provisions of this chapter become effective.

These rules are also published herein under Notice of Intended Action as ARC 3773A to allow for public comment.

The rules are intended to implement Iowa Code section 12C.9.

The rules became effective February 15, 1993.

The following chapter is adopted.

Rescind 781—Chapter 14 and adopt the following new chapter:

TREASURER OF STATE[781](cont'd)

CHAPTER 14

DEPOSIT AND SECURITY OF PUBLIC FUNDS IN
CREDIT UNIONS**781—14.1(12C) Scope and transition.**

14.1(1) Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans and credit unions. This chapter contains rules which shall apply to the system for securing deposits of public funds in credit unions. Rules pertaining to securing public funds in savings and loans or federal savings banks are contained in 781—Chapter 3. Rules pertaining to the securing of public funds in banks are contained in 781—Chapter 13.

14.1(2) A credit union shall secure its existing uninsured public funds deposits through the use of a letter of credit as required in this chapter by March 31, 1993. Any new deposits by a public unit in a credit union after February 15, 1993, shall be secured according to the requirements of these rules.

781—14.2(12C) Definitions. As used in this chapter:

"Credit union" means a credit union as defined in Iowa Code subsection 12C.1(2).

"Letter of credit" means an irrevocable, non-transferable, standby letter of credit (Form 655-0195) issued directly to the public unit by the U.S. Central Credit Union.

"Public units." The state of Iowa, its cities, counties, school districts and all other political subdivisions of the state are public units under this chapter including but not limited to the following entities:

1. Cities.
2. Transit authorities.
3. Municipal utilities, including jointly owned.
4. Public libraries, city and regional.
5. Municipal housing programs.
6. Solid waste agencies.
7. Water works.
8. City cemeteries.
9. County offices including treasurers, recorders, clerks of court, sheriffs and auditors.
10. Townships.
11. County fair boards.
12. Regional planning agencies.
13. County care facilities.
14. County hospitals.
15. County conservation boards.
16. Sanitary districts.
17. Treasurer of state.
18. Iowa beer and liquor control department.
19. Iowa department of transportation.
20. Judicial district department of correctional services.
21. Iowa finance authority.
22. Iowa family farm development authority.
23. Iowa railway finance authority.
24. State board of regents.
25. State fair board.
26. State commerce commission.
27. State racing commission.
28. Iowa college aid commission.
29. Iowa higher education loan authority.
30. School districts.
31. Area education agencies.

32. Community action programs.

33. Community colleges

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

"Treasurer" as used in this chapter shall mean the treasurer of the state of Iowa.

"Uninsured public funds" or "uninsured public deposits" means the funds of a public unit deposited in a credit union which are not federally insured, together with any accrued interest thereon.

781—14.3(12C) Forms. The following forms shall be utilized by credit unions in connection with the operation of this chapter:

1. (Form 655-0195) Letter of Credit.
2. (Form 655-0204) Deposit Agreement.

781—14.4(12C) Uninsured public deposits in credit unions. Uninsured public deposits in a credit union shall be secured by a letter of credit (Form 655-0195) and a deposit agreement (Form 655-0204) between the public unit and the credit union. The credit union will only be allowed to aggregate funds deposited by the same public unit. Prior to accepting an uninsured public deposit, a credit union must secure the deposit according to requirements contained in this chapter.

781—14.5(12C) Securing uninsured public deposits in credit unions using a letter of credit.

14.5(1) A credit union shall secure the uninsured public time deposits of a public unit with a letter of credit as defined in these rules and Iowa Code section 12C.16.

14.5(2) The public unit shall have in its possession prior to or simultaneously at the time of deposit of uninsured public deposits, a letter of credit issued by the U.S. Central Credit Union to the public unit in an amount that is not less than 110 percent of the amount of public funds deposits to be secured thereby. The letter of credit shall have an expiration date which is at least ten business days later than the maturity date of the time deposit.

14.5(3) The public unit shall keep the letter of credit in a vault or a safe deposit box in a financial institution other than the credit union until such time as the letter of credit expires or is presented for payment to U.S. Central Credit Union.

14.5(4) In the event that the public unit decides to extend the maturity of its deposit after the issuance of the letter of credit, the public unit shall obtain a new letter of credit from U.S. Central Credit Union that taking into account the extended maturity date of the time deposit and the amount of the time deposit complies with the requirement of subrule 14.5(2). The new letter of credit must be obtained by the public unit prior to the original maturity date of the deposit.

14.5(5) If the credit rating of U.S. Central Credit Union is lowered to a rating not within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to Iowa Code chapter 17A, then U.S. Central Credit Union shall immediately notify each credit union which is securing uninsured public deposits by use of a letter of credit issued by U.S. Central Credit

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Union and the treasurer. Each credit union, upon notification of the U.S. Central Credit Union downgrade, shall immediately return the deposits, with interest accrued to that date, to the public units which are secured by a letter of credit.

781—14.6(12C) Termination of credit union's federal insurance. In the event that a credit union's applicable federal deposit insurance is suspended or terminated, the credit union must notify the public unit immediately and shall immediately return all deposits to the public unit with accrued interest.

781—14.7(12C) Sale or merger of a credit union. The responsibility of a credit union to secure public deposits by a letter of credit shall not be altered by any merger, takeover or acquisition, except to the extent that such duty is assumed by the successor entity. A credit union shall immediately notify the public unit, in writing, of its merger, takeover or acquisition by a successor entity.

781—14.8(12C) Procedures upon default.

14.8(1) The acceptance of public funds by a credit union constitutes consent by the credit union to assessments to cover losses of public funds in other credit unions by the treasurer in accordance with Iowa Code section 12C.23 and the rules contained in this chapter.

14.8(2) The treasurer, upon notification from a public unit that a public unit has not been completely repaid its principal and interest for the deposit and that funds are not available from a letter of credit securing such deposit, the treasurer shall assess all credit unions in the state with public deposits as provided in Iowa Code section 12C.23.

14.8(3) A credit union and any security given for the public funds in its possession are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if in failing to pay the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer or, if the credit union fails to pay an assessment, by the treasurer of state, when due.

These rules are intended to implement Iowa Code chapter 12C.

[Filed Emergency 1/29/93, effective 2/15/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3755A

BANKING DIVISION[187]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby adopts amendments to Chapter 2, "Application Procedures," Iowa Administrative Code.

Specifically, the amendments will authorize state-chartered banks to reduce the number of shares outstanding through the exchange of existing common shares into a fraction of one share and the subsequent cancellation of any fractional shares created in exchange for the payment of cash by the bank. This type of corporate action is commonly referred to as a reverse stock split. In authorizing a reverse stock split as permissible corporate action for state banks, the superintendent will require that three conditions be met. First, the board of directors of the state bank desiring to undertake a reverse stock split shall grant to all shareholders the rights and remedies of a dissenting shareholder as provided for in Iowa Code chapter 490, division XIII. Second, the state bank shall provide to all shareholders a full and accurate disclosure of all material aspects of the proposed corporate action in a timely manner. Last, the superintendent shall make a determination that the cash price being paid for the fractional created shares is fair and reasonable. The authorization of reverse stock splits will allow state banks to accomplish the same results that they presently achieve through use of cash-out mergers utilizing phantom banks, but at a significant cost savings to the bank through lower accounting and legal fees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 23, 1992, as ARC 3641A.

The Superintendent received no letters of comment from interested parties. A public hearing was held on January 12, 1993. No interested parties appeared at the hearing.

These amendments are identical to the Notice.

These amendments are intended to implement Iowa Code sections 524.106, 524.1505 and 524.1508.

These amendments shall become effective on March 24, 1993.

The following amendments are adopted.

Amend 187—2.7(17A,524) to read as follows:

187—2.7(17A,524) **Renewal, amendment or restatement of articles of incorporation.**

2.7(1) Application. Sample forms and instructions for making application to the superintendent to renew, amend or restate existing articles of incorporation of a state bank will be furnished upon written request to the superintendent. *State banks desiring to effect a reverse stock split or similar change in capital structure by such renewal, amendment, or restatement should make arrangements to meet with the superintendent to discuss the proposal prior to its adoption.*

2.7(2) Examination and investigation. *The superintendent may conduct such examination or investigation as the superintendent deems necessary, including the gathering of information as provided for in rule 2.12(17A).*

2.7(3) Reverse stock split. *Before the superintendent approves any renewal, amendment, or restatement of*

existing articles of incorporation of a state bank that would effect a reverse stock split or similar change in the capital structure of the state bank and require any of its shareholders to surrender their shares of bank stock for cash, all of the following requirements shall have been satisfied:

a. The board of directors shall adopt a resolution granting all shareholders of the state bank the rights and remedies of a dissenting shareholder as provided for in Iowa Code chapter 490, division XIII;

b. The state bank shall have provided to all of its shareholders a full and adequate disclosure of all material aspects of the proposed transaction, which disclosure shall have accompanied the notice of the shareholder meeting held to consider the proposed renewal, amendment, or restatement of existing articles of incorporation; and

c. A determination shall have been made by the superintendent that the cash price being paid for the surrendered stock is reasonable. The following factors may be considered by the superintendent in making the determination as to whether the cash price for such stock is reasonable:

(1) The book value of the bank stock;

(2) Recent sales prices of the bank stock;

(3) Appraisals of the bank stock;

(4) Bank earnings and stock dividend payment history;

(5) Total number of shares being surrendered; and

(6) Any other relevant factors as the superintendent may prescribe.

2.7(3 4) Approval. The superintendent determines whether or not approval of such applications should be granted.

2.7(3 5) Certification. If the determination of the superintendent is favorable, the renewed, amended or restated articles of incorporation will be approved and forwarded to the secretary of state for filing and recording. Upon filing such articles, the secretary of state will return the original to the state bank and will also issue a certificate to the state bank indicating the date the filing was effective. Thereafter, the state bank will operate in accordance with its renewed, amended or restated articles of incorporation.

This rule is intended to implement Iowa Code sections 524.106, 524.1505, and 524.1508.

[Filed 1/29/93, effective 3/24/93]

[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3760A

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 216.5(10), the Civil Rights Commission hereby adopts amendments to Chapter 1, "Rules of Practice," Chapter 2, "General Definitions," Chapter 3, "Complaint Process," and Chapter 11, "Public Records and Fair Information Practices," and substitutes "administrative law judge" for "hearing officer" in Chapters 6, 8 to 10 and 15, Iowa Administrative Code.

CIVIL RIGHTS COMMISSION[161](cont'd)

Notice of Intended Action was published in the November 25, 1992, Iowa Administrative Bulletin as ARC 3550A.

The amendments to Chapter 1 provide the Civil Rights Commission's toll-free and facsimile (FAX) numbers and provide notification of the availability of a forms notebook. The amendments to Chapter 2 bring definitions in the Iowa Administrative Code into agreement with changes which have been made in 1993 Iowa Code chapter 216. The amendment to Chapter 3 reflects changes in technology, changes in Iowa Code chapter 216, and changes resulting from case law. The access to file information will be updated in rule 11.17(216).

In addition, the Commission amends all chapters of their rules by striking "hearing officer" and inserting "administrative law judge".

Changes from the Notice reflect comments from the Iowa Association of School Boards during the comment period and Iowa Association of Business and Industry after the comment period and staff review of the noticed rules. The initial change is a correction of the commission's zip code and the addition of the telecommunications device for the deaf (TDD) number. The second change is the insertion of the words "waiver, estoppel and" in subrule 3.3(3). Subrule 3.4(3) has been changed correcting a reference to subrule 3.4(1) to read 3.4(2) and adding the language "complained of" as this is required by an Equal Employment Opportunity Commission (EEOC) rule. A fourth change is to strike the reference to office hours in subrule 3.5(3) and this is followed by a change striking the second unnumbered paragraph of subrule 3.5(4). Paragraph 3.5(7)"c" is amended by adding a proviso governing FAX filings transmitted after office hours. Subrule 3.5(10) is amended by dividing it into paragraphs and by adding the proviso governing FAX filings and by changing the word "document" to "complaint". Subrule 3.8(2) is stricken. Subrule 3.10(2) is amended by striking the word "immediately". Subrule 3.10(4) is changed by renumbering the reference to rule "3.8" as "3.9" and adding a new paragraph "f" cutting off the right to sue if the Commission finds "no jurisdiction" (thus it is cut off by No Probable Cause (NPC), untimely, and "no jurisdiction" findings). The last part of paragraph 3.12(1)"g" is stricken. The methods of conciliation efforts are added to subrule 3.13(8). Subrule 3.14(3) is amended by changing the one-day turnaround for issuing subpoena after notice to seven days and "custody or control" is added at the end of the subrule. Paragraph 3.16(3)"c" is amended by changing the application period from "20" to "30" days and the extension of application period is eliminated. The last part of paragraph 3.16(4)"b" is stricken. Paragraph 3.16(6)"c" is amended by replacing "at any time" with "within a reasonable period of time after the closure" and by replacing "voluntarily accepted all the benefits of" by "ratified". Paragraph 3.16(6)"d" is amended by replacing "at any time" with "within a reasonable period of time after the closure" and adding language limiting the reasons for reopening to involuntariness and mistake concerning the nature of request for withdrawal. Also, the provision is added that where the withdrawal is filed pursuant to a settlement agreement and the complainant has ratified that agreement, the complainant is barred from applying for reopening of the case on the ground that the agreement was not voluntary.

In addition, Code citations were changed to reflect renumbering of the 1993 Iowa Code.

No comments were received at a public hearing held on December 15, 1992.

These amendments implement Iowa Code chapter 216. These amendments will become effective March 24, 1993.

The following amendments are adopted.

ITEM 1. Amend subrule 1.1(1), paragraph "b," as follows:

b. Location. The Iowa civil rights commission, herein-after referred to as "commission," is located on the second floor, 211 East Maple Street, Des Moines, Iowa 50319 50309; telephone (515)281-4121; toll free inside Iowa only 1-800-457-4416; facsimile transmission (FAX) (515) 242-5840; telecommunications device for the deaf (TDD) 515-281-8085. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday.

ITEM 2. Amend rule 161—1.5(216) by adding the following new subrules:

1.5(7) "Forms notebook." Other forms commonly used by the commission or its staff are compiled within a "forms notebook." The notebook is available for inspection by the public at the commission offices. Copies of the forms notebook can be obtained for an appropriate copying charge.

1.5(8) "Purpose of forms." The existence of standard forms is for the convenience of the commission, the public, and the parties. The existence of a standard form does not imply that the purpose of the standard form cannot be accomplished through a document in a different form.

ITEM 3. Amend rule 161—2.1(216), definitions, as follows:

2.1(1) No change.

2.1(2) No change.

2.1(3) No change.

2.1(4) *The term "complainant" shall mean the person, as defined in Iowa Code subsection 216.2(11), who makes a complaint of discrimination with the commission.*

2.1(45) *The term "executive director" shall mean an employee of the commission, selected by and serving at the will of the governor, who shall have the duties, powers and authority conferred upon the director by law.*

2.1(56) *The term "issuance" shall mean mailing by U.S. certified mail, a document or letter indicating a decision issued by of the commission. The "date of issuance" shall be the date the commission mails by U.S. certified mail a document or letter indicating a decision by of the commission.*

2.1(7) *The term "respondent" shall mean the person, as that term is defined in Iowa Code subsection 216.2(11), against whom the complaint of discrimination is made with the commission.*

2.1(8) *The term "right to sue" shall mean the release issued by the commission stating that the complainant has a right to commence an action in the district court. The term "right to sue" is the same as the "release" or "administrative release" described in Iowa Code section 216.16 and these terms may be used interchangeably.*

2.1(9) *The term "verified" shall mean (a) sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgments, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement's execution and is subscribed by the person. Such an unsworn*

CIVIL RIGHTS COMMISSION[161](cont'd)

declaration may be in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Executed on (date). (Signature).

2.1(610) Final actions. The following procedures shall constitute final actions of the commission, ~~subject to judicial review under Iowa Code chapter 17A:~~

a. to f. No change.

2.1(11) *Construction of rules. The rules and regulations promulgated by the Iowa civil rights commission shall be liberally construed to effectuate the purposes and provisions of Iowa Code chapter 216.*

Renumber subrules 2.1(7) and 2.1(8) as 2.1(12) and 2.1(13), respectively.

ITEM 4. Amend rule 161—3.2(216) by adding the following new subrules:

3.2(4) If the commission has issued a right-to-sue letter per subrule 3.9(3), a party or party's attorney may have access to the commission's case file on that complaint.

3.2(5) Only upon written notification from an attorney or a party that the attorney represents may the attorney then obtain access to the commission case file on the same terms as that party.

ITEM 5. Amend rule 161—3.3(216) by adding the following new subrule:

3.3(3) Tolling of filing period. By law the filing period described in subrule 3.3(1) and in Iowa Code subsection 216.15(12) is subject to waiver, estoppel and equitable tolling. Whether the filing period should be equitably tolled in favor of a complainant depends upon the facts and circumstances of the particular case. Equitable tolling suspends the running of the filing period during the period of time in which the grounds for equitable tolling exist.

ITEM 6. Amend rule 161—3.4(216) as follows:

161—3.4(216) Filing complaint Complaints.

3.4(1) Filing complaint. Any person claiming to be aggrieved by a discriminatory or unfair practice may, personally or by an attorney, make, sign, and file with the commission a verified, written complaint. The attorney general, the commission, *or a commissioner, or the executive director or designee when authorized by commission policy,* may initiate the complaint process by filing a complaint with the commission in the same manner as an aggrieved person.

3.4(2) Contents of complaint. Each complaint of discrimination should contain the following:

a. The full name, address and telephone number, if any, of the person making the charge;

b. The full name and address of each respondent;

c. A clear and concise statement of the facts, including pertinent dates, if known, constituting each alleged unfair or discriminatory practice;

d. If known and if employment discrimination is alleged, the approximate number of employees of a respondent employer.

3.4(3) Technical defects in complaint. Notwithstanding the provisions of subrule 3.4(2), a complaint is sufficient when the commission receives from the person making the complaint a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint. Such amendments will relate back to the date the complaint was filed.

ITEM 7. Amend 161—Chapter 3 by adding the following new rule 161—3.5(216) and renumbering the remaining rules accordingly.

161—3.5(216) Filing of documents with the Iowa civil rights commission. Any document, including a complaint of discrimination, may be "filed" with the commission by any one of the following methods:

3.5(1) In person. By delivery in person to the offices of the commission at the location set forth in 161—paragraph 1.1(1)"b" during the office hours set forth in said paragraph "b."

3.5(2) By mail. By depositing the document in the United States mail, postage prepaid, in an envelope addressed to the Iowa Civil Rights Commission at the address set forth in 161—paragraph 1.1(1)"b." In the case of state agencies or other persons served by the state local (interoffice) mail, it is sufficient to deposit the document in Iowa state local (interoffice) mail in an envelope designated "Local" and addressed to the "Iowa Civil Rights Commission."

3.5(3) By facsimile transmission (FAX). By transmitting via facsimile transmission a copy of the document to the FAX number set forth in 161—paragraph 1.1(1)"b."

A document filed by FAX is presumed to be an accurate reproduction of the original. If a document filed by FAX is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received.

3.5(4) By courier service. By delivering the document to an established courier service for immediate delivery to the Iowa civil rights commission at the address set forth in 161—paragraph 1.1(1)"b."

3.5(5) Suggested procedures for facsimile transmissions (FAX). In order to avoid an incomplete or illegible FAX, it is suggested that those desiring to "file" a document via that method follow these procedures:

a. Precede each transmission with a cover sheet setting forth the name of the sender, the specific individual (if any) to whom the transmission is directed, the date of the transmission, and the number of pages including the cover sheet to be transmitted.

b. On the same day as the transmission, speak by telephone to a member of the staff of the commission and confirm that the transmission was received and all pages were legible.

c. After the transmission, mail to the commission the original "hard copy" of the document along with the cover sheet which preceded transmission (or a copy of the transmission report).

d. After the transmission, mail to the commission a letter setting forth the date and time of the transmission and, if applicable, the specific individual to whom the sender spoke in order to confirm that the transmission was received and all pages were legible.

3.5(6) Charge for facsimile transmissions in excess of five pages. For facsimile transmissions in excess of five pages, the commission will bill the sender a reasonable fee per page for each page in excess of five pages.

3.5(7) Date a document is deemed to be "filed" with the commission. The date on which any document is deemed to be "filed" with the commission is determined according to the following:

a. Filing in person. If the document, including a complaint of discrimination, is filed in person as set forth in subrule 3.5(1), then the date of the filing is the date that

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the document is delivered to the commission offices and date-stamped received.

b. Filing by mail. If the document, except for a complaint of discrimination, is filed by mail as set forth in subrule 3.5(2), then the date of the filing is date of mailing.

c. Filing by facsimile transmission. If the document, including a complaint of discrimination, is filed by facsimile transmission as set forth in subrule 3.5(3), the date of the filing is the date the document is received by the commission as shown on the face of the facsimile. Provided, however, that if a transmission is received outside the office hours set forth in 161—paragraph 1.1(1)"b," the date of filing is the next day that the commission offices are open for business. Transmissions received prior to office hours on a regular business day of the commission are filed on that day.

d. Filing by courier service. If the document, except for a complaint of discrimination, is filed by courier service as set forth in subrule 3.5(4), then the date of the filing is the date the document is delivered to the established courier service for immediate delivery to the Iowa civil rights commission at the address set forth in 161—paragraph 1.1(1)"b."

e. Presence of commission receipt stamp. Except where the date of the receipt stamp is demonstrated to be in error, the date of filing of a document, including a complaint of discrimination, shall in no event be deemed to be later than the date shown by the dated commission receipt stamp on the document.

3.5(8) Proof of mailing. Adequate proof of the date of mailing includes the following:

a. A legible United States Postal Service postmark on the envelope in which the document was enclosed.

b. A legible postage meter mark on the envelope in which the document was enclosed.

c. The date disclosed on a certificate of service.

d. The date disclosed on a notarized affidavit of mailing.

e. The date disclosed on a certification in substantially the following form: "The undersigned certifies under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing) I mailed copies of (describe document) addressed to the Iowa Civil Rights Commission, 211 E. Maple, 2nd Floor, Des Moines, Iowa 50309, and to the names and addresses of the persons listed below by depositing a copy thereof (in a United States post office mailbox with correct postage properly affixed) or (state interoffice mail)

(Date) (Signature).

3.5(9) Conflict among proofs of mailing. The date of mailing is the date shown by the postmark and only in the absence of a legible postmark the date of mailing is the date shown by the postage meter mark and only in the absence of both a legible postmark and a legible postage meter mark the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.

3.5(10) Filing of complaint.

a. A complaint of discrimination is filed by any of the methods listed in this rule.

b. The date a complaint of discrimination is filed with the commission is the date the complaint is received by the commission. Provided, however, that if the complaint is filed by FAX which is received outside the office hours set forth in 161—paragraph 1.1(1)"b," the date of filing is the next day that the commission offices are open for business. Transmissions received prior to office hours on

a regular business day of the commission are filed on that day.

c. Except where the date of the receipt stamp is demonstrated to be in error, the date of filing of a complaint of discrimination shall in no event be deemed to be later than the date shown by the dated commission receipt stamp on the complaint.

ITEM 8. Amend renumbered rule 161—3.7(216), Preservation of records, by adding the following subrule:

3.7(3) Adverse inference. If after a public hearing the administrative law judge determines

a. That a party or agent, employee, or person acting for the party has destroyed evidence in violation of subrule 3.7(1) or 3.7(2), and

b. That the destruction was done at a time when the party knew or should have known that the evidence destroyed was relevant to the investigation, and

c. There is no satisfactory explanation for the destruction of the evidence,

then the administrative law judge may infer that the destroyed evidence was adverse to the party who destroyed the evidence or whose agent or employee destroyed the evidence or on behalf of whom any other person was acting when destroying the evidence.

ITEM 9. Amend renumbered rule 161—3.8(216) as follows:

161—3.8(216) The complaint.

3.8(1) Amendment of complaint.

a. A complaint or any part may be amended by the complainant or by the commission any time prior to the hearing thereon and, thereafter, at the discretion of the ~~hearing officer~~ *administrative law judge or commission*. The complaint may be amended to include additional material allegations the investigation may have disclosed.

To prevent unnecessary litigation or duplication, the commission may amend a complaint based upon information gained during the course of the investigation. The scope of the issues at public hearing shall ~~be defined by~~ *include* the facts as uncovered in the investigation and shall not be limited to the allegations as stated in the original complaint. Provided, however, that when an amendment is made, the respondent may be granted a continuance within the discretion of the ~~hearing officer~~ *administrative law judge* if it is needed to allow the respondent to prepare to defend on the additional grounds.

b. *Amendments alleging additional acts which constitute unfair or discriminatory practices related to or growing out of the subject matter of the original complaint will relate back to the date the original complaint was filed. If a reasonable investigation of the initial complaint would encompass an alleged unfair or discriminatory practice then that alleged unfair or discriminatory practice grows out of the subject matter of the original complaint.*

c. *Amendments alleging additional acts which constitute unfair or discriminatory practices which are not related to and which do not grow out of the subject matter of the original complaint will be permitted only where at the date of the amendment the allegation could have been filed as a separate complaint. The complaint as so amended shall then be processed by the commission as a single complaint of discrimination.*

3.8(2) *Amendments adding those allegedly liable as successors and relation back. Whenever the commission or complainant learns subsequent to the filing of the original complaint that an entity may be liable as a suc-*

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cessor to the respondent named in the original complaint, the complainant or the commission may at any time amend the complaint to add the alleged successor as a respondent. Provided, however, that when such an amendment is made after issuance of the notice of hearing the alleged successor added by the amendment may be granted a continuance within the discretion of the administrative law judge, if it is needed to allow the alleged successor to prepare its defense. An amendment adding an alleged successor always relates back to the date of the filing of the original complaint.

~~3.8(2)~~**3.10(3) Withdrawal of complaint.** A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.

ITEM 10. Amend renumbered rule 161—3.10(216) as follows:

161—3.10(216) Right to sue.

~~3.10(1) Request for right to sue. If the commission has not concluded its action on a complaint within 120 days, After the expiration of 60 days from the timely filing of a complaint with the commission, the complainant may request a letter granting the complainant the right to sue for relief in the state district court.~~

~~3.10(2) Conditions precedent to right to sue. Upon a request under the preceding section subrule 3.10(1), the commission shall immediately issue mail to the complainant a right-to-sue letter where the following conditions have been met:~~

~~a. The complaint was filed with the commission within 180 days of the alleged incident as provided in rule 3.5(216);~~

~~b. The complaint has been on file with the commission for at least 60 days. A finding of "no probable cause" has not been issued;~~

~~c. No conciliation agreement has been negotiated;~~

~~d. Notice of hearing has not been served upon respondent.~~

~~3.10(3) Letter of right to sue. Where the above conditions have been met, a right-to-sue letter will be issued mailed stating that complainant has a right to commence an action in the state district court within 90 days of the issue date of mailing of the right-to-sue letter.~~

~~3.10(4) Exceptions to issuance of right to sue. Notwithstanding the provisions of any other rule a right-to-sue letter shall not be sent if on the date the request for a right to sue was filed any of the following is true:~~

~~a. A finding of "no probable cause" has been made on the complaint by the administrative law judge charged with that duty under Iowa Code subsection 216.15(3); or~~

~~b. A conciliation agreement has been executed under Iowa Code section 216.15; or~~

~~c. The commission has served notice of hearing upon the respondent pursuant to Iowa Code subsection 216.15(5); or~~

~~d. The complaint has been administratively closed and two years have elapsed since the issuance date of the administrative closure; or~~

~~e. A finding that the complaint was not timely filed has been made by the commission pursuant to rule 3.9(216) or by the administrative law judge charged with the duty of~~

~~determining "probable cause" under Iowa Code subsection 216.15(3); or~~

~~f. A finding that the commission does not have jurisdiction of the complaint has been made pursuant to rule 3.9(216) or by the administrative law judge charged with the duty of determining "probable cause" under Iowa Code subsection 216.15(3).~~

~~3.10(4)(5) Closure by commission. Where the commission has issued sent a right-to-sue letter, the hearing officer shall approve the case for a commission staff member shall close the case by an administrative closure. Notice of the closure shall be mailed to both parties by certified mail.~~

ITEM 11. Rescind renumbered rule 161—3:12(216) and insert the following:

161—3.12(216) Administrative review and closure.**3.12(1) Preliminary screening.**

a. Questionnaire. As soon as practicable after receipt of a complaint, the commission may draft and mail to the parties written questionnaires. Complainant and respondent will receive different sets of questions as they typically have different items of information and different interpretations of the facts. The questionnaire will be as specific as practicable to the particular complaint.

b. Responses to the questionnaire.

(1) Respondent and complainant are required to respond in writing to their respective questionnaires. The answers ordinarily should be responsive to the questions asked, though elaboration is encouraged. If a question does not apply, the responder can so indicate. In lieu of answers responsive to the particular questions, the commission will accept written position statements. The position statements should cover the same general subject areas covered by the questionnaire.

(2) Responses are due 30 days from the mailing of the questionnaire. Extensions will be granted on an informal basis. Requests for extensions may be oral and may be granted or denied orally. No notice of the request for an extension nor of the disposition of that request need be given the nonrequesting party. Since the legislature encourages preliminary screening to be completed within 120 days of filing of the complaint, requests for extensions are strongly discouraged. A request for an extension by a party shall constitute a waiver by that party of any objection to the commission taking longer than the 120-day period to screen the complaint.

c. Failure to respond.

(1) Complainant. A complaint may be administratively closed when a complainant fails to respond to the questionnaire.

(2) Respondent. A complaint may be screened in and assigned to investigation when a respondent fails to respond to the questionnaire. Also, information may be sought pursuant to the commission's subpoena procedures.

d. Suggested procedure in answering questionnaire. Answers should be as clear and as precise as possible. Answers too long to be placed on the questionnaire itself should be numbered by part and question number and placed on a separate sheet. The parties are encouraged to submit as much supporting documentation as possible including affidavits of witnesses and documentation of treatment of individuals comparable to the complainant. Where not readily apparent, the significance of the submitted supporting documentation should be explained.

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This may be done through an answer that refers the commission to a particular item of the submitted supporting documentation.

e. Preliminary screening committee. As soon as practicable after the receipt of all materials responsive to the questionnaires, a committee of commission staff members may meet and review the submitted answers and materials. This preliminary screening committee will then determine whether the case will be "screened in" for further processing or "screened out" as not warranting further investigation.

f. Standard for screening. A case will be screened in when further processing is warranted. Further processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development.

g. Effect of screen out. A complaint determined not to warrant further processing shall be administratively closed.

h. Effect of failure to follow screening procedure. Preliminary screening is a tool to remove from the commission's active complaints those cases which the collected preliminary information indicates do not warrant further processing. Irregularities in the preliminary screening of a complaint, failure to complete preliminary screening within 120 days of the filing of the complaint, or failure to follow the preliminary screening procedure altogether shall not, by itself, in any way prejudice the rights of either party.

3.12(2) Periodic review and administrative closure.

a. Periodic evaluation of evidence. The executive director or designee may periodically review the complaint to determine whether further processing is warranted. Where the periodic review occurs prior to the determination of whether there is probable cause, then processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development. A complaint determined not to warrant further processing shall be administratively closed.

b. Uncooperative complainant. A complaint may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is uncooperative, causing unreasonable delay in the processing of the complaint.

c. Involuntary satisfactory adjustment. A complaint may be closed as satisfactorily adjusted when the respondent has made an offer of adjustment acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and be served by certified mail upon the complainant. The complainant shall be allowed 30 days to respond. The response shall be in writing and state the reasons why the complaint should remain open. The executive director or designee shall review and consider the response before making a closure decision.

d. Litigation review. The complaint may be administratively closed after a probable cause determination has been made where it is determined that the record does not justify proceeding to public hearing.

3.12(3) Purpose and effect of administrative closures. An administrative closure need not be made as a result of the procedures governing a determination of whether there is probable cause. Unlike a "no probable cause determination" an administrative closure is not a final determination of the merits of the case. An administrative

closure resulting from preliminary screening is merely an estimation of the probable merits of the case based on the experience and expertise of the commission. An administrative closure does not have the same effect as a determination of "no probable cause."

ITEM 12. Amend renumbered subrules 3.13(8) and 3.13(9) and add a new subrule 3.13(10) as follows:

3.13(8) ~~Limitation on conciliation:~~ *Minimum period for conciliation attempts.* Upon the commencement of conciliation efforts, the commission must allow at least 30 days for the parties to reach an agreement. *Conciliation efforts may be conducted by mail, teleconferencing, or face-to-face meetings with the parties at the discretion of the commission. The mandatory 30-day period for conciliation begins when the complainant and the commission's offer of settlement is communicated to respondent or respondent's attorney.* After the passage of 30 days the executive director may order further conciliation attempts bypassed if it is determined that the procedure is unworkable. The director must have the approval of a commissioner before bypassing conciliation.

3.13(9) Conciliation agreements. A conciliation agreement shall become effective after it has been signed by the respondent or authorized representative, by the complainant or authorized representative, and by either a commissioner, or the executive director or designee on behalf of the commission. Copies of the agreement shall be ~~served or mailed~~ to all parties.

3.13(10) Breach of conciliation agreement.

a. At any time in its discretion the commission may investigate whether the terms of a conciliation agreement are being complied with by the respondent. Upon a finding that the terms of the conciliation agreement are not being complied with by the respondent, the commission shall take appropriate action to ensure compliance.

b. Enforcement in court. Appropriate action to ensure compliance as used in the preceding paragraph includes the filing of an action in district court seeking specific performance of the terms of the conciliation agreement or other remedies which may be available.

ITEM 13. Rescind renumbered rule 161—3.14(216) and adopt the following new rule:

161—3.14(216) Investigative subpoenas.

3.14(1) Application of rule. The provisions of rule 3.13(216) apply to subpoenas served prior to the issuance of the notice of hearing described in rule 161—4.1(216).

3.14(2) Prior to notice of hearing. The executive director, or designee, may issue subpoenas prior to the issuance of a notice of hearing. Neither the complainant, other than the commission, nor the respondent shall have the right to demand that a subpoena be issued.

3.14(3) Initial information request. Before a subpoena is sought to determine whether the agency should institute a contested case proceeding, the commission staff shall make a request in written form of the person having possession, custody, or control of the requested material or real evidence. The written request shall be either hand delivered by a member of the commission staff or sent by certified mail, return receipt requested. Where a person fails to provide requested information a subpoena may be issued. A subpoena may be issued not less than seven days after the written request has been delivered to the person having possession, custody or control of the requested materials.

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3.14(4) Form of subpoena. Every subpoena shall state the name of the commission and the purpose for which the subpoena is issued.

3.14(5) To whom directed. The subpoena shall be directed to a specific person, or the person's attorney, or an officer, partner, or managing agent of any person who is not a natural person. If the person having possession, custody, or control of the requested material is unknown, the subpoena may be directed to the "custodian of records" for the person who is known to have possession, custody, or control of the requested material or real evidence. The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place. Where a public hearing has been scheduled, the subpoena may command the person to whom it is directed to attend and give testimony.

3.14(6) Method of service. The subpoena shall be served either by personal service by an official authorized by law to serve subpoenas or by any member of the commission staff by delivery of a copy to the person named therein. Service which is accomplished in accord with the Iowa Rules of Civil Procedure governing personal service is sufficient for the purpose of service of subpoenas under these rules.

3.14(7) Proof of service. Where service is accomplished by personal service, proof of service will be by acknowledgment of receipt by the person served or by the affidavit of the person serving the subpoena. Failure to make proof of service shall not affect the validity of the service.

3.14(8) Objections to subpoena.

a. Any person served with a subpoena issued by the commission who intends not to comply with all or part of it shall promptly, after the date of service of the subpoena upon that person, petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. The executive director or designee may as soon as practicable make a final determination upon the petition. The commission shall then mail the determination of the petition via certified mail to the petitioner.

b. In general, the grounds for modification or revocation of a subpoena are:

(1) The subpoena is not within the statutory authority of the commission;

(2) The subpoena is not reasonably specific;

(3) The subpoena is unduly burdensome;

(4) The subpoena is not reasonably relevant to matters under investigation.

c. To ensure prompt processing of a petition to revoke or modify a subpoena such a petition should be captioned "Motion to Quash" or "Petition to Modify/Revoke Subpoena" or some substantially similar title. The case number assigned to the case should appear on the petition. The petition should be directed to the attention of the executive director of the commission.

3.14(9) Failure to comply. Where a person fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.14(10) Open public records law. The inclusion of a record as a confidential public record under Iowa Code chapter 22 does not in any way affect the authority of the commission to subpoena and compel the production of that record. Iowa Code chapter 22 does not govern or affect the access by the commission to public records through its subpoena power.

ITEM 14. Rescind renumbered rule 161—3.16(216) and insert the following:

161—3.16(216) Procedure to reopen.

3.16(1) Application of rule. The provisions of this rule apply only to commission decisions and actions taken prior to the issuance of the notice of hearing described in rule 161—4.1(216).

3.16(2) Reopening by commission—general rule. At any time during which the commission would be required to issue a right-to-sue letter if the complainant were to request one, the commission may, in its discretion, reopen and reconsider any decision, case closure, or other action of the commission. The commission's discretion in reopening and reconsidering a case shall be guided by the interests of justice.

3.16(3) Applications for reopening.

a. Except where specifically otherwise provided, a complainant or respondent may apply for reopening of a previously closed proceeding.

b. The commission shall grant reopening upon good cause shown by the applicant.

c. An application for reopening under this subrule must be in writing alleging the grounds and must be filed within 30 days after the issuance of the decision or action to be reconsidered.

d. Written objections to a commission closure shall be liberally construed, where appropriate, as an application for reopening.

e. All parties shall be notified whenever an application for reopening is made. The parties shall be afforded no less than 14 and no more than 30 days to submit their position on the motion for reopening in writing. Requests to appear in person may be granted or denied at the discretion of the commission.

f. The commission, a commissioner, the executive director or designee may grant or deny the application for reconsideration. If the application is granted, the matter shall be referred back to the investigating staff, if further investigation is required. If no further investigation is required, the commission shall decide the matter on the accumulated record of the case. Each of the parties shall be informed of the action taken on the application to reopen in writing sent by certified mail to the last known mailing address.

3.16(4) Administrative closure reopenings.

a. In addition to the reopening provisions of subrules 3.16(2) and 3.16(3), an administrative closure may, within a reasonable period of time since the issuance of the administrative closure, be reopened by the commission where the commission finds that the administrative closure was influenced in substantial part by any of the following:

(1) Willfully false information provided to the commission concerning a material issue in the case,

(2) Fraud perpetrated upon the commission by some person who is not the complainant, or

(3) Material misrepresentations made by the respondent to the commission or complainant.

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b. The fact that more than two years have elapsed since the issuance of an administrative closure does not in itself mean that the administrative closure may not be reopened under paragraph "a" of this subrule.

3.16(5) No probable cause determination reopening. In addition to the reopening provisions of subrule 3.16(3), within a reasonable period of time after issuance of a no probable cause, the commission may, in its discretion, reopen and reconsider that no probable cause order where either:

a. The commission finds that the no probable cause order was influenced in substantial part by any of the following:

(1) Willfully false information provided to the commission concerning a material issue in the case,

(2) Fraud perpetrated upon the commission by some person who is not the complainant, or

(3) Material misrepresentations made by the respondent to the commission or complainant.

b. Less than 30 days have elapsed since the issuance of the no probable cause order and the commission determines, in its discretion, that the interests of justice require the matter to be reopened and reconsidered.

3.16(6) Successful conciliation, mediation and withdrawal reopening.

a. Breach. A party to a conciliation or mediation agreement may at any time apply for reopening of a case which has been closed as successfully conciliated, mediated or satisfactorily adjusted on the grounds that the other party has materially breached the agreement. If the commission finds that the agreement has been materially breached, the case shall be reopened.

b. Court action upon breach. The provisions of paragraph "a" shall not affect a party's right to proceed in district court on an action for breach of contract based on the conciliation or mediation agreement. Upon verification that a party has filed such an action for breach of contract, however, the commission shall close the case as that party's remedy shall lie in the district court. The commission may, in addition to action authorized by subrule 3.13(10), intervene in such an action for breach.

c. Coercion or duress. A party to a conciliation or mediation agreement may within a reasonable period of time after the closure apply for reopening of a case which has been closed as conciliated, mediated or satisfactorily adjusted on the grounds that the agreement was not entered into voluntarily. If the commission finds that the agreement was not entered into voluntarily then the case shall be reopened. Provided, however, that where a party has ratified an agreement that party is barred from applying for reopening of the case on the grounds that the agreement was not voluntary.

d. Withdrawal. A person whose case has been closed as "withdrawn" may within a reasonable period of time after the closure apply for reopening of that case on the grounds that the request for withdrawal either was not filed voluntarily or was filed as a result of a mistake concerning the effect of the request for withdrawal. Provided, however, that where the withdrawal is filed pursuant to a settlement agreement and the complainant has ratified that agreement, the complainant is barred from applying for reopening of the case on the ground that the agreement was not voluntary.

3.16(7) Probable cause determination. The provisions of subrule 3.16(3) notwithstanding a respondent may not apply for reconsideration of a finding of probable cause.

3.16(8) Decision to proceed to hearing. The provisions of subrule 3.16(3) notwithstanding a complainant may not

apply for reopening of a case which has had a finding of probable cause but which is administratively closed because it is determined that the record does not justify proceeding to hearing.

3.16(9) Request for right-to-sue reopening. The commission may reopen any case which has been administratively closed whenever: a request for an administrative release is received, all the conditions for issuance of the administrative release are satisfied, and none of the exceptions set forth in subrule 3.10(4) apply. This type of reopening is made in order to effect the complainant's statutory right to receive an administrative release. A reopening under this subrule need not be separately made and issued, but instead is inherent in the issuance of the right to sue.

3.16(10) Issuance of right to sue. The issuance of a right-to-sue letter may not be reconsidered and a case closed after such an issuance may not be reopened. Provided, however, where the right-to-sue letter was erroneously issued then the closure after the erroneous issuance of the right-to-sue letter will be deemed void and the case reopened.

3.16(11) Notice of reopening. Whenever the commission reopens or reconsiders a decision, case closure, or other action of the commission under any provision of this rule, the commission shall inform each of the parties of the reopening in writing sent by certified mail to the last known mailing address.

3.16(12) Effect of reopening. Whenever a case is reopened by the commission, whether upon application or otherwise, the previous closure of the case is made void. The previous closure of a reopened case has no effect whatsoever on the case after the reopening. A reopening constitutes a reversal of the prior determination to close the case.

ITEM 15. Amend rule 161—11.17(216) as follows:

Amend subrule 11.17(2) as follows:

11.17(2) If a case has been approved for public hearing ~~and the letter informing parties of this fact has been mailed, and the notice of hearing has been issued,~~ any party or party's attorney may have access to file information through prehearing discovery measures provided in ~~subrule 161—4.2(2) 161—4.6(216).~~ In addition, file information may be sought pursuant to Iowa Code subsection 17A.13(2).

Rescind subrule 11.17(4) and insert the following in lieu thereof:

11.17(4) If the commission has issued a right-to-sue letter per 161—subrule 3.10(3), a party or party's attorney may have access to the commission's case file on that complaint.

11.17(5) Only upon written notification, from an attorney or a party, that the attorney represents that party may the attorney then obtain access to the commission case file on the same terms as that party.

ITEM 16. Amend 161—**Chapters 1 to 3, 6, 8 to 11,** and 15 by striking the words "hearing officer" and inserting "administrative law judge" wherever they appear in the rules.

ITEM 17. Update Iowa Code citations to reflect renumbering of the 1993 edition.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3787A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 11, "Applications," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as **ARC 3570A**. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted these amendments on January 22, 1993.

This revision to Chapter 11 allows the Board to waive the personal interview in connection with dental licensure by credentials and to implement 1992 Iowa Acts, chapter 1121 [1993 Iowa Code section 153.15A], which requires dental hygienists to have a current CPR certification in order to apply for licensure.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 147.80 and chapter 153.

These amendments will become effective March 24, 1993.

The following amendments are adopted.

ITEM 1. Amend subrule 11.3(3) as follows:

11.3(3) Applicant shall appear for a personal interview ~~conducted~~ *if requested to do so* by the board.

ITEM 2. Amend subrule 11.5(2) by adding the following new paragraph "g":

g. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

ITEM 3. Amend subrule 11.6(2) by adding the following new paragraph "k":

k. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3782A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts an amendment to Chapter 14, "Renewal," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as **ARC 3571A**. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted this amendment on January 22, 1993.

The revision to Chapter 14 implements 1992 Iowa Acts, chapter 1121[1993 Iowa Code section 153.15A], which requires dental hygienists to have a current CPR certification in order to renew a license.

There are no changes as a result of the public hearing and this amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 147.10 and 272C.2 and chapter 153.

This amendment will become effective March 24, 1993.

The following amendment is adopted.

Amend rule 650—14.1(153) by adding the following new subrule:

14.1(4) In order to renew a license as a dental hygienist the licensee shall be required to furnish evidence of a valid annual certification in a nationally recognized course in cardiopulmonary resuscitation.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3783A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as **ARC 3572A**. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted these amendments on January 22, 1993.

The revision to Chapter 22 raises the fees for a certification of qualification or student status leading to qualification and the renewal fees and establishes penalty fees for late renewal.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 136C and 153.

These amendments will become effective March 24, 1993.

The following amendments are adopted.

ITEM 1. Rescind the existing subrule 22.8(6) in its entirety and insert the following in lieu thereof:

22.8(6) Failure to renew a certificate prior to November 1 following expiration shall cause the certificate to lapse and become invalid. A certificate holder whose certificate has lapsed and become invalid is prohibited from taking radiographs until the procedures for application and testing provided for in these rules are met.

ITEM 2. Amend subrule 22.9(1) as follows:

22.9(1) The fee for application for a certificate of qualification or student status leading to qualification shall be \$25 \$35.

DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 3. Amend subrule 22.9(2) as follows:

22.9(2) The fee for renewal of a certificate shall be ~~\$10~~ \$30.

ITEM 4. Rescind the existing subrule 22.9(3) in its entirety and insert the following in lieu thereof:

22.9(3) Failure to renew the certificate by August 1 following June 30 expiration shall result in a late fee of \$15 being assessed by the board in addition to the renewal fee. Failure to renew by September 1 following expiration shall result in a late fee of \$30 being assessed. Failure to renew by October 1 following expiration shall result in a late fee of \$60 being assessed. The maximum late fee shall be \$60.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3784A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 25, "Continuing Education," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as ARC 3573A. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted these amendments on January 22, 1993.

The revision to Chapter 25 clarifies the time when a continuing education report is due from licensees and sponsors and implements 1992 Iowa Acts, chapter 1121[1993 Iowa Code section 153.15A] requiring dental hygienists to have a current CPR certificate in order to renew a license.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 147.10 and Iowa Code chapter 153.

These amendments will become effective March 24, 1993.

The following amendments are adopted.

ITEM 1. Rescind the existing subrule 25.2(7) in its entirety and insert the following in lieu thereof:

25.2(7) Each licensee shall file a signed continuing education reporting form reflecting a minimum of 30 continuing education credit hours in compliance with this chapter. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license.

ITEM 2. Amend subrule 25.2(8) as follows:

25.2(8) No carryover of credits from one ~~calendar biennium~~ *biennial* period to the next will be allowed.

ITEM 3. Amend rule 650—25.2(153) by adding the following new subrule:

25.2(10) A licensed dental hygienist shall furnish evidence of a valid annual certification for cardiopulmonary resuscitation which shall be credited toward the dental hygienist's continuing education requirement for renewal of a license. Such evidence shall be filed at the time of renewal of the license. Credit hours awarded shall not exceed six continuing education credit hours per biennium.

ITEM 4. Amend subrule 25.4(3) as follows:

25.4(3) The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the board office upon completion of the activity, but in no case later than ~~March 1 of the following calendar year~~ *July 1 of even-numbered years*. The report shall be sent to the Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

[Filed 1/29/93, effective 3/24/93]
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ARC 3785A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as ARC 3567A. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted these amendments on January 22, 1993.

The revision to Chapter 27 complies with the Centers for Disease Control recommendations preventing transmission of HIV and HBV to patients during exposure-prone procedures. Any licensee that tests positive to HIV or HBV will be expected to comply with the professional review panel recommendations.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 153.34(7), 153.34(9), 272C.3 and chapter 139C.

These amendments will become effective March 24, 1993.

The following amendments are adopted.

ITEM 1. Amend subrule 27.9(1) as follows:

27.9(1) Licensee actions determined by the board to be verbally abusive, coercive, intimidating, harassing, *untruthful* or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct.

ITEM 2. Amend rule 650—27.9(153) by adding the following new subrule:

27.9(3) A dentist or dental hygienist determined to be infected with HIV or HBV shall not perform an exposure-

DENTAL EXAMINERS BOARD[650](cont'd)

prone procedure except as approved by the expert review panel as defined in Iowa Code section 139C.1, established by the Iowa department of public health under subsection 139C.2(3), or if the dentist or dental hygienist works in a hospital setting, the licensee may elect either the expert review panel established by the hospital or the expert review panel established by the Iowa department of public health for the purpose of making a determination of the circumstances under which the dentist or dental hygienist may perform exposure-prone procedures. The licensee shall comply with the recommendations of the expert review panel. Failure to do so shall constitute unethical and unprofessional conduct and is grounds for disciplinary action by the board.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

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ARC 3781A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts an amendment to rescind Chapter 28, "Designation of Specialty," Iowa Administrative Code, and adopts a new Chapter 28 with the same title.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as ARC 3568A. A public hearing was held on December 18, 1992. Dentists representing three of the specialties attended the hearing and offered comments regarding the amendment. Written comments were also received from several dentists. The Iowa Board of Dental Examiners adopted this chapter with recommended changes on January 22, 1993.

The revision to Chapter 28 adds the specialty of dental public health and defines each of the eight specialties and their requirements.

Changes from the Notice are as follows:

- 28.2(1). Change the second sentence in the paragraph to read: It is that form of dental practice in which the community serves as the patient rather than the individual.
- 28.2(2)"b." Delete the word "and" and replace with the word "or".
- 28.5(2)"a" and "b." Add the words "and Maxillofacial" following the word "Oral".
- 28.7(2)"a" and "b." Strike the word "pedodontics" and insert the words "pediatric dentistry".
- 28.8(1). Delete the entire subrule and insert the following:

28.8(1) Definition. Periodontics is that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes; and the maintenance of the health, function, and esthetics of these structures and tissues.

The amendment is intended to implement Iowa Code section 153.13.

The amendment will become effective March 24, 1993. The following amendment is adopted.

Rescind 650—Chapter 28 in its entirety and insert the following in lieu thereof.

CHAPTER 28
DESIGNATION OF SPECIALTY

650—28.1(153) General review. A dentist may represent that the dentist is a specialist in the specialties of dental public health, endodontics, oral pathology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics, or prosthodontics provided the requirements of that area of specialty have been met. The board recognizes there are overlapping responsibilities among the recognized areas of dental practice. However, as a matter of principle, a specialist shall not routinely provide procedures that are beyond the scope of the specialty as defined below.

650—28.2(153) Dental public health.

28.2(1) Definition. Dental public health is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice in which the community serves as the patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

28.2(2) Requirements.

- a. Be a diplomate of the American Board of Dental Public Health; or
- b. Have successfully completed a formal graduate or residency training program in dental public health certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.3(153) Endodontics.

28.3(1) Definition. Endodontics is the branch of dentistry which is concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

28.3(2) Requirements.

- a. Be a diplomate of the American Board of Endodontics; or
- b. Have successfully completed a formal graduate or residency training program in endodontics certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.4(153) Oral pathology.

28.4(1) Definition. Oral pathology is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations.

DENTAL EXAMINERS BOARD[650](*cont'd*)**28.4(2) Requirements.**

- a. Be a diplomate of the American Board of Oral Pathology; or
- b. Be a fellow in the American Board of Oral Pathology; or
- c. Have successfully completed a formal graduate or residency training program in oral pathology certified by the Council on Dental Education of the American Dental Association; or
- d. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.5(153) Oral and maxillofacial surgery.

28.5(1) Definition. Oral and maxillofacial surgery is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

28.5(2) Requirements.

- a. Be a diplomate of the American Board of Oral and Maxillofacial Surgery; or
- b. Be a member of the American Association of Oral and Maxillofacial Surgeons; or
- c. Have successfully completed a formal graduate or residency training program in oral surgery certified by the Council on Dental Education of the American Dental Association; or
- d. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.6(153) Orthodontics.

28.6(1) Definition. Orthodontics is that area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces or the stimulation and redirection of functional forces within the craniofacial complex, or both. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structures.

28.6(2) Requirements.

- a. Be a diplomate of the American Board of Orthodontics; or
- b. Have successfully completed a formal graduate or residency training program in orthodontics certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.7(153) Pediatric dentistry.

28.7(1) Definition. The specialty of pediatric dentistry is the practice and teaching of comprehensive preventive and therapeutic oral health care of children from birth through adolescence. It shall be construed to include care

for special patients beyond the age of adolescence who demonstrate mental, physical or emotional problems.

28.7(2) Requirements.

- a. Be a diplomate of the American Board of Pediatric Dentistry; or
- b. Have successfully completed a formal graduate or residency training program in pediatric dentistry certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.8(153) Periodontics.

28.8(1) Definition. Periodontics is that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes; and the maintenance of the health, function, and esthetics of these structures and tissues.

28.8(2) Requirements.

- a. Be a diplomate of the American Board of Periodontology; or
- b. Have successfully completed a formal graduate or residency training program in periodontics certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

650—28.9(153) Prosthodontics.

28.9(1) Definition. Prosthodontics is that branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance and health of the patient by the restoration of natural teeth or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes, or both.

28.9(2) Requirements.

- a. Have fulfilled those requirements prescribed by the American Board of Prosthodontics to be eligible to be examined therein for certification; or
- b. Have successfully completed a formal graduate or residency training program in prosthodontics certified by the Council on Dental Education of the American Dental Association; or
- c. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

These rules are intended to implement Iowa Code section 153.13.

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ARC 3786A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 30, "Discipline," Iowa Administrative Code.

DENTAL EXAMINERS BOARD[650](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as ARC 3569A. A public hearing was held on December 18, 1992. The Iowa Board of Dental Examiners adopted these amendments on January 22, 1993.

The revision to Chapter 30 provides discipline for licensees who fail to comply with the Centers for Disease Control recommendations preventing transmission of HIV and HBV to patients during exposure-prone procedures or fail to comply with the recommendations of a professional review panel or fail to comply with infection control standards.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 153.34(9) and 272C.2 and chapter 139C.

These amendments will become effective March 24, 1993.

The following amendments are adopted.

Amend rule 650—30.4(153) by adding the following numbered paragraphs:

35. Failure to comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures issued by the Centers for Disease Control of the United States Department of Health and Human Services.

36. Failure to comply with the recommendations of the expert review panel established pursuant to Iowa Code subsection 139C.2(3) and applicable hospital protocols established pursuant to subsection 139C.2(1).

37. Failure to comply with the infection control standards which are consistent with the standards set forth in 347—Chapters 10 and 26, Iowa Administrative Code.

38. Failure to fully and promptly comply with office inspections conducted at the request of the board to determine compliance with sanitation and infection control standards.

[Filed 1/29/93, effective 3/24/93]

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ARC 3758A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 8, "Self-Employment Loan Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 16, 1992, as ARC 3352A. A public hearing was held on October 6, 1992. The IDEB Board adopted these amendments on January 21, 1993.

The amendments increase the loan amount available to an applicant from \$5,000 to \$10,000 in conformance with 1992 Iowa Acts, chapter 1244, section 12 [1993 Iowa

Code section 15.241]; add definitions for "Initial working capital," "Fixed assets," and "Applicant"; clarify how applications are evaluated; and add a new section describing the comprehensive management assistance which is available to SELP applicants and recipients.

There are no changes as a result of the public hearing and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15.241.

These amendments will become effective on March 24, 1993.

The following amendments are adopted.

ITEM 1. Amend rule 261—8.2(15) by inserting the following new definitions in alphabetical sequence:

"Applicant" means an individual proprietorship, partnership, limited liability company or corporation engaged in a single business, or related businesses wherein overlapping ownership interests exceed 50 percent.

"Fixed assets" means those items used to manufacture a product, provide a service, or to sell, store or deliver merchandise. These items will not be sold in the normal course of business, but will be used and worn out or consumed over time, usually longer than a year, as the business is conducted.

"Initial working capital" means those items that are required as part of the base of the business and includes, but is not limited to, deposits for utilities, rent, down payments for insurance and lease purchases, purchase of office supplies and incidentals and petty cash.

ITEM 2. Amend 261—8.3(15) by inserting the following new subrule:

8.3(8) Loan limitations.

a. Maximum amount. The maximum loan amount available to any one applicant is \$10,000.

b. Use of loan funds. The first \$5,000 can be used for the purchase of land, buildings, machinery, equipment, furniture, fixtures, inventory, tools of the trade, vehicles used in the business and initial operating capital. Any amount over \$5,000 can only be used for the purchase of fixed assets or to leverage other project funds on a one-to-one basis.

c. Follow-on funding. The department may accept applications for additional funding from current or former SELP loan recipients. No applicant may receive cumulatively more than \$10,000 under the program. For example, a loan recipient who was awarded \$5,000 in prior years may request an additional \$5,000 for the business. In determining whether to fund a request for follow-on funding, the department will consider, in addition to the evaluation criteria in subrule 8.4(3), factors including, but not limited to, the applicant's credit history with the department in repayment of the prior SELP loan; the solvency of the business; and the business's need for funding. Any application for follow-on funding will be subject to the restrictions outlined in paragraph 8.3(8)"b."

d. Draw downs. The department reserves the right to restrict the timing of the draw down of funds. As a general rule, the initial draw down of funds may not include more than \$1,500 of initial working capital.

e. SELP—comprehensive management assistance.

(1) Eligibility. Comprehensive management assistance is limited to eligible applicants or recipients of the SELP program.

(2) Use of funds. Assistance is available only in the form of technical or professional services provided by

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

department-contracted providers. Assistance may include, but shall not be limited to: consulting, training, and apprenticeship, professional services; assistance in furnishing information about available financial or technical assistance; evaluating small business venture proposals; assistance in the completion of viable start-up or expansion plans; and assistance in the completion of applications for financial or technical assistance under programs administered by the department.

(3) Disbursement. Each eligible business may receive up to \$2,500 for management assistance per year. All funds under the comprehensive management assistance program will be paid directly to the service provider. No funds will be given directly to the business.

ITEM 3. Amend rule 261—8.4(15) as follows:

261—8.4(15) Application procedure. Application materials are available from the IDEED division of ~~job training marketing and business development~~.

8.4(1) Submittal. Completed applications shall be submitted to: SELP, Division of ~~Job Training Marketing and Business Development~~, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

8.4(2) Review. Applications will initially be reviewed by the IDEED staff. IDEED staff may request additional information from the applicant prior to committee review. A review committee will score each application. The scores will be averaged and the applications receiving a ~~minimum~~ *an average score of 10 points or more* out of a total of 19 will be considered by the committee for recommendation for funding. The committee's recommendation for funding will include the amount of the loan (not to exceed ~~\$5,000~~ *\$10,000*), the ~~amount of the interest rate~~ to be charged (not to exceed 5 percent), and other terms and conditions. The IDEED director will review the recommendation and make a final decision based on various factors including geographical distribution, economic impact, etc.

8.4(3) Evaluation factors. ~~In scoring and reviewing applications, the following factors to be considered include but are not limited to: budget factors, business design, demonstrated need of applicant, feasibility of plan, creditworthiness, and previous business experience. In addition, the review committee will take into consideration an applicant's inability to secure a loan from conventional sources (e.g., bank, savings and loan) for the business venture; personal debt level; and lack of personal resources to adequately finance the business venture. Applications will be reviewed and evaluated using a 19-point system, based upon the following criteria:~~

a. Background of applicant 0-5 points

Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

b. Business plan—financial 0-5 points

Does the application contain a comprehensive two-year cash flow projection? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions (i.e., third-party documentation regarding market size, annual sales, and competition)?

c. Business plan—marketing 0-5 points

Does the application contain sufficient information to ascertain that the applicant fully understands who their customers will be and how to reach them?

d. Need of applicant 0-3 points

Consideration will be given to an applicant's: inability to secure a loan from conventional sources (e.g., bank, savings and loan, credit union, etc.) for the business venture; personal debt level; and lack of personal financial resources to adequately fund the business venture.

e. Creditworthiness 0-1 point

Does the applicant have outstanding debt to the state? Can the business, as proposed, provide enough income to meet the applicant's minimum monthly income requirement, including service for outstanding debt?

ITEM 4. Amend subrules 8.6(1) and 8.6(2) as follows:

8.6(1) Monitoring. The IDEED reserves the right to monitor the recipient's records to ensure compliance with the terms of the loan. *IDEED staff will contact the loan recipient within 90 days of the award and as frequently as conditions may warrant during the life of the loan.*

8.6(2) Reporting. Loan recipients shall submit to the IDEED reports in the format requested by the department. The department retains the authority to request information *on the condition of the business on a more frequent basis at any time during the life of the loan.*

[Filed 1/29/93, effective 3/24/93]

[Published 2/17/93]

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ARC 3759A

**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 22, "Community Economic Betterment Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 14, 1992, as ARC 3445A. The Iowa Department of Economic Development Board adopted these amendments on January 21, 1993.

The amendments bring the rules into compliance with 1992 Iowa Acts, chapter 1244, sections 19 to 24[1993 Iowa Code sections 15.315 to 15.320]. The amendments add definitions for "community base employment," "community builder program," "direct job," and "full-time equivalent job"; revise definitions of "job attainment goal," "job creation," and "recipient"; eliminate references to grant awards; update the evaluation criteria and the points assigned; and make other clarifying revisions.

A public hearing to receive comments about the proposed amendments was held on November 4, 1992. No comments were received from the public concerning the amendments. There are no changes as a result of the hearing and the adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 15.315 to 15.320.

These amendments will become effective on March 24, 1993.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261] (cont'd)

The following amendments are adopted.

ITEM 1. Amend 261—22.1(99E) as follows:

261—22.1(99E-15) Purpose. The purpose of the community economic betterment program is to *assist communities and rural areas of the state with their economic development efforts and to increase direct and indirect employment opportunities for Iowans by increasing the level of economic activity and development within the state.* The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

ITEM 2. Amend 261—22.2(99E) by adding the following new definitions in alphabetical order and amending existing definitions as follows:

"Community base employment" means the total number of full-time equivalent jobs the business employs at the time of application for CEBA funds.

"Community builder program" means the community builder program as defined in 261—Chapter 80.

"Direct job" means a job created or retained by the business receiving CEBA funds and reflected on its employment payroll records.

"Full-time equivalent job" means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

"Job attainment goal" means the total number of jobs created and job retention pledged by the recipient in addition to the business's community base employment.

"Job creation" means new permanent full-time equivalent (FTE) positions added to a business's normal operations, over and above the number of FTE positions the business had at the time of application for CEBA funds; and those created positions do not result in the displacement of workers from another Iowa business.

"Recipient" means a business which receives assistance through the CEBA program and in return agrees to provide a specified number of new direct jobs, or retain a specified number of direct jobs within the state, or receives assistance through CEBA's comprehensive management assistance.

ITEM 3. Amend 261—22.4 (99E) as follows:

261—22.4(99E15) Eligible applicants. Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient; ~~or approved recipient's vendor; or other intermediary which may assist in the fulfillment of the project goals.~~

ITEM 4. Amend subrule 22.5(2) as follows:

22.5(2) Forms of assistance. Assistance for projects may be provided in any of the following forms:

1. Principal buy-downs to reduce the principal of a business loan;
2. Interest buy-downs to reduce the interest on a business loan;
3. Grants;

4. 3. Forgivable loans;
5. 4. Loans and loan guarantees;
6. 5. Equity-like investments;
7. 6. Cost reimbursement for technical/professional management services.

ITEM 5. Amend subrule 22.6(2) as follows:

22.6(2) Ineligible applications. The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

- a. It is submitted by an ineligible applicant, or
- b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability, or
- c. CEBA grant funds comprise more than 50 percent of the project's financing, or
- d. ~~After July 1, 1987, the applicant is located in a region which does not have an approved regional economic development plan, or~~
- e. ~~d.~~ If the CEBA application is not properly signed by the applicant ~~or~~ and the business.

ITEM 6. Amend paragraph 22.6(3)"b" as follows:

b. Applications should be submitted to: Division of Financial Assistance Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by calling (515) ~~281-3746~~ 242-4819.

ITEM 7. Amend subrule 22.7(1) by adding a new paragraph "f" and relettering existing paragraph "f" as "g":

f. ~~The certification of a community builder program for the community.~~

f. g. The expected recapture of these funds.

ITEM 8. Amend subrule 22.8(2) as follows:

22.8(2) Application form. Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. The new business opportunities or new product development components of CEBA;
- b. EDSA (economic development set-aside program);
- c. ~~FRED (financing rural economic development program);~~
- d. c. BDFC (business development finance corporation program); or
- e. d. PFSA (public facilities set-aside program).

ITEM 9. Amend subrule 22.8(3) as follows:

22.8(3) Scoring. The criteria noted in rule 22.7(99E 15) are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum—20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. Up to a maximum of 25 percent of the assistance from Iowa Code chapter ~~280B 260E~~ or ~~280C 260F~~ or tax abatements issued under Iowa Code chapters 404 and 427B and 100 percent of the local dollars committed to a RISE project will be considered local effort. The form of local assistance compared to the form of CEBA assistance requested ~~would~~ will be considered

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

(e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing, etc.). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

b. Community need. Maximum—~~20~~ 10 points. This ~~would include~~ includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum—30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing ~~would will~~ be considered a private contribution. Contribution in the form of "new cash equity" by the business owner ~~would will~~ result in a higher score.

d. Certified community builder community. Maximum—10 points. A community will receive 10 points upon completion and subsequent certification by the department of a plan prepared in accordance with 261—Chapter 80.

d. e. Extra points if small business, as defined by SBA. Maximum—10 points.

e. f. Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum—40 points. This factor ~~would compare~~ compares the amount requested to the number of jobs to be created and the projected increase in state and local tax revenues. Also considered here ~~would be~~ is the form of assistance (e.g., a grant forgivable loan ~~would will~~ receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum—40 points. Higher points to be awarded for:

- Higher wage rates;
- Lower turnover rates;
- Full-time, career-type positions;
- Relative safety of the new jobs;
- Health insurance benefits;
- Fringe benefits;
- Other related factors.

(3) Economic impact. Maximum—40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

- Higher proportion of in-state suppliers;
- Greater diversification of state economy;
- Fewer in-state competitors;
- Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

A project which is not a retail operation.

Maximum preliminary points for project impact—120 points.

(4) Final impact score. Maximum—120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION—Rating factors in 22.8(3)^{e-f}(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of suc-

cess, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a "reliability and feasibility factor" to obtain a final impact score, 22.8(3)^{e-f}(4). This factor ~~would will~~ range from 0 to 100 percent, depending upon the department's judgment as to the likelihood of the projections turning out as planned. If, in the department's judgment, the project would proceed whether it was funded or not, it ~~would will~~ be assigned a zero percent on the reliability and feasibility factor and the final impact score ~~would will~~ be zero. This ~~would be~~ is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible ~~would be~~ is 200 points.

Projects that score less than 120 points in rule 22.8 (99E 15) will not be recommended for funding by the staff to the committee.

Lowest ranking. Any application that has substantially low ~~wages~~ wage scales as determined under 22.7(2)^b, or has consistent violations of the law as determined under 22.7(3)^d will be assigned a final score of zero.

ITEM 10. Amend subrules 22.9(2) and 22.9(3) as follows:

22.9(2) ~~Application form.~~ Applications. Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. Small business gap financing component of CEBA;
- b. EDSA (economic development set-aside program);
- c. ~~FRED (financing rural economic development program);~~

d. c. BDFC (business development finance corporation program); or

e. d. PFSA (public facilities set-aside program).

22.9(3) Rating system. The rating system for proposed projects will be as follows:

a. Local effort (as defined in 22.8(3)^a). Maximum—20 points;

b. Private contribution as compared to CEBA request (as defined in 22.8(3)^c). Maximum—~~30~~ 20 points;

c. Certified community builder community (as defined in 22.8(3)^c). Maximum—10 points;

e. d. Extra points if small business, as defined by SBA. Maximum—10 points;

d. e. Project impact, as defined in 22.8(3)^{e-f} and 22.8(4). Maximum—120 points;

e. f. Potential for future expansion of the industry in general. Maximum—20 points. This factor ~~would award~~ awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible ~~would be~~ is 200 points.

Projects that score less than 120 points in rule 22.9(99E 15) will not be recommended for funding by the staff to the committee.

Lowest ranking. Any application that has substantially low ~~wages~~ wage scales as determined under 22.7(2)^b, or has consistent violations of the law as determined under 22.7(4)^e 22.7(3)^c will be assigned a final score of zero.

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ITEM 11. Amend subrule 22.12(4) as follows:

22.12(4) Performance reports and reviews.

a. ~~Applicants~~ *Recipients* will be required to submit ~~quarterly~~ *semiannual* performance reports to the department. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made in the agreement with the department. Each ~~quarterly~~ report must be accompanied by the business's *most recent* quarterly "Employer's Contribution and Payroll Report," and the business may also be required to submit actual payroll records as a part of that report.

b. The department may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of ~~applicant~~ *recipient* performance reports. When problems of compliance are noted, the department may require remedial actions to be taken.

ITEM 12. Amend subrule 22.15(6) as follows:

22.15(6) Forms. The following forms will be used by the department in the administration of the CEBA program:

1. Application for business financial assistance form;
2. Application for comprehensive management assistance form;
- ~~3. Grant agreement;~~
4. 3. Loan agreement;
- 5: 4. Loan subsidy (buy-down) agreement;
- 6: 5. Loan guarantee agreement;
- 7: 6. Equity-like agreement;
- 8: 7. Forgivable loan agreement;
- 9: 8. Comprehensive management assistance agreement;
- ~~10: 9. Applicant program budget and schedule;~~
- ~~11: 10. Applicant quarterly semiannual performance report; and~~
- ~~12: 11. Applicant status of funds report request for release of funds; and~~
12. Applicant final expenditure report.

These rules are intended to implement Iowa Code sections ~~99E.31(2), 99E.32(2)"a"(9) and 99E.32(2)"b."~~ Iowa Code sections 15.315 to 15.320.

ITEM 13. Amend 261—Chapter 22 by striking references to "99E" throughout the chapter and inserting in lieu thereof "15" as the correct citation of the implementing authority.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3764A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby adopts Chapter 34, "Community Forestry Challenge Grant Program," Iowa Administrative Code.

This chapter establishes the rules and procedures governing cost-sharing between state and local public agencies or volunteer organizations to assist in a variety of urban forestry activities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as ARC 3580A. No comments were received during the comment period and public hearing held December 16, 1992. One clarification was made in 34.10(3) that makes it clear the entire 50 percent local match may be from in-kind contributions.

These rules are intended to implement Iowa Code section 461A.2.

These rules will become effective March 24, 1993.

The following new chapter is adopted:

CHAPTER 34

COMMUNITY FORESTRY CHALLENGE GRANT PROGRAM (CFCGP)

571—34.1(461A) Purpose. The purpose of this chapter is to define procedures for cost-sharing between state and local public agencies or volunteer organizations to assist them in developing comprehensive community street and park tree programs or to establish a one-time demonstration community tree planting on public lands within Iowa.

571—34.2(461A) Definitions.

"Administrator" means the administrator of the forestry division of the department, also known as the state forester.

"CFCGP" means the community forestry challenge grant program.

"Department" means the Iowa department of natural resources.

"Director" means the director of the Iowa department of natural resources.

"Division" means the forestry division of the Iowa department of natural resources.

"Iowa urban and community forestry council" means the group of professionals and volunteer leaders selected by the forestry division administrator to advise the division on urban and community forestry programs, also known as the council.

"Urban and community forestry" means the planning, planting and maintenance of trees in communities or public recreation areas.

571—34.3(461A) Availability of funds. Funds to institute the CFCGP program are derived through federal allocations pursuant to section 9 of the Cooperative Forestry Assistance Act (16 U.S.C. 2105).

571—34.4(461A) Eligibility of forestry development projects. Forestry development grants (maximum \$5,000) may include, but are not necessarily limited to, the following:

1. Hiring a new full- or part-time city forester.
2. Internships for forestry, horticulture or landscape architect to perform community forestry work.
3. Completing a 100 percent street and park tree inventory.
4. City tree ordinance development or revision.
5. City employee or volunteer community forestry training.
6. Development of community forestry master plans.
7. Community forestry youth and adult education programs.

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8. City forestry planting site design development.

571—34.5(461A) Eligibility of demonstration projects. A one-time cost-share grant (maximum \$3,000) is available per community or volunteer organization for a demonstration project that may include, but is not necessarily limited to, the following:

1. Tree or landscape plantings on public areas.
2. Tree or landscape maintenance projects on public areas.
3. Site improvements around public trees.
4. Site developments around public trees.
5. Construction mitigation around public trees.

571—34.6(461A) Projects not eligible. The following types of projects are not eligible for assistance from the CF CGP:

1. Acquisition of land.
2. Replacement of normally allocated local government funds.
3. Any type of development or planting that will not improve public enjoyment, access or safety.
4. Projects with a total grant request of less than \$500.
5. Any project or project costs incurred prior to notification of the sponsoring agency by the forestry division administrator that a grant has been approved.

571—34.7(461A) Eligible applicants. Eligible projects may be submitted by regional or local units of Iowa state, county, or city government, local governmental departments, school districts, volunteer organizations and service clubs involved with local urban and community forestry resources. Eligible projects must occur within the state of Iowa.

571—34.8(461A) Establishing project priorities. The forestry division administrator shall appoint a three-member challenge grant committee representing a cross section of the Iowa urban and community forestry council for the purpose of reviewing, establishing priorities for cost-sharing and ranking applications for approval by the administrator. This committee will review and rank all proposals received on a competitive basis for: demonstrated need, cash match, community involvement, new project, cost-effectiveness, meeting Tree City USA requirements, and having a completed community tree assessment or inventory.

571—34.9(461A) Application procedures. Announcements concerning the application procedures will be issued by the administrator each year. A maximum four-page proposal must be received by the Forestry Division Administrator, Wallace State Office Building, Des Moines, Iowa 50319-0034, no later than 4:30 p.m. on the last working day identified in the announcement. The proposal should briefly describe the eligible applicant, detail project request, total budget, source of match and completion date. For demonstration projects, an 8" x 11" site map must be included in addition to the proposal.

This proposal must be signed by an authorized official of state, regional or local government under whose jurisdiction the project will occur, indicating that the project funds will be spent in accordance with the proposal and all applicable federal and state laws, rules and regulations. The applicant must sign a statement relinquishing the department or the Iowa urban and community forestry Council from any liability associated with this project.

571—34.10(461A) Requirements for funding. In order to qualify for funding, state, regional or local units of government, school districts, volunteer organizations and service clubs must comply with the following requirements:

34.10(1) The project(s) must be on public land within the state of Iowa (streets, boulevards, parks, schools, cemeteries, etc.).

34.10(2) A 50-50 minimum match of requested funds is required.

34.10(3) In-kind contributions are allowed if specific for the proposed project. The entire 50 percent match may be in-kind contributions. These in-kind costs must be documented. Allowable in-kind costs include, but are not limited to, the following:

- a. Volunteer labor (reasonable local rates).
- b. Value of locally purchased or donated trees to be planted on public areas.
- c. Value of wood mulch and other tree protective devices (reasonable local rates).

34.10(4) Only plant materials, products and services purchased from Iowa firms are eligible for demonstration projects. Shrubs and nonwoody plants are eligible if in combination with trees.

571—34.11(461A) Project agreements.

34.11(1) A cooperative agreement approved by the administrator between the local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be 18 months, unless an extension approved by the administrator is authorized.

34.11(2) Cooperative agreements between the departments and the local project recipient may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of federal funds. Amendments to increase scope or fund assistance must be approved by the administrator before work is commenced or additional costs are incurred.

571—34.12(461A) Reimbursement procedures. Financial assistance from the community forestry challenge grant program will be in the form of reimbursement grants which will be made on the basis of the approved percentage of all eligible expenditures up to the amount of the approved grant.

Reimbursement requests must be submitted by the grant recipient on project billing forms provided by the department at the completion of the project.

For forestry development projects and demonstration projects, grant recipients shall provide documentation as required by the department to substantiate all project expenditures.

These rules are intended to implement Iowa Code section 461A.2.

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3765A**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby adopts a new Chapter 112, "Hunting Preserves," Iowa Administrative Code.

Iowa Code section 484B.4 requires that all hunting preserves be licensed and, furthermore, section 484B.7 requires all such licensed hunting preserves to maintain records and make reports as required by the Department. Accordingly, the Department is creating a new chapter which contains: boundary signing, fencing, lease requirements; ungulate (big game) requirements; records and reporting procedures, including annual reporting of hunting preserve information and deadlines for submittal of said reports to the Commission; game bird and ungulate tagging requirements; established hunting preserve season; and health requirements for game birds and ungulates.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 1992, as **ARC 3565A**. No comments were received at the public hearing held December 30, 1992. These rules are identical to those published under Notice of Intended Action.

These rules were adopted by the Natural Resource Commission on January 15, 1993, and will become effective March 24, 1993.

These rules implement the provisions of Iowa Code chapter 484B.

The following new chapter is adopted:

**CHAPTER 112
HUNTING PRESERVES**

571—112.1(484B) Definitions. As used in these rules:

"Annual activity report" means Annual Report Form provided by the department.

"Boundary sign" means a sign prescribed by the department which, when posted, designates hunting preserve boundaries.

"Game birds" means pen-reared birds of the family gallinae and mallard ducks.

"Hunting preserve operator's license" means a seasonal license which authorizes the holder to establish a hunting preserve for the purpose of holding, propagating, and releasing game birds and ungulates for hunting purposes.

"Lease" means a land-lease document for hunting preserve purposes.

"Licensee" means a person or organization that possesses a valid hunting preserve operator's license issued by the Iowa department of natural resources under Iowa Code section 484B.4.

"Pen-reared" means the propagation and holding of game birds and game animals whose origins are from captive populations.

"Tag" means a self-adhesive, numbered, transportation tag for marking individual game birds and ungulates taken.

"Ungulate" means pen-reared, hoofed, nondomesticated mammal (big game).

571—112.2(484B) Hunting preserve operator's license. A hunting preserve operator's license may, following

review and inspection, be issued to a person or organization who, upon application, complies with all requirements established in Iowa Code section 484B.4 and this chapter.

571—112.3(484B) Land leases required. All hunting preserve applications which include leased tract(s) of land shall be accompanied by a legible copy of the land-lease document(s). The lease document(s) shall include, but not be limited to, the following information: name/address of lessee and lessor, term of the lease (not less than five years), purpose of the lease, description/location of the leased tract(s) (acreage—section—township—county), one copy of plat map depicting location of leased tract(s), and dated signatures by both parties.

571—112.4(484B) Boundary signs required. All licensed hunting preserves shall provide, post, and maintain boundary signs which meet the following minimum specifications: 160-square-inch surface area; sign material of wood, steel, aluminum or heavy poly-plastic; and white/red sign color combination with the message "Licensed Hunting Preserve." Boundary sign spacing shall be no more than 500 feet apart.

571—112.5(484B) Fencing required—ungulates. All licensed hunting preserves possessing a valid hunting preserve license for ungulates shall construct and maintain a "deer-proof" boundary fence. Such fence shall be constructed and maintained with a minimum fence height of eight feet above ground level.

571—112.6(484B) Records and annual report. All licensed hunting preserves shall submit a completed annual activity report no later than April 30 of the license year to the Law Enforcement Bureau, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. All licensed hunting preserves shall retain sales/shipping receipts involving the purchase and delivery of any game birds or ungulates to the licensee. All licensed hunting preserves shall record any transaction involving the sale of game birds or ungulates by the licensee. All original sales receipts for harvested game birds and ungulates shall remain with the licensee as a part of the permanent record and a copy shall be provided to the purchasing hunter/client. This record requirement shall also apply to any sale of live birds or ungulates for private or commercial use and must be recorded immediately following the event.

Any licensed hunting preserve having a valid license for ungulates shall maintain an inventory record of all ungulates released and being held on the licensed property at any given time.

571—112.7(484B) Game bird transportation tags. Numbered, self-adhesive bird tags shall be placed on a leg of each bird harvested on a licensed hunting preserve prior to transporting the bird from the licensed area. The bird tag shall remain attached to the bird until the time it is processed for consumption.

Bird tags shall be purchased from the License Bureau of the Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, at a cost of \$5 per 100 bird tags.

571—112.8(484B) Ungulate transportation tags. Numbered, self-adhesive ungulate tags shall be placed on a leg of each ungulate harvested on a licensed hunting preserve prior to moving the carcass in any manner. The hunter

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shall, upon taking an ungulate, immediately validate the ungulate tag by including the following information in the space provided: species and sex of animal taken and the hunter's signature. The hunter shall also notch or punch a hole in the corresponding blocks on the ungulate tag designating the year, month and day the animal was taken. The ungulate tag shall remain attached to the ungulate until it is processed for consumption.

Ungulate tags shall be purchased from the License Bureau of the Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, at a cost of \$1 per ungulate tag.

571—112.9(484B) Processed game birds. Licensed hunting preserves may prepare game birds for hunters/clients by cleaning, dressing, preserving, and packaging whole birds or bird parts. Packaging material shall be a see-through plastic bag. The plastic bag shall be sealed and the bird tag placed around the opening of the bag or attached to the bag in such a manner so that the bird tag number(s) is completely legible. The number of game birds or combination of bird parts shall correspond to the number of bird tags affixed to the clear plastic bag.

571—112.10(484B) Processed ungulates. Licensed hunting preserves may prepare ungulates for hunters/clients by cleaning, dressing, preserving, and packaging the meat. Packaging material shall be a freezer-type paper wrap which shall be sealed and bear the species name, date killed, and hunting preserve name in a legible fashion on the outside of the package. The ungulate tag shall remain with the meat during processing and shipment.

571—112.11(484B) Health requirements—game birds and ungulates. No game birds or ungulates shipped or transported into Iowa shall be affected with, or recently exposed to, any infectious, contagious, or communicable disease, or originate from a quarantined area.

All game birds and their hatching eggs shipped or transported into Iowa shall have proof of origination from flocks or hatcheries that have a pullorum-typhoid clean rating given by the official state agency of the National Poultry Improvement Plan or its equivalent and shall be in accordance with the United States Department of Agriculture and the Iowa department of agriculture and land stewardship.

All ungulates shipped or transported into Iowa for hunting preserve purposes shall be accompanied by an approved Certificate of Veterinary Inspection. Ungulates that are livestock are subject to regulations administered by the Iowa department of agriculture and land stewardship. All veterinary inspection certificates shall be retained as a part of licensee's permanent records.

571—112.12(484B) General conditions for permits.

1. Records and facilities shall be available for inspection by officers of the department during reasonable hours.

2. All records and reports must be kept current and shall reflect a true and accurate account of the licensee's activities.

3. The department's law enforcement bureau must be notified within 30 days in writing if the licensee ceases operation as a hunting preserve.

4. Licensees must seek to renew their hunting preserve operator's license within 30 days following the expiration date. Renewal requests received after this period may be

considered as a new application pursuant to rules 112.2(484B) and 112.3(484B).

5. All new hunting preserve operator's license applications shall be considered on a first-come, first-served basis following April 30 of each year.

These rules are intended to implement Iowa Code chapter 484B.

[Filed 1/29/93, effective 3/24/93]

[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3772A

**PROFESSIONAL LICENSURE
DIVISION[645]**

BOARD OF BARBER EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 158.15, the Board of Barber Examiners hereby adopts amendments to Chapter 20, "Barber Examiners," Iowa Administrative Code.

The amendments eliminate the requirement for certification of freedom from infectious or contagious diseases as enacted by 1992 Iowa Acts, chapter 1097; add language to allow instructors to place their license on inactive status and clarify the requirements for reinstatement of an inactive or lapsed instructor license; and clarify when the penalty fee for late renewal of a personal or shop license becomes effective.

These amendments were published under Notice of Intended Action as ARC 3463A in the October 14, 1992, Iowa Administrative Bulletin and were adopted by the Board of Barber Examiners on January 26, 1993. There are no changes from the amendments published under Notice.

These amendments are intended to implement Iowa Code sections 147.10, 147.11, and 158.3(1)"a."

These amendments will become effective April 7, 1993.

The following amendments are adopted.

ITEM 1. Amend rule 645—20.5(147) by rescinding sub-rule 20.5(2).

ITEM 2. Amend rule 645—20.108(272C) as follows:

645—20.108(272C) Exemptions for inactive practitioners.

20.108(1) A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of barbering in Iowa without first complying with all regulations rules governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

20.108(2) If the practitioner seeks a compliance waiver for the barber's license and the practitioner also has an

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instructor's license, the instructor's license shall automatically become inactive.

20.108(3) *If the practitioner holds both a barber's license and instructor's license, the practitioner may choose to seek a compliance waiver for both licenses or for the instructor's license alone.*

ITEM 3. Adopt the following new rule:

645—20.112(272C) Reinstatement of an instructor's license. If the license has been lapsed or inactive for five years or less, the instructor shall hold a current barber's license in the state of Iowa and pay only the current renewal fee. If the instructor's license has been lapsed or inactive for more than five years, the instructor shall also pay the examination fee and take and pass the instructor's examination.

ITEM 4. Amend subrules 20.214(3) and 20.214(9) as follows:

20.214(3) Renewal of barbering license for biennial is \$60. Penalty for late renewal is \$25, in addition to renewal fee *if not postmarked by the July 1 expiration date.*

20.214(9) Renewal of barber shop license is \$30. Penalty for late renewal is \$10, in addition to renewal fee *if not postmarked by the July 1 expiration date.*

ITEM 5. Amend **645—20.100(258A)** to **645—20.213(258A)** by striking references to "258A" and inserting "272C" to reflect renumbering of the 1993 Iowa Code.

[Filed 1/29/93, effective 4/7/93]
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ARC 3777A**PROFESSIONAL LICENSURE
DIVISION[645]**

BOARD OF BARBER EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 272C.2, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," Iowa Administrative Code.

The amendment clarifies the procedures for reporting continuing education by the licensee and the approved sponsor.

The amendment was published under Notice of Intended Action in the December 9, 1992, Iowa Administrative Bulletin as **ARC 3617A** and was adopted by the Board of Barber Examiners on January 26, 1993. There are no changes from the Notice.

This amendment is intended to implement Iowa Code sections 272C.2 and 272C.5.

This amendment will become effective April 7, 1993.

The following amendment is adopted.

Rescind rule **645—20.105(258A)** and insert in lieu thereof the following:

645—20.105(272C) Certificate for continuing education. Each licensee shall file with the license renewal application a certificate of attendance form furnished by the board signed by the educational institution or organization

sponsoring the continuing education. The report shall be sent to the Board of Barber Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. A copy of the certificate of attendance shall be retained by the licensee for a period of at least three years from the date of the continuing education.

[Filed 1/29/93, effective 4/7/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3757A**PROFESSIONAL LICENSURE
DIVISION[645]**BOARD OF PHYSICAL AND OCCUPATIONAL
THERAPY EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby rescinds Chapter 201, "Occupational Therapy Examiners," and adopts a new Chapter 201, "Occupational Therapy Examiners," Iowa Administrative Code.

Chapter 201 was rewritten to include past policies and to clarify the application procedure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 28, 1992, as **ARC 3477A**. Changes were made from the Notice of Intended Action for further clarification at 201.3(2), 201.5(2)"b"(2), 201.6(1), 201.13(6), 201.13(8), 201.15(2), paragraphs "b" and "d," and 201.21(6). A new paragraph was added to the end of 201.5(2)"b"(2) for clarification of the application procedures.

The rules were adopted by the Board of Physical and Occupational Therapy Examiners on January 15, 1993, and will become effective March 24, 1993.

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

The following rules are adopted.

Rescind **645—Chapter 201** and insert in lieu thereof the following:

CHAPTER 201

OCCUPATIONAL THERAPY EXAMINERS

645—201.1(148B) Definitions.

"ALJ" means administrative law judge.

"AOTCB" means the American Occupational Therapy Certification Board.

"Approved program or activity" means a continuing education program meeting standards set forth in these rules which qualifies for approval by the board pursuant to these rules.

"Board" means the board of physical and occupational therapy examiners.

"Department" means the Iowa department of public health.

"Examination" means the AOTCB examination for occupational therapists and for occupational therapy assistants.

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"Hour of continuing education" means 50 minutes of attendance per clock hour.

"Licensee" means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

645—201.2(147,148B) General.

201.2(1) An applicant for a permanent license shall meet the requirements of Iowa Code section 148B.5.

201.2(2) An application for a license shall be upon an official form supplied by the department. The form shall be completed and signed by the applicant and filed with the department with the required fee in the form of a check or money order payable to the Board of Physical and Occupational Therapy Examiners.

201.2(3) The first license fee provides for the initial licensure of persons and is valid through the expiration date of the biennial licensing period during which the license was issued. The renewal licenses are issued for biennial periods.

201.2(4) Licenses issued by the board shall be 8 1/2 by 11 inches in size. Each license issued shall bear the signature of the chairperson of the board of physical and occupational therapy examiners.

201.2(5) Persons desiring information concerning the time and place of meetings of the board, or other information, shall write to Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

201.2(6) An individual board member, following verification that an applicant has completed all components of the licensing process, may temporarily approve an applicant's license to practice until such time as the full board shall consider the application.

201.2(7) Incomplete applications that have been on file in the board office for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

645—201.3(147,148B,272C) Education requirements.

201.3(1) The applicant for licensure as an occupational therapist shall have completed the requirements for a baccalaureate or master's degree in occupational therapy in an occupational therapy program accredited by the American Medical Association in collaboration with the American Occupational Therapy Association. The applicant shall also have successfully completed a minimum of six months' supervised field work experience.

201.3(2) The applicant for licensure as an occupational therapy assistant shall be a graduate of an educational program approved by the American Occupational Therapy Association. The applicant shall have successfully completed a minimum of two months' supervised field work experience.

645—201.4(147,148B) Examination requirements.

201.4(1) The applicant for licensure as an occupational therapist shall have received a passing score on the certification examination for occupational therapists of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

201.4(2) The applicant for a license as an occupational therapy assistant shall have received a passing score on the certification examination for occupational therapy assistants of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements

to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

645—201.5(147) Application for permanent licensure.

201.5(1) Applications for licensure to practice as an occupational therapist or occupational therapy assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, on an application form furnished by the board. The notarized application shall include the following:

a. Full name, current address, age, date of birth, place of birth and other information as requested on the application form.

b. Official transcript, with school seal of occupational therapy or occupational therapy assistant professional curriculum.

c. A notarized copy of the certificate or diploma indicating degree awarded to the applicant, if the degree is not indicated on the official transcript.

d. A notarized copy of the certification examination results or official letter from AOTCB confirming a passing score.

e. A notarized copy of official document of name change, if applicable.

201.5(2) An applicant who has passed the examination within 12 months of the date of the application shall submit an application as outlined in 201.5(1).

a. An applicant who has passed the examination one to five years prior to the date of the application shall also provide evidence to the board to document either:

(1) Proof of practice of 2080 hours in the last five years, or

(2) Completion of 15 hours, for occupational therapists, or 7.5 hours, for occupational therapy assistants, of clinically applicable continuing education for each year since passing the examination.

b. An applicant who has passed the examination six to ten years prior to the date of the application shall also provide evidence to the board to document either:

(1) Proof of practice of 2080 hours in the last five years, or

(2) Completion of 75 hours, for occupational therapists, or 37.5 hours, for occupational therapy assistants, of clinically applicable continuing education within the last five years, and three months of full-time practice under the supervision of a licensed occupational therapist. This supervised practice must be completed within six months after the date of the application and the supervising occupational therapist must verify in writing completion of three months of full-time supervised practice. While completing the supervised practice, the applicant will be considered unlicensed and shall be supervised as unlicensed personnel. (See 201.13(7), 201.13(8) and 201.13(9).)

The applicant must inform the board of intent to be licensed through this method and must submit the name of the supervising therapist. In the event there is a change in the supervising therapist, the applicant shall submit the name of the new supervisor in writing to the board within seven days after the change in supervision takes place.

c. An applicant who has passed the examination more than ten years prior to the date of the application shall also provide evidence to the board to document proof of practice of 2080 hours in the last five years.

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201.5(3) Applicants not meeting all requirements as set out in 201.5(2) will be required to take or retake the certification examination.

201.5(4) If licensed in another state, the applicant shall provide an official statement from the state licensing board of each state in which the applicant has been licensed regarding the status of the applicant's license, including issue date, expiration date, and information regarding any pending or prior disciplinary action.

201.5(5) An applicant who will be working in Iowa in the scope of occupational therapy prior to licensure shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision of the applicant until the applicant is licensed. (See 201.13(6).) In the event that there is a change in the licensed occupational therapist providing supervision, the applicant shall submit the name of the person providing the supervision in writing to the board within seven days after the change in supervision takes place. The application shall be completed within 90 days.

645—201.6(148B) Limited permit.

201.6(1) A limited permit to practice as an occupational therapist or as an occupational therapy assistant may be granted to persons who have completed the educational and experience requirements to be licensed as an occupational therapist or occupational therapy assistant and are waiting to take the certification examination.

201.6(2) A limited permit allows a limited permit holder to practice only under the supervision of an Iowa-licensed occupational therapist. Supervision of the limited permit holder is defined in 201.13(272C).

201.6(3) A limited permit shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

201.6(4) An applicant for a limited permit shall submit the limited permit application fee of \$25 and a completed, notarized application as set out in 201.2(2) except for the certification examination results.

a. The applicant shall include on the application the name and license number of the occupational therapist who will be providing supervision.

b. It is the responsibility of the limited permit holder to make arrangements to take the examination and to have the official results submitted to the board of physical and occupational therapy examiners and to submit the permanent licensure fee within 30 days of being eligible for permanent licensure.

645—201.7(147) License renewal.

201.7(1) The biennial license renewal period shall extend from July 1 of each odd-numbered year until June 30 of the next odd-numbered year. The continuing education period shall extend from January 1 of the odd-numbered year until December 31 of the next even-numbered year.

201.7(2) Individuals who have met continuing education requirements for the biennium and wish to have their licenses renewed shall complete the board-approved renewal form and the board-approved continuing education report and return them with the renewal fee to Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by January 31 of the odd-numbered year.

201.7(3) The licensed occupational therapy assistant shall include with the renewal application a report of supervision on a board-approved form.

201.7(4) Late filing. Individuals who fail to submit the application for renewal and completed continuing education report by January 31 shall be required to pay a late filing fee and may be subject to an audit of their continuing education report.

201.7(5) Occupational therapists and occupational therapy assistants who have not fulfilled the requirements for license renewal or applied for waiver or exemption by July 1 of the odd-numbered year will have a lapsed license and shall not engage in the practice of occupational therapy.

645—201.8(147) Reinstatement of lapsed license. Individuals allowing a license to lapse will be required to reapply for permanent license and may be required to take the certification examination. Occupational therapists and occupational therapy assistants who do not request to be reinstated by means of submitting penalty fees and an application for reinstatement by August 1 of the new licensure biennium may be required to take an examination as determined by the board. Consideration will be given to the length of lapsed license, practicing with lapsed license, and previous violations of board rules. Should an individual continue to practice with a lapsed license, disciplinary action will be taken which may include suspension, revocation or probation.

645—201.9(272C) Exemptions for inactive practitioners. A licensee who is not engaged in the active practice of occupational therapy in the state of Iowa, residing within or without the state of Iowa, may be granted a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of occupational therapy in Iowa without first complying with all regulations governing reinstatement after exemption. (See 201.11(147).) The application for a certificate of exemption shall be submitted upon a form provided by the board.

Individuals who fail to request reinstatement within a five-year period from the date the certificate of exemption was granted shall be considered to have a lapsed license.

645—201.10(272C) Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill them or make the required reports. No waiver or extension of time shall be granted unless written application shall be made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional and the waiver is acceptable to the board. Waivers of the minimum continuing education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived.

645—201.11(147) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of occupational therapy in the state of

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Iowa, apply for reinstatement by submitting the following to the board:

201.11(1) Completed written application for reinstatement on board-approved form with reinstatement fee; and

201.11(2) Documentation of one of the following:

a. Proof of completion of a total number of hours of accredited continuing education computed by multiplying 30 for occupational therapists or 15 for occupational therapy assistants for each renewal period the license has been inactive; or

b. Successful completion of the appropriate occupational therapist or occupational therapy assistant certification examination within one year immediately prior to the submission of such application for reinstatement.

201.11(3) The board may require successful completion of an oral interview prior to reinstatement.

645—201.12(147) License fees. All fees are nonrefundable.

201.12(1) The application fee for an occupational therapist license is \$55. The application fee for an occupational therapy assistant license is \$45.

201.12(2) The application fee for a limited permit as provided by Iowa Code section 148B.4 is \$25.

201.12(3) The renewal fee for an occupational therapist license is \$55. The renewal fee for an occupational therapy assistant license is \$45.

201.12(4) Penalty fee for failure to complete and return the renewal application and statement of supervision for occupational therapy assistants by January 31 (odd-numbered year) is \$55.

201.12(5) Penalty fee for failure to complete the required continuing education by December 31 of even-numbered years is \$25. Failure to complete and return the continuing education report (Form G) by January 31 (odd-numbered year) is \$25.

201.12(6) Reinstatement fee following inactive exemption or lapsed license is \$100.

201.12(7) Fee for a certified statement that a licensee is licensed in Iowa is \$10.

201.12(8) Fee for failure to report, in writing, change of address within 30 days is \$10.

201.12(9) Fee for failure to report, in writing, change of name within 30 days is \$10.

645—201.13(272C) Supervision.

201.13(1) The occupational therapy assistant and limited permit holder practice occupational therapy under the supervision of an occupational therapist licensed in the state of Iowa.

a. Supervision of the licensed occupational therapy assistant shall include a minimum of four hours per month of on-site and in-sight supervision by the occupational therapist.

b. Supervision of the limited permit holder shall include one-to-one supervision for a minimum of two hours per week by the occupational therapist.

201.13(2) Supervision of the licensed occupational therapy assistant and occupational therapy assistant limited permit holder shall include:

a. The evaluation of each patient by the supervising occupational therapist prior to treatment by the licensed occupational therapy assistant or limited permit holder. This time spent in evaluating the patient by the therapist shall not be considered time spent supervising.

b. A treatment plan written by the supervising occupational therapist outlining which elements have been dele-

gated to the licensed occupational therapy assistant or limited permit holder.

c. Monitoring of patient progress by the supervising occupational therapist.

d. Evaluation of treatment plan and determination of treatment termination by supervising occupational therapist.

201.13(3) The occupational therapist holding a limited permit may perform the duties of the occupational therapist under the supervision of an Iowa licensed occupational therapist, except for providing supervision to an occupational therapy assistant.

201.13(4) The licensed occupational therapy assistant and limited permit holder must designate on a board-approved form the supervising occupational therapist and the facilities within which the occupational therapy assistant or limited permit holder works. Any change in supervision or facility should be reported to the board within seven days after the change takes place.

201.13(5) A supervision plan and documentation of supervision shall be kept by each occupational therapy assistant or limited permit holder and be available for review upon request of the board.

201.13(6) The applicant for permanent license who is already certified and working in the scope of occupational therapy prior to licensure shall receive the same supervision as set out in 201.13(1)"b" and 201.13(2) for occupational therapy assistants and 201.13(1)"b" and 201.13(3) for occupational therapists.

a. The applicant shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision until the applicant is licensed.

b. The application shall be completed within 90 days.

c. The applicant shall notify the board within seven days of any changes in supervision.

201.13(7) The occupational therapist shall ensure that the occupational therapy assistant, limited permit holder, or applicant is assigned only those duties and responsibilities for which the assistant, limited permit holder, or applicant has been specifically trained and is qualified to perform.

201.13(8) When supervising unlicensed personnel not covered under 201.13(1), 201.13(2), 201.13(3) and 201.13(6), the following conditions shall be met:

a. Evaluation of patient by the occupational therapist.

b. Treatment plan determined by the occupational therapist with delegation of specific treatment responsibilities in writing.

c. The occupational therapist shall monitor patient progress, change treatment plan as indicated and determine termination of treatment.

201.13(9) Care rendered by unlicensed personnel shall not be held out as, and shall not be charged as, occupational therapy unless direct in-sight supervision is provided by an occupational therapist.

645—201.14(272C) Continuing education requirements.

201.14(1) The biennial license renewal period shall extend from July 1 of each odd-numbered year to June 30 of the next odd-numbered year. The biennial period for completing continuing education requirements shall be from January 1 of the odd-numbered year to December 31 of the following even-numbered year. The occupational therapist shall complete 30 hours of continuing education each educational biennium. The occupational

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therapy assistant shall complete 15 hours of continuing education each educational biennium.

201.14(2) Compliance with the continuing education requirement is a prerequisite for license renewal in each subsequent two-year period.

201.14(3) Occupational therapists licensed during the first year of the continuing education biennium shall complete 15 hours of continuing education and, if licensed during the second year of the continuing education biennium, are exempt from continuing education requirements until the following continuing education biennium.

201.14(4) Occupational therapy assistants licensed during the first year of the continuing education biennium shall complete 7.5 hours of continuing education and, if licensed during the second year of the continuing education biennium, are exempt from continuing education requirements until the following continuing education biennium.

201.14(5) No carryover credits will be allowed from one biennium to another.

201.14(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—201.15(272C) Standards for approval. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets board standards.

201.15(1) A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:

a. It constitutes an organized program of learning which contributes directly to the professional competency of the licensee; and

b. It pertains to the clinical practice of occupational therapy; and

c. It is conducted by individuals who have special education, training and experience qualifying them as experts concerning the subject matter of the program; and

d. The contents, purpose, objectives and outline given in a time frame are printed in a brochure, manual or paper to demonstrate the intent of the program; and

e. It provides proof of attendance to include the following:

(1) Date, place, course title, presenter(s).

(2) Number of program contact hours.

(3) Official signature of program sponsor.

201.15(2) Continuing education credit may also be granted for the following:

a. A maximum of 15 hours for the occupational therapist and 7.5 hours for the occupational therapy assistant will be granted for presenting professional programs which meet the criteria as set out in 201.15(1). Two hours' credit will be granted for each hour of presentation. A presenter may claim this credit only one time for any single presentation topic.

b. College or university courses relating to the clinical practice of occupational therapy are granted continuing education credit based on the number of credit hours earned.

One semester credit = 10 hours of continuing education credit.

One trimester credit = 8 hours of continuing education credit.

One quarter credit = 7 hours of continuing education credit.

A course description and an official school transcript indicating successful completion of the course must be

provided by the licensee to receive credit for an academic course if continuing education is audited.

c. Participation in research or other activities which result in published articles or chapters in a recognized professional publication. Authors will receive up to five hours of continuing education credit per published page. A copy of the article or chapter must be provided by the licensee if continuing education is audited.

d. A maximum of 15 hours for occupational therapists and 7.5 hours for occupational therapy assistants will be allowed per biennium for viewing videotaped presentations and attending in-service training programs of one hour or more if the following criteria are met:

(1) There is a sponsoring group or agency.

(2) There is a facilitator or program official present.

(3) The program official may not be the only attendee.

(4) The program meets all of the criteria of 201.15(1).

e. Home study courses that have a certificate of completion will be considered for a maximum of 15 hours for occupational therapists and 7.5 hours for occupational therapy assistants per biennium.

201.15(3) The following subject areas will be considered for a maximum of ten hours, for occupational therapists, and five hours, for occupational therapy assistants, of continuing education credit per biennium.

Business-related topics: administration, marketing, government regulations and other like topics.

General health topics: quality assurance, clinical research, CPR, abuse reporting and other like topics.

645—201.16(272C) Reporting continuing education credits.

201.16(1) A report of continuing education activities shall be submitted on a board-approved form with the renewal application by January 31 of the odd-numbered year. All continuing education activities submitted must be completed by December 31 of the even-numbered year as specified in 201.14(2) or a late fee will be assessed. (See 201.12(5).)

201.16(2) Failure to receive a renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal fee by January 31 of the odd-numbered year.

201.16(3) Review of continuing education reports.

a. After each educational biennium the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

b. Licensees whose renewal license applications are submitted late (after January 31 of the odd-numbered year) may be required to submit to an audit of continuing education reports.

c. Any occupational therapist or occupational therapy assistant against whom a complaint is filed may be subject to an audit of continuing education.

d. Occupational therapists and occupational therapy assistants are responsible for keeping on file required documents that can support the continuing education attendance and participation reports submitted to the board for relicensure. These documents shall include a program brochure including the statement of purpose, course objectives, qualification of speakers, program outline with a time frame designation and a certification of attendance. Programs or other educational activities that do not meet board standards will be disallowed. Failure to submit documentation supporting the continuing education report will disqualify the licensee's eligibility for relicensure.

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e. The licensee is required to make available to the board upon request documents to support the continuing education activities (as stated in 201.16(3)"d") for auditing purposes for four years.

645—201.17(272C) Hearings. In the event of denial, in whole or part, of credit for continuing education activity, the licensee shall have the right, within 20 days after the sending of the notification of denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or an ALJ designated by the board. If the hearing is conducted by an ALJ, the ALJ shall submit a transcript of the hearing, including exhibits, to the board after the hearing with the proposed decision of the ALJ. The decision of the board or decision of the ALJ after adoption by the board shall be final.

645—201.18(272C) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Physical and Occupational Therapy Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall include complainant's address and telephone number, shall be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

645—201.19(272C) Report of malpractice claims or actions or disciplinary actions. Each licensee shall submit to the board a copy of any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state within 30 days after such occurrences.

645—201.20(272C) Investigation of complaints or malpractice claims. The chair of the board of physical and occupational therapy examiners shall assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the state department of inspections and appeals to investigate the complaint or malpractice claim. The investigating board member or employee of the department of inspections and appeals may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department of inspections and appeals may consult with an officer or assistant attorney general concerning the investigation or evidence produced from the investigation. The investigating board member, if the board member investigates the complaint, or an assistant attorney general, if the department investigates the complaint, shall make a written determination whether there is probable cause for a disciplinary hearing. The investigating board member shall not take part in the decision of the board, but may appear as a witness.

645—201.21(272C) Alternative procedure and settlement.

201.21(1) Disciplinary hearings. A disciplinary hearing before the licensing board is an alternative to the procedure in Iowa Code sections 147.58 to 147.71.

201.21(2) Informal settlement—parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecut-

ing attorney, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board.

b. The board is not involved in negotiation until presentation of a final, written form to the full board for approval.

201.21(3) Informal settlement—waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

201.21(4) Informal settlement—board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

201.21(5) Informal settlement—disqualification of designee. A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

201.21(6) License or limited permit denial. Any request for a hearing before the board concerning the denial of a license or limited permit shall be submitted by the applicant, in writing, to the board by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license.

201.21(7) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing, the department of public health shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least ten days before the date of the hearing.

201.21(8) Hearings open to the public. A hearing of a licensing board concerning a licensee or an applicant shall be open to the public unless the licensee or applicant or their attorney requests in writing that the hearing be closed to the public.

201.21(9) Hearings. The board adopts the rules of the department of public health found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearings before the board. The board may authorize an administrative law judge to conduct the hearings, administer oaths, issue subpoenas and prepare written findings of fact, conclusions of law and decision at the direction of the board. If a majority of the board does not hear the disciplinary proceeding, a recording or a transcript of the proceeding shall be made available to members of the board who did not hear the proceeding.

201.21(10) Appeal. Any appeal to the district court from disciplinary action of the board or denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a hearing before the board to appeal to the district court.

201.21(11) Transcript. The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

201.21(12) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

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645—201.22(272C) Suspension, revocation or probation. The board may revoke or suspend a license or place a licensee on probation for any of the following reasons:

201.22(1) All grounds listed in Iowa Code section 147.55.

201.22(2) Violation of the rules promulgated by the board.

201.22(3) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

201.22(4) Practicing the profession while the license is suspended.

201.22(5) Revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or country; or failure by the licensee to report in writing to the Iowa board of physical and occupational therapy examiners revocation, suspension, or other disciplinary action taken by licensing authority of another state, territory or country; or both.

201.22(6) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

201.22(7) Failure to comply with rule 201.13(148B) for supervision of occupational therapy assistants, limited permit holders or unlicensed personnel.

201.22(8) Failure to comply with the following rules of ethical conduct and practice:

a. An occupational therapist or occupational therapy assistant shall not practice outside the scope of the license granted.

b. When the occupational therapist or occupational therapy assistant does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment, the licensee is obligated to inform the referring practitioner and assist in identifying a professional qualified to perform the service.

c. The occupational therapist or occupational therapy assistant shall not delegate to an unlicensed employee or person under the licensee's control a service which requires the skill, knowledge or judgment of an occupational therapist or occupational therapy assistant.

d. It is the responsibility of the occupational therapist to inform the referring source when any requested treatment procedure is inadvisable or contraindicated. The occupational therapist shall refuse to carry out the orders of a referring practitioner when the requested treatment is inadvisable or contraindicated.

e. Treatment shall not be continued beyond the point of possible benefit to the patient or by treating more frequently than necessary to obtain maximum therapeutic effect.

f. It is unethical for the occupational therapist or occupational therapy assistant to directly or indirectly request, receive, or participate in dividing, transferring, assigning, rebating or refunding an unearned fee or to profit by means of a credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services.

g. The occupational therapist or occupational therapy assistant shall not exercise influence on patients to pur-

chase equipment produced or supplied by a company in which the occupational therapist or occupational therapy assistant owns stock or has any other direct or indirect financial interest.

h. An occupational therapist or occupational therapy assistant shall not permit another person to use the therapist's or assistant's license for any purpose.

i. An occupational therapist or occupational therapy assistant shall not obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority, or sell, prescribe, give away or administer controlled substances in the practice of occupational therapy.

j. An occupational therapist or occupational therapy assistant shall not verbally or physically abuse a patient.

201.22(9) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying patient's records.

201.22(10) Failure to report a change of name or address within 30 days after it occurs.

201.22(11) Submission of a false report of continuing education or failure to submit the report on continuing education.

201.22(12) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

201.22(13) Failure to comply with a subpoena issued by the board.

201.22(14) Failure to report to the board as provided in rule 201.18(272C) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

201.22(15) Failure to abide by the terms or conditions of any stipulation or settlement agreed to by both the board and the licensee, pursuant to rule 201.21(272C).

645—201.23(272C) Peer review committees.

201.23(1) Each peer review committee for the profession, if established, may register with the board of examiners within 30 days after March 24, 1993, or within 30 days after formation.

201.23(2) Each peer review committee shall report in writing within 30 days of the action any disciplinary action taken against a licensee by the peer review committee.

201.23(3) The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice occupational therapy to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The members of the peer review committees shall serve at the pleasure of the board. The peer review committees shall observe the requirements of confidentiality provided in Iowa Code chapter 272C.

645—201.24(21,272C) Conduct of persons attending meetings.

201.24(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

201.24(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

meeting by order of the board member presiding at the meeting.

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

[Filed 1/29/93, effective 3/24/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3778A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF SPEECH PATHOLOGY AND
AUDIOLOGY EXAMINERS****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby adopts new Chapter 303, "Agency Procedures for Rule Making," Chapter 304, "Petitions for Rule Making," and Chapter 305, "Declaratory Rulings," Iowa Administrative Code.

The chapters adopt uniform rules on agency procedure for rule making, declaratory rulings and petitions for rule making.

These rules were published under Notice of Intended Action as ARC 3377A in the September 30, 1992, Iowa Administrative Bulletin and were adopted by the Board of Speech Pathology and Audiology Examiners on January 22, 1993. The only change to the Notice of Intended Action was to rescind the rules that were applicable to the new chapters.

These rules are intended to implement Iowa Code sections 17A.3 to 17A.5, 17A.7, and 17A.9.

These rules will become effective April 1, 1993.

The following new chapters are adopted.

Rescind rules **645—300.9(147)** and **645—300.10(147)** and adopt the following new chapters:

**CHAPTER 303
AGENCY PROCEDURE FOR RULE MAKING**

The board of speech pathology and audiology examiners hereby adopts the agency procedure for rule making segment of the Uniform Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—303.3(17A) Public rule-making docket.

303.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "board of speech pathology and audiology examiners".

645—303.4(17A) Notice of proposed rule making.

303.4(3) Notice mailed. In lieu of the words "(specify time period)", insert "one year".

645—303.5(17A) Public participation.

303.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Board of Speech

Pathology and Audiology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—303.6(17A) Regulatory flexibility analysis.

303.6(3) Mailing list. In lieu of the words "(designate office)", insert "Board of Speech Pathology and Audiology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—303.10(17A) Exemptions from public rule-making procedures.

303.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of reasons for exempting each of them)", insert the following:

"a. Rules which implement recent legislation, when a statute provides for an effective date which does not allow for the usual notice and public participation requirements.

"b. Rules which confer a benefit or remove restriction of licensees, the public, or some segment of the public.

"c. Rules which are necessary because of imminent peril to the public health, safety, or welfare.

"d. Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

645—303.11(17A) Concise statement of reasons.

303.11(1) General. In lieu of the words "(specify the office and address)", insert "Board of Speech Pathology and Audiology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—303.13(17A) Agency rule-making record.**303.13(2) Contents.**

c. In lieu of the words "(agency head)", insert "board of speech pathology and audiology examiners".

These rules are intended to implement Iowa Code sections 17A.3 to 17A.5.

**CHAPTER 304
PETITIONS FOR RULE MAKING**

The board of speech pathology and audiology examiners hereby adopts the declaratory rulings segment of the Uniform Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—304.1(17A) Petitions for rule making. In lieu of the words "(designate office)", insert "Board of Speech Pathology and Audiology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

In lieu of the words "(AGENCY NAME)" the heading on the petition should read:

**BEFORE THE
BOARD OF SPEECH PATHOLOGY AND
AUDIOLOGY EXAMINERS**

645—304.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Speech Pathology and Audiology Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 17A.7.

CHAPTER 305
DECLARATORY RULINGS

The board of speech pathology and audiology examiners hereby adopts the declaratory rulings segment of the Uniform Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—305.1(17A) Petition for declaratory ruling. In lieu of the words "(designate office)", insert "Board of Speech Pathology and Audiology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

BEFORE THE
BOARD OF SPEECH PATHOLOGY
AND AUDIOLOGY EXAMINERS

645—305.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Speech Pathology and Audiology Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075".

These rules are intended to implement Iowa Code section 17A.9.

[Filed 1/29/93, effective 4/1/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3746A

TRANSPORTATION DEPARTMENT[761]

NOTE: Rules not subject to Iowa Code chapter 17A

Pursuant to the authority of Iowa Code subsections 321.454(2) and 321.457(3), the Transportation Commission, on January 12, 1993, amended 761—Chapter 510, "Designated Highway System," by amending rule 761—510.1(321). This rule lists the highways that may be used by longer and wider vehicles. The amendment adds one route segment to the list of highways and became effective January 12, 1993. This rule is exempt from the rule-making provisions of Iowa Code chapter 17A, but is published in the Iowa Administrative Code as a convenience to persons who need to use the rule.

Rule-making action:

Amend subrule **510.1(1)** by striking the words:

"IA 1 IA 2 N. to Iowa City
IA 1 US 30 N. to US 151"

and inserting in lieu thereof the words:

"IA 1 IA 2 N. to US 151".

[Filed 1/25/93, effective 1/12/93]
[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

ARC 3780A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 476.2 and 476.1D, the Utilities Board (Board) gives notice that on January 22, 1993, the Board issued an order in Docket No. RMU-92-10, In Re: Deregulation of New Services, "Order Adopting Rules," adopting amendments to 199 IAC 5.2(476) and 5.3(2).

Notice of the Board's order of September 11, 1992, initiating the rule making was published in IAB Vol. XV, No. 7 (9/30/92) p. 642, as ARC 3430A. Comments in the docket were received from the Iowa Telephone Association (ITA), MCI Telecommunications Corporation and Teleconnect Long Distance Services and Systems Company (MCI/Teleconnect), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Vista Telephone Company of Iowa (Vista), and U S West Communications, Inc. (U S West). An oral presentation involving all commenters except Vista was held on November 13, 1992.

The purpose of the rule change adopted by the Board is to allow expedited consideration of deregulation requests for new services and facilities. Timing is important in entering a competitive market with a new service. The deregulation decision regarding new services and facilities must be made without unnecessary delay. However, the decision to deregulate cannot be taken lightly because it removes a service or facility from the Board's jurisdiction. Interested parties and the Board itself must have sufficient time to develop a proper record to make an accurate finding about effective competition.

In cases involving new services and facilities where expedited consideration is granted, the amendments require more public notice than the current deregulation rules. The amendments also provide for the Board in expedited proceedings to make a finding in uncontested deregulation filings within 60 days and in contested filings within 120 days. For good cause, those deadlines can be extended.

Pursuant to comments filed in the docket, the Board modified the proposed amendments. The changes are within the scope of the notice published as ARC 3430A.

ITA correctly noted that expedited consideration may not be necessary for all deregulation petitions for new services and facilities. The rules have been revised to provide expedited consideration only for those petitions containing a request for such treatment.

Vista suggested it would be virtually impossible to notify all potential entities that could provide a service or facility. The Board agrees and will insert the word "reasonably" in the third sentence of new subrule 5.2(3).

Consumer Advocate was concerned that a statutory construction argument could be made concerning its standing to respond to a deregulation petition under the "any person" language in subparagraph 5.3(2)"b"(1). While the Board questions the concern, it will explicitly add Consumer Advocate to the standing language in Item 2.

Consumer Advocate noted that subparagraph 5.3(2)"b"(2) refers to a petition containing "adequate grounds to docket the petition" while subparagraph 5.3(2)"b"(3) refers to "grounds which raise material issues." It suggested the two subparagraphs should have the

UTILITIES DIVISION[199](cont'd)

ARC 3779A**UTILITIES DIVISION[199]****Adopted and Filed**

same language to avoid confusion. Subparagraph (2) will be modified so that both subparagraphs will contain the "material issues" language.

The amendments are intended to implement Iowa Code sections 476.2 and 476.1D.

The amendments will become effective on March 24, 1993.

The following amendments are adopted.

ITEM 1. Amend rule 199—5.2(476) by adding the following new subrule:

5.2(3) Notice for proposed service. A petition under subrule 5.2(1), paragraph "a" or "b," which relates to a proposed service or facility not yet offered by the utility and not an existing service or facility, may include a request for expedited consideration. The request will be granted if notice is given on or before the date of filing the petition. Notice shall be given by serving or mailing a copy of the petition to all persons reasonably identified as actual or potential competitive providers of the service or facility and to all local and interexchange telephone utilities in Iowa. The notice shall also state the time limitation and responsive filing requirements in subrule 5.3(2).

ITEM 2. Amend subrule 5.3(2) as follows:

5.3(2). Time for action. *The following schedules shall apply:*

a. *With regard to petitions filed which relate to an existing service or facility, or to a proposed service or facility for which expedited consideration is not granted, if the board does not issue an order docketing the matter as a formal proceeding within sixty (60) days after the filing of the petition, the petition will be deemed denied.*

b. *With regard to petitions filed which relate to a proposed service or facility and for which expedited consideration is granted, the following procedural schedules shall apply:*

(1) *Any person, including the Consumer Advocate, wanting to file a response to a petition must do so within 30 days of the filing of the petition. If the response includes a request to docket the matter as a formal notice and comment proceeding, the response shall state specifically the grounds for the request.*

(2) *If no timely request to docket the petition stating grounds which raise material issues is filed, the board will issue the findings required in Iowa Code section 476.1D within 60 days of the filing of the petition.*

(3) *If a timely request to docket is filed stating grounds which raise material issues, the board will issue an order requiring the petitioner to notify the persons on the service list under subrule 5.2(3) and setting a schedule for interested persons to file sworn statements of position, an oral presentation, and briefing as necessary. The board will issue the findings required in Iowa Code section 476.1D within 120 days of the filing of the petition.*

(4) *The deadlines under subparagraphs (2) and (3) may be extended for good cause.*

[Filed 1/29/93, effective 3/24/93]

[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

Pursuant to Iowa Code sections 476.1, 476.2, and 476.9, the Utilities Board (Board) gives notice that on January 28, 1993, the Board issued an order in Docket No. RMU-92-5, In Re: Statement of Financial Accounting Standard No. 106, "Order Adopting Rules," adopting new rule 199 IAC 16.9(476).

Notice of the proposed rule making by a Board order issued August 13, 1992, was published in IAB Vol. XV, No. 5 (9/2/92) p. 415, as **ARC 3308A**.

This rule making was commenced in response to a petition filed by U S West Communications, Inc., GTE Central, and Vista Telephone Company of Iowa (collectively, Petitioners). Iowa-Illinois Gas and Electric Company (Iowa-Illinois) subsequently joined in the petition. The Petitioners and Iowa-Illinois requested the Board to consider amendments to its accounting rules which would identify the Board's position on Statement of Financial Accounting Standard (SFAS) No. 106 and establish standards under which the Board would recognize accrual accounting for postemployment benefits other than pensions. The proposed amendment authorizes utilities to account for postemployment benefits other than pensions using an accrual method with the amount accrued based upon an actuarial study. The proposed amendment conforms to SFAS No. 106 issued in December 1990 by the Financial Accounting Standards Board (FASB). FASB is a professional association which establishes a common set of accounting standards, procedures, and conventions commonly known as Generally Accepted Accounting Principles (GAAP).

Comments in support of the proposed rule were filed in this docket by GTE North Incorporated, Contel of Iowa, Inc. d/b/a GTE Iowa, Contel of Kansas, Inc., d/b/a GTE Systems of Iowa (collectively GTE), Vista Telephone, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Petitioners, Iowa-Illinois, Midwest Power Systems Inc., Iowa Electric Light and Power Company, Iowa Southern Utilities Company, Interstate Power Company, Peoples Natural Gas Company, Iowa-American Water Company, and United Cities Gas Company. An appearance was filed by AT&T Communications of the Midwest, Inc. Oral comment proceedings were held on October 26, 1992.

On January 14, 1993, the Board issued an order in Docket No. RMU-92-12, In Re: Rate Making Treatment for Postemployment Benefits Other Than Pensions, adopting subrules 199 IAC 7.11(3) and 7.11(4). These new subrules authorize accrual accounting for postemployment benefits for rate making purposes. The Board will adopt proposed rule 16.9(476) which authorizes accrual accounting for accounting purposes. SFAS No. 106 accrual accounting results in more accurate matching between the postemployment benefit expenses and services provided by employees. In addition, accrual accounting will avoid the consistent understatement of liabilities. Thus, utilities subject to rate regulation will be authorized under the circumstances identified in the rules to use accrual accounting for postemployment benefits other than pensions for both accounting and rate making purposes.

In the Notice of Intended Action, the term "transaction" was used in subrule 16.9(3) rather than the term

UTILITIES DIVISION[199](cont'd)

"transition." It was apparent from the filed comments that no commenters were confused by this inadvertent reference. The adopted rule will include the correct term "transition." Also, the term "postretirement" was used throughout the noticed rule. In the recently adopted sub-rules, 7.11(3) and 7.11(4), the term "postemployment" is used. To be consistent, the term "postemployment" will be used in rule 16.9(476). Consistent use of the term will avoid confusion.

This amendment is intended to implement Iowa Code sections 476.1, 476.2, and 476.8.

This amendment will become effective on March 24, 1993.

The following amendment is adopted.

Adopt new rule 199—16.9(476) as follows:

199—16.9(476) Postemployment benefits other than pensions. Accrual accounting for postemployment benefits other than pensions in accordance with Statement of

Financial Accounting Standard No. 106 (SFAS 106) will be permitted where:

1. The accrued postemployment benefit obligations have been funded in a segregated and restricted account or alternative arrangements have been approved by the board.

2. The net periodic postemployment benefit cost and accumulated postemployment benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by SFAS 106.

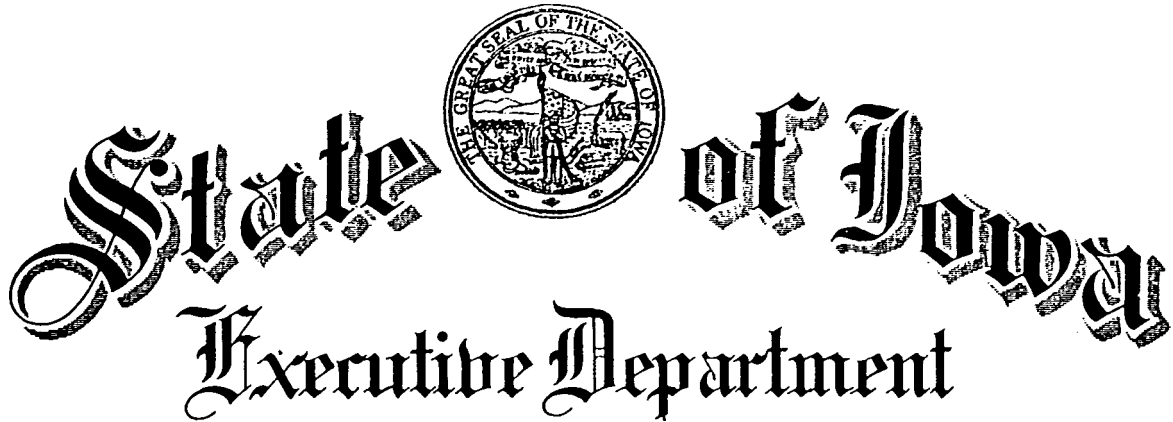
3. The transition obligation is amortized in accordance with SFAS 106.

[Filed 1/29/93, effective 3/24/93]

[Published 2/17/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/17/93.

AGENCY	RULE	DELAY
Education Department[281]	102.2(280), definitions of "Abuse," "Board of educational examiners," "Incident," "Injury," "Sexual harassment"; 102.3(280); 102.4(2), introductory paragraph; 102.8(5); 102.9(1), first sentence; 102.9(3), introductory paragraph; 102.9(4); 102.9(5), first and second unnumbered paragraphs; 102.10(280)"7"; 102.10(280), last paragraph; 102.11(280)"2"; 102.12(280), introductory paragraph; new 102.14(280) (IAB 12/9/92 ARC 3614A)	Effective date of January 13, 1993, delayed 70 days by the Administrative Rules Review Committee (ARRC) at its meeting held January 5, 1993. [Pursuant to §17A.4(5)] Delay lifted by the Committee at its meeting held February 8, 1993, effective February 9, 1993.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

P R O C L A M A T I O N

WHEREAS,

the Office of State Representative from the 99th Representative District, consisting of the following areas:

a. In Lee County:

(1) Washington and Green Bay townships.

(2) That portion of the city of Fort Madison and Jefferson township bounded by a line commencing at the point Sheppard's lane intersects the west corporate limit of the city of Fort Madison, then proceeding first southwest and then in a counter-clockwise manner along the corporate limits of the city of Fort Madison to the point of origin.

b. That portion of Des Moines County not contained in the 97th or 100th representative district.

has become vacant by the reason of the death of Representative Clay Spear.

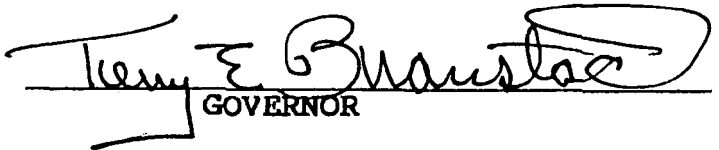
NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

TUESDAY, THE 16TH DAY OF FEBRUARY 1993, A.D.


WHEREFORE, all electors within said 99th House District, will take due notice and the County Commissioner of Elections of said counties will take official notice as provided in Chapter 39, Code of Iowa, 1993.



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 this first day of February in the year of our Lord one thousand nine hundred ninety-three.


GOVERNOR


Secretary of State



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 45

- WHEREAS,** strengthening working partnerships, communication and coordination between the Iowa Department of Economic Development and other statewide and regional service providers will provide useful tools, programs, and investments that support regional and local efforts; and
- WHEREAS,** maintaining statewide access to the full array of economic development programs and assistance will continue to help Iowa's existing businesses to grow, diversify and develop new markets for Iowa products and services; and
- WHEREAS,** a voluntary regionally-based economic development advisory body will stimulate outreach activities and enhance programs linking area businesses with access to state and federal programs and services.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the Constitution and laws of the State of Iowa, do order that the Iowa Department of Economic Development shall continue to recognize and work with the Regional Coordinating Councils in operation as of June 30, 1992, on long-term and short-term economic development programs for the benefit of businesses in the regions and the state. The Department shall recognize the Councils which retain their current form and the Councils which are locally redesignated. The Department of Economic Development is further directed to work with Regional Coordinating Councils and existing service providers in the state and other public and private sector economic developers to coordinate the delivery of economic development programs and services and to ensure that Iowa's assistance programs are accessible to business and industry throughout the state.

This Executive Order shall become effective immediately upon its execution.



IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 27th day of August in the year of our Lord, one thousand nine hundred and ninety-two.


Terry Branstad

 GOVERNOR

ATTEST:

Elaine Baxter

 SECRETARY OF STATE



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 46

WHEREAS, the Telecommunications and Informational Management (TIM) Council established under Executive Order 33 has accomplished its major telecommunications purposes; and

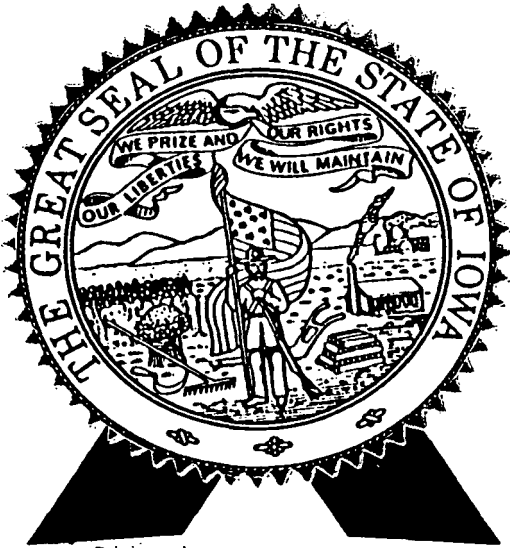
WHEREAS, the communications network overseen by the TIM Council is being merged with the Iowa Communications Network (ICN); and

WHEREAS, a new administrative structure must be developed by statute to over see the new network; and

WHEREAS, authority must be immediately invested in an executive to coordinate disparate agency responsibilities regarding the ICN;

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the laws and Constitution of the State of Iowa, do hereby order that:

- I. Executive Order 33 is hereby repealed.
- II. All agency authority established pursuant to statute relative to the Iowa Communications network is hereby subject to review and approval of the ICN chief executive officer appointed by me.



Attest:

E. Paine Baxter
SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 5th day of January in the year of our Lord, one-thousand nine hundred and ninety-three.

Terry E. Branstad
GOVERNOR

SUMMARY OF THE OPINIONS OF THE ATTORNEY GENERAL

BONNIE J. CAMPBELL

May and June, 1992

APPROPRIATIONS; GOVERNOR

Payment of salary increases from agency general appropriations. Iowa Const. art. III, § 16; Iowa Code § 8.43 (1991). If no other appropriation exists, judicially mandated salary increases may be paid from the employing agencies' general appropriations for salaries and support. Separate statutory authority would need to be found to pay salary increases to non-contract state employees. The veto of section 1 of H.F. 2490, while leaving sections 2 and 3 intact, would result in such a situation. Any proposed item veto should be carefully scrutinized. Further, depending on its factual effect, the Court might conclude that a veto of the salary adjustment appropriation and instructions to pay the salary awards from each agency's general appropriation violated the adjudicated pay raises granted to contract covered employees or constituted an improper impoundment of funds by reducing or diverting that amount from other appropriations. (Krogmeier and Osenbaugh to Tegeler, Director, Department of Management, 5-28-92) #92-5-4

CITIES; COUNTIES; LAW ENFORCEMENT

Notice of Parking Violations. Iowa Code § 321.236(1) (1991). If authorized by ordinance, cities and counties can serve a simple notice of fine for overtime parking violations by leaving a copy of the notice on the vehicle. This method of service is a reasonable means of effecting "simple notice" as well as consistent with the statutory right of local authorities to regulate vehicular parking in section 321.236(1). (Odell to Hibbard, State Representative, 5-18-92) #92-5-2

COUNTIES

Hospital levy referendum. Iowa Code § 347.7 (1991). A county should not attempt to pursue a referendum for the alternate use of funds generated from the hospital operation and maintenance levy, allowed by Iowa Code § 347.7, until the department of public health has adopted guidelines for this procedure as required by § 347.7. (Scase to Beres, Hardin County Attorney, 6-22-92) #92-6-6(L)

COUNTIES; REAL PROPERTY

Plats of survey for property divisions. Iowa Code §§ 409A.1-4 (1991). "The North 125 feet of the South 445 feet of Lot 1 . . ." is an example of a "specific quantity description" rather than a "metes and bounds description." The county auditor may not require filing of plat of survey for a specific quantity description unless it results in uncertainty about the location of the common boundary between two newly created parcels. (Smith to Rachels, Marion County Attorney, 6-4-92) 92-6-4(L)

COUNTIES AND COUNTY OFFICERS

County Home Rule Implementation and County Ordinances. Iowa Code §§ 331.301(5), 331.302(6), 331.302(7) and 331.302(9) (1991). County ordinances are not invalid due to the failure of a board of supervisors to compile a code of ordinances at least once every five years. (Reno to Anstey, Mills County Attorney, 5-18-92) #92-5-1(L)

ELECTIONS

Absentee Voting; Application for Ballot. Iowa Code § 53.2 (1991). A commissioner of elections shall accept absentee ballot request forms whether received directly from the voter, through the mail or through a third party courier. (Krogmeier to Baxter, Secretary of State, 6-30-92) #92-6-7(L)

GARNISHMENT; LABOR

Income used to determine garnishment limitations. Iowa Code § 642.21 (1991); 15 U.S.C. § 1673(a). For purposes of Iowa Code § 642.21 and 15 U.S.C. § 1673(a), the maximum garnishment amount is based on the disposable earnings of the employee, rather than the gross pay earned. The graduated limitations of how much an individual judgment creditor can garnish each year are based on the total earnings of the employee. (Kochenburger to Jay, State Representative, 5-27-92) # 92-5-3(L)

MENTAL HEALTH; SUBSTANCE ABUSE

Costs. Iowa Code §§ 125.43, 125.44, 230.1, 230.15, 230.18, 331.424 (1991). There is no statutory mandate that a county must pay for the costs of treatment of an indigent person involuntarily committed for mental health or substance abuse to a private facility. The Code does not limit the number of times a county is responsible for the costs of substance abuse treatment. (McGuire and Ramsay to Zenor and Schultz, Clay and Clinton County Attorneys, 6-11-92) #92-6-5

SCHOOLS AND SCHOOL DISTRICTS; PUBLIC RECORDS

Student records, Personnel information; Attorney Work Product. Iowa Code §§ 22.1, 22.2, 22.7(1), 22.7(4), 22.7(11) (1991). Formal, official documents by which a school superintendent conveys official information to school board members containing information about the school district are public records. If the information contained in these letters falls within a statutory exemption such as student records, personnel information, or attorney work product, it is a confidential public record and unavailable for public inspection. Chapter 22 does not require the school district to retain copies of these letters. (Boesen to Daggett, State Representative, 6-3-92) #92-6-2(L)

SOIL CONSERVATION DISTRICTS

Audit required. Iowa Code § 467A.6 (1991). Iowa Code § 467A.6 (unnumbered paragraph five) requires that an independent audit be performed of the accounts of receipts and disbursements of a soil and water conservation district, which may be performed by either the Auditor of State or a certified public accountant. Payment of the cost shall be provided from proper public funds of the district receiving the audit. (Hindt to Johnson, State Auditor, 6-3-92) #92-6-3(L)

TAXATION

Apportionment of Taxes; Applicability to Delinquent Taxes. Iowa Code §§ 449.1, 449.3 (1991). County boards of supervisors are not authorized to apportion delinquent taxes pursuant to chapter 449. County boards of supervisors may not demand payment of taxes as a requirement of apportionment under chapter 449. (Hardy to Crawl, Pottawattamie County Attorney, 6-2-92) #92-6-1(L)

1991 IOWA CODE	OPINION
8.43	92-5-4
22.1	92-6-2(L)
22.2	92-6-2(L)
22.7(1)	92-6-2(L)
22.7(4)	92-6-2(L)
22.7(11)	92-6-2(L)
53.2	92-6-7(L)
125.43	92-6-5
125.44	92-6-5
230.1	92-6-5
230.15	92-6-5
230.18	92-6-5
321.236(1)	92-5-2
331.301(5)	92-5-1(L)
331.302(6)	92-5-1(L)
331.302(7)	92-5-1(L)

1991 IOWA CODE	OPINION (Con't)
331.302(9)	92-5-1(L)
331.424	92-6-5
347.7	92-6-6(L)
409A.1-4	92-6-4(L)
449.1	92-6-1(L)
449.3	92-6-1(L)
467A.6	92-6-3(L)
642.21	92-5-3(L)

IOWA CONSTITUTION	OPINION
Article III, § 16	92-5-4

July and August, 1992

CONSTITUTIONAL LAW

Ethanol subsidies to large producers. United States Const. Amend. XIV; Iowa Const. art. I, § 6; Iowa Code § 159A.8 (1991); House File 2456 (1992 Iowa Acts, ch. ____, § 5). Given the strong presumption of constitutionality, a court would likely find a rational basis for limiting ethanol subsidies to those gallons attributable to new or expanded production capacity exceeding five million gallons per year. The classification would therefore likely pass muster under the equal protection clause. (Osenbaugh to Halvorson, State Representative, 7-14-92) #92-7-2

COUNTIES

County attorney duties; joint 911 service board. Iowa Code chs. 477B, 613A (1991). The joint 911 service board is not a board of the county whose members are entitled to seek legal advice and services from the county attorney. The county attorney must, however, provide advice on matters of interest to the county and defense to county officers who serve as members of the joint 911 service board. The joint 911 service board is required to defend and indemnify its employees and may purchase liability and property insurance. (Scase to Connolly, State Senator, 7-9-92) #92-7-1(L)

LICENSING; EDUCATIONAL EXAMINERS; CHILD ABUSE

Disqualification of applicants before Board of Educational Examiners. Iowa Code §§ 260.6(2) and (3), 260.2(14) (1991). Where disqualification of an applicant is being considered on conviction of a felony, child abuse or sexual abuse of a child, the convictions must be evaluated prior to disqualifying the applicant. (Miller-Todd to Nearhoof, Board of Educational Examiners, 8-12-92) #92-8-4(L)

MOTOR VEHICLES

Vehicle recyclers. Iowa Code ch. 321H (1991). A person whose primary business is selling wrecked or damaged vehicles at auction is not automatically precluded from obtaining a vehicle recyclers license. (Hunacek to Rensink, Director, Department of Transportation, 8-4-92) #92-8-1(L)

STATUTORY CONSTRUCTION; COUNTIES AND COUNTY OFFICERS

Deadline for filing proposed charter for election. Iowa Code § 4.11 (1991); Iowa Code Supp. § 331.237 (1991). Two amendments to § 331.237(1) by the 1991 General Assembly are irreconcilable in providing conflicting deadlines for receipt of a proposed charter for county government. The later enacted amendment prevails. The appropriate filing deadline for submitting a proposed commonwealth charter at the next general election is, therefore, "not later than sixty days before the next general election." (Donner to Sarcone, Polk County Attorney, 8-5-92) #92-8-2

VETERANS' AFFAIRS

Commission Appointments. Iowa Code § 35A.2, as amended by 1992 Iowa Acts, ch. ____ (S.F. 2011), sec. 8; 1992 Iowa Acts, ch. ____, (Senate File 2011), sec. 41; Iowa Code §§ 69.16, 69.16A (1991). Members of the previous Commission within the Division of Veterans' Affairs serving unexpired terms on the effective date of Senate File 2011 may serve on the new Commission of Veterans' Affairs in their discretion until the expiration of the terms to which they were appointed and the decision to do so does not trigger the nomination, appointment or confirmation process under Senate File 2011. Future nominations by veterans' organizations which conflict with balance requirements for political affiliation and gender under Iowa Code §§ 69.16 and 69.16A should be resolved by consultation between the nominating veterans' organizations and the governor. If conflicts with these requirements are not resolved informally, the governor may make appointments of persons who otherwise meet the qualifications for appointment outside the nominating procedure. (Pottorff to Governor Branstad and Senator Kibbie, 8-27-92) #92-8-5(L)

WEAPONS PERMITS

Nonprofessional weapon permits are issued for statewide use unless otherwise restricted or limited by the issuing authority. Iowa Code §§ 724.7, 724.6, 724.11 (1991); 661 IAC 4.4(2); and 1980 Op.Att'yGen. 438. (Young to Swanson, Montgomery County Attorney, 8-12-92) #92-8-3

1991 IOWA CODE	OPINION
4.11	92-8-2
35A.2	92-8-5(L)
69.16	92-8-5(L)
69.16A	92-8-5(L)
159A.8	92-7-2
260.2(14)	92-8-4(L)
260.6(2) & (3)	92-8-4(L)
ch. 321H	92-8-1(L)
ch. 477B	92-7-1(L)
ch. 613A	92-7-1(L)
724.6	92-8-3
724.7	92-8-3
724.11	92-8-3

1991 IOWA CODE SUPPLEMENT	OPINION
331.237	92-8-2

IOWA CONSTITUTION	OPINION
Article I, § 6	92-7-2

UNITED STATES CONSTITUTION	OPINION
Amend. XIV	92-7-2

IOWA ADMINISTRATIVE CODE	OPINION
661 IAC 4.4(2)	92-8-3

September and October, 1992

CONSTITUTIONAL LAW; EQUAL RIGHTS AMENDMENT

Gender Balance. Iowa Const. art. I, § 1 (proposed amendment); Iowa Code § 69.16A. The passage of the Equal Rights Amendment will not affect statutory requirements for gender balance on state boards and commissions. (Anderson to Kremer, State Representative, 10-28-92) #92-10-6

ELECTIONS

Counties; Municipalities, Schools. Iowa Code §§ 47.2(1), 47.3 (1991). Political subdivisions may only authorize the presentation of questions to voters of matters that are specifically required or authorized by law to be placed before the electorate. The commissioner of elections is authorized to

refuse to conduct an election that is not required or authorized by law. The results of an unauthorized election are not binding on government officials. Public funds may not be expended to pay the costs of an unauthorized election. (Krogmeier to Baxter, Secretary of State, 10-2-92) #92-10-2

GIFTS; LOBBYISTS

Lobbyist And Client Reporting Requirements; Personal Financial Disclosure Statements. 1992 Iowa Acts, ch. 235; Iowa Code ch. 68B. The term "official" in H.F. 2466 includes persons appointed to serve on state boards, commissions, committees, or councils. Whether a board or commission member receives a salary or per diem is not a determinative factor in resolving the scope of the term "official." The identity of the appointing authority, moreover, is not a factor in determining whether a board or commission member is an "official" for purposes of § 68B.5. The definition of "lobbyist" which includes representation on a regular basis of certain organizations denotes recurring activity. Application of the definitions of a "lobbyist" in specific factual circumstances will ultimately need to be resolved by legal advice rather than through the opinion process. We cannot anticipate all the factors that may affect this determination in the opinion process. Those persons who "are employed, hold office, or terminate service or employment on or after July 1, 1992," are prohibited "within two years after the termination of service or employment" from becoming a lobbyist. House File 2466 does not restrict officials from lobbying during service in state government. The definitions of "contribution" and "gift" under H.F. 2466 control in determining what should be included in lobbyists' reports. The term expenditure, not otherwise defined, should be given its ordinary meaning as a disbursement for the purpose of lobbying. The first client report, due on January 31, 1993, need not include information from the preceding calendar year. The requirements of H.F. 2466 concerning the filing of personal financial disclosure statements are applicable to officials, members of the general assembly and candidates for state office. Officials are defined to include: members of the governor's office and other statewide elected offices, i.e., the Governor, the Lieutenant Governor, Auditor, Treasurer, Secretary of State, Secretary of Agriculture, and Attorney General; members of state agencies, e.g., state boards, commissions, councils or committees; all employees of the governor's office; and all supervisory personnel of other statewide elected offices and state agencies. The statement of personal financial disclosure does not require a disclosure of income but requires disclosure of sources of income and significant financial interests. Significant financial interests are defined to include a greater than 5 percent ownership interest in any outstanding issuance of stocks, bonds, bills, notes, mortgages or other securities; any employment or association for compensation within the previous twelve months with certain entities that have an interest in matter before the body of which the filing person is a member; and offices and directorships in certain listed entities. The statement is filed

by members of the general assembly with the respective clerk of the members' house. Officials and candidates for state office should file the statement with the campaign finance disclosure commission. (Krogmeier and Pottorff to Governor Branstad, 9-17-92) #92-9-3

INCOMPATIBILITY; CITIES; COUNTIES; GENERAL ASSEMBLY

Simultaneous service in general assembly and on local boards or commissions. Iowa Constitution, art. III, § 22; Iowa Code chs. 137, 388 (1991). Simultaneous service in the general assembly and on a local utility board is prohibited by article III, section 22, of the Iowa Constitution when the board member receives \$400 per year compensation plus actual expenses. Simultaneous service in the general assembly and on a county health board is not prohibited by article III, section 22, when the board member is reimbursed only for "actual expenses", nor is it prohibited by the common law doctrine of incompatibility. (Doland to Gustafson, Crawford County Attorney, Hutchins, State Senator, and Martin, Cerro Gordo County Attorney, 10-14-92) #92-10-3

INCOMPATIBILITY OF OFFICES; CONFLICT OF INTEREST

County supervisor and local school director. Iowa Code §§ 298.8, 331.216 (1991). The doctrines of incompatibility of office and conflict of interest do not preclude an individual from serving both as a member of the county board of supervisors and as a member of the board of directors of a local school. All prior opinions finding these offices to be incompatible, including 1962 Op.Att'yGen. 348 and 1960 Op.Att'yGen. 173, are overruled. (Scase to Halvorson and Ferguson, 9-8-92) #92-9-1

MUNICIPALITIES

Creation of new employee classification "public safety officer." Iowa Code §§ 364.1, 364.16, 372.5, 411.1(2), 411.1(3), 411.35 (1991); Iowa Const. art. III, § 38A. A municipality has home-rule and statutory authority to consolidate police and fire protection functions into new "public safety officer" employee classification. If the municipality participates in the state-wide retirement system in Iowa Code chapter 411, and the "public safety officer" meets the definitions in §§ 411.1(2) and 411.1(3), the employee will be covered by chapter 411 benefits. (Odell to Lind, State Senator, 9-28-92) #92-9-6(L)

MUNICIPALITIES

Manufactured Homes; Preemption. U.S. Const. art. VI; 42 U.S.C. §§ 5401, et seq.; 24 C.F.R. §§ 3280, et seq.; Iowa Code § 414.28 (1991); 661 IAC 16. The National Manufactured Housing

Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401, et seq., governs the design and construction of manufactured homes, but does not regulate the installation and setup requirements of modular homes. A municipality, therefore, is not preempted by the federal manufactured home construction and safety standards from adopting and enforcing a foundation system for manufactured homes. (Walding to Gronstal, State Senator, 10-7-92) #92-10-2(L)

PUBLIC RECORDS

Counties, Lawful Custodian of Record Books. Iowa Code ch. 22; Iowa Code §§ 22.1, 331.303, 331.303(1), 331.303(2), 331.504, 331.504(1), and 331.504(2) (1991). The lawful custodian of the record books referred to in sections 331.303(1) and 331.504(2) is the county board of supervisors. An analysis of the substantive responsibilities of a county auditor and a county board of supervisors identifies the county board of supervisors as the lawful custodian of the record books referred to in sections 331.303(1) and 331.504(2). (Moline to Riordan, State Senator, 9-21-92) #92-9-5

SANITARY DISTRICTS; TAXATION

Late-payment Penalties For Delinquent Sewer Charges. Iowa Code § 358.20 (1991); Iowa Code Supp. §§ 445.37, 445.39 (1991). Late-payment penalties provided by sanitary district ordinance are properly certified to the county treasurer as liens of delinquent sewer charges. Certified sanitary district sewer charges including late-payment penalties must be treated by the county treasurer as unpaid taxes to which interest accrues after the statutory delinquency date for the first installment of unpaid real property taxes. (Smith to Angrick, Citizens' Aide/Ombudsman, 9-9-92) #92-9-2(L)

SCHOOLS

Tort Levy; Health Benefit Plans. Iowa Code §§ 296.7, 296.7(1), 296.7(2), 296.7(3), 296.7(5) and 296.7(6) (1991); 1990 Iowa Acts, ch. 1234, § 1. School districts are prohibited from using a tort levy to pay employee health benefit plans. (Reno to Varn, State Senator, 10-26-92) 92-10-5(L)

SUBSTANCE ABUSE

Mandatory Substance Abuse Evaluation And Treatment For Employees. Iowa Code § 730.5 (1991). A preemployment physical is an examination to determine the fitness of an individual for a particular employment purpose. Iowa Code section 730.5 does not impose a duty on an employer to pay for the treatment of an employee who has declined coverage under an employer sponsored plan or to pay for a former employee's treatment. (West to Schultz, Clinton County Attorney, 10-26-92) #92-10-4(L)

TAXATION

Property Tax Suspension And Abatement Procedures Following A Public Bidder Sale. Iowa Code §§ 427.8, 446.18, 446.29 (1991). If the certificate of purchase holder following a public bidder sale is a private person, suspension or abatement procedures under § 427.8 are not available. If the certificate of purchase holder is a public body, § 427.8 procedures are still available because past due taxes, special assessments, or rates and charges remain unpaid. (Miller to Ferguson, Black Hawk County Attorney, 9-21-92) #92-9-4(L)

STATUTES CONSTRUED

1991 IOWA CODE

1991 IOWA CODE	OPINION
ch. 22	92-9-5
22.1	92-9-5
47.2(1)	92-10-1
47.3	92-10-1
ch. 68B	92-9-3
69.16A	92-10-6
ch. 137	92-10-3
296.7	92-10-5(L)
296.7(1)	92-10-5(L)
296.7(2)	92-10-5(L)
296.7(3)	92-10-5(L)
296.7(5)	92-10-5(L)
296.7(6)	92-10-5(L)
298.8	92-9-1
331.216	92-9-1
331.303	92-9-5
331.303(1)	92-9-5
331.303(2)	92-9-5
331.504	92-9-5
331.504(1)	92-9-5
331.504(2)	92-9-5
358.20	92-9-2(L)
364.1	92-9-6(L)
364.16	92-9-6(L)
372.5	92-9-6(L)
ch. 388	92-10-3
411.1(2)	92-9-6(L)
411.1(3)	92-9-6(L)
411.35	92-9-6(L)
414.28	92-10-2(L)
427.8	92-9-4(L)
446.18	92-9-4(L)
446.29	92-9-4(L)
730.5	92-10-4(L)

1991 IOWA CODE SUPPLEMENT

1991 IOWA CODE SUPPLEMENT	OPINION
445.37	92-9-2(L)
445.39	92-9-2(L)

IOWA CONSTITUTION

Article I, § 1
 Article III, § 22
 Article III, § 38A

OPINION

92-10-6
 92-10-3
 92-9-6(L)

UNITED STATES CONSTITUTION

Article VI

OPINION

92-10-2(L)

IOWA ADMINISTRATIVE CODE

661 IAC 16

OPINION

92-10-2(L)

1992 IOWA ACTS, 74TH G.A.

ch. 235

OPINION

92-9-3

1990 IOWA ACTS, 73RD G.A.

ch. 1234, § 1

OPINION

92-10-5(L)

November and December, 1992

AGRICULTURE

Trusts. Iowa Code chapter 172C, §§ 172C.1(10), 172C.1(11), 172C.4, 172C.5(1), 172C.5(3)(a), 172C.5A, 172C.5A(3). The term "trust" as defined in Iowa Code section 172C.1(10) includes a revocable and irrevocable inter vivos trust. An inter vivos trust in which the trustee and beneficiary are the same person falls outside the statutory definition of trust. Therefore, such a trust is not subject to the restrictions and reporting requirements of chapter 172C. (Benton to Elaine Baxter, Secretary of State, 11-24-92) #92-11-6(L)

COUNTIES AND COUNTY OFFICERS

Denying Access of Deputy Auditor to Closed Session of County Board of Supervisors. Iowa Code §§ 21.5, 331.221(2), 331.503(2), 331.504(1), 331.903(1), 331.903(4) (1991). A county board of supervisors may not deny a deputy auditor access to a closed session to take minutes or tape record the session, when the deputy has been designated to serve as secretary to the board in the absence of the county auditor. (Christenson to Doyle, State Senator, 11-12-92) #92-11-1(L)

Interest on Tax Receipts. Iowa Code §§ 331.455(5), 441.16, 441.50, 453.7(2) (1991). Section 453.7(2) requires the county treasurer to credit the county general fund with interest earned on investment of receipts from the taxes levied for the assessment expense fund and special appraiser's fund. (Smith to Arthur Ollie, State Representative, 11-24-92) #92-11-5(L)

GIFTS; LOBBYISTS; STATE OFFICIALS AND EMPLOYEES

Definition of lobbyist. Iowa Code §§ 68B.2(6)(a)(2), (3), (4); 68B.2(10)(a)(2), (3); 68B.2(15), 68B.5, 68B.22, 68B.31(4)(b) (1991); 1992 Iowa Acts, ch. 1228. Chapter 68B contains many restrictions on lobbyists and their relationship to public officials and employees. The definition of lobbyist as a person who represents on a regular basis certain organizations does not include the organization itself but instead includes those who actively engage in lobbying activities as the organization's representative. The word "represents" as used in two of the three definitions of lobbyist means one who is authorized to speak or act on behalf of another. A person who represents an organization on a regular basis is one who is authorized to act on behalf of the organization on an on-going basis, and not simply one who speaks on the organization's behalf on a temporary or sporadic basis. Officers, employees, or agents who are delegated authority to act on the organization's behalf before the government body in question are lobbyists.

An organization which has lobbyists is not itself per se a lobbyist but may not provide gifts to officials or employees if the organization will be directly and substantially affected financially by performance of the official's or employee's official duties more than a substantial class of persons to which the organization belongs as a member of a business or geographic region. Local chambers of commerce may sponsor a legislative reception if those organizations will not be affected more by the legislators' actions than is true of businesses generally within the geographic area in question. However, the organization's legislative lobbyists cannot sponsor a reception, either directly or indirectly, at which a legislator is given food or drink worth more than \$ 2.99. (Osenbaugh to Wise, State Representative, 12-31-92) #92-12-4

HEALTH; LABOR

Swimming pool and spa water heater inspections. 1992 Iowa Acts, ch. 1194, § 3; Iowa Code §§ 88.6(1), 89.3 (1991); Iowa Code Supp. § 1351.1 (1991). Senate File 2218, 1992 Iowa Acts, ch. 1194, completely removed the jurisdiction of the Division of Labor to inspect swimming pool and spa water heaters under chapter 89 (Boilers and Unfired Steam Pressure Vessels), but did not affect the division's authority to inspect swimming pools and spas for compliance with occupational safety and health standards under chapter 88. (Brauch to Meier, Labor Commissioner, 12-10-92) #92-12-1(L)

MOTOR VEHICLES; LAW ENFORCEMENT

Command responsibility at scene of automobile accident. Iowa Code §§ 102.2, 102.4 (1991). Responsibility for command at an auto accident scene during a fire or hazardous substance emergency belongs to the ranking fire officer who must defer to the extent possible to a peace officer present with respect to

traffic control. If there is no fire or hazardous substance emergency, command of the scene is the responsibility of a peace officer present. (Williams to Jochum, State Representative, 11-12-92) #92-11-2(L)

SCHOOLS

General fund expenditures; extracurricular activities. Iowa Code §§ 256.11(5)(g), 279.28, 280.3, 280.13, 280.14, 285.11(6) (1991). A public school board of directors may use general fund revenues to provide equipment and facilities necessary for the teaching of interscholastic athletics and other extracurricular activities which are incorporated into the school's educational program. We affirm in part and reverse in part 1936 Op.Att'yGen. 375 as it relates to the propriety of general fund expenditures for particular cost items. (Scase to Horn, State Senator, 11-12-92) #92-11-3

STATE OFFICERS AND EMPLOYEES: ETHICS

Sales; Lobbying. 1992 Iowa Acts, ch. 235. Iowa Code §§ 68B.3, 68B.4, 68B.5, 68B.10 (1991). Effective January 1, 1993, section 68B.3 prohibits a sale of services, including architectural services, by an official to any state agency that is not competitively bid. Negotiation cannot be defined as competitive bidding through rulemaking. Sales of goods or services by officials and state employees of the Department of Commerce to individuals, associations, or corporations subject to the regulatory authority of any agency within the Department must comply with the procedures for obtaining agency consent. Separate agencies within the umbrella of a regulatory agency may promulgate rules that designate sales which, as a class, do not constitute the sale of goods or services that affect an official's job duties or functions. Effective January 1, 1993, the spouse of an official or state employee will not be subject to the same limitations on sales of goods or services solely by virtue of this relationship. The limitations, moreover, will not extend either to a firm in which the official or employee is a partner or corporation of which the official or employee holds ten percent or more of the stock. The two-year ban on becoming a lobbyist would extend to a former official who is a certified public accountant engaging in paid advocacy for a client before a state agency but would not extend to the firm in which the certified public accountant is a member. When the statutory provisions go into effect, they apply to all officials serving terms at that time, regardless of when individual terms will expire following the effective date. Taking a leave of absence will not relieve officials from their obligations under the statutes. Despite a leave of absence, officials will retain their status as officials so long as they retain their appointment. Delegating authority to staff members on January 1, 1993, will not mitigate the impact of these provisions of law. (Pottorff to Thayer, Executive Secretary, Iowa Architectural Examining Board, 12-15-92) #92-12-2

TAXATION

Nonreimbursement Of Tax Sale Certificate Issuance Fee Upon Redemption. Iowa Code Supp. §§ 331.552, 447.1 and 447.13 (1991) County treasurers are not authorized to include the ten dollar tax sale certificate issuance fee imposed by section 331.552 as part of the amount redeemers are required to pay in order to redeem a parcel under section 447.1. (Hardy to Ricklefs, Jones County Attorney, 12-31-92) #92-12-3(L)

TAXATION; CITIES; COUNTIES

28E Agreement, Property Tax, Sanitary Landfill, Property Acquisitions By Tax Exempt Political Subdivisions. Iowa Code chs. 28E and 472 (1991); Iowa Code §§ 28E.1, 28E.3, 28F.1, 427.1(2), 427.18, 446.7 (1991). Property of a solid waste agency, which agency is created under Iowa Code chapter 28E and made up entirely of government units listed in section 427.1(2), is exempt from property taxes. Where the property is obtained through condemnation, Iowa Code section 427.18 is applicable and the solid waste agency is liable for property taxes for the fiscal year in which the property was acquired, but property taxes for prior years would be merged in the agency's tax exempt status. Under Iowa Code section 446.7, if after notice the agency fails to pay the taxes for the fiscal year of property acquisition, those taxes are required to be abated by the board of supervisors. (McCown to Martens, Iowa County Attorney, 11-12-92) #92-11-4

STATUTES CONSTRUED

1991 IOWA CODE

OPINION

21.5	92-11-1(L)
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28E.3	92-11-4
28F.1	92-11-4
68B.2(6)(a)(2)-(4)	92-12-4
68B.2(10)(a)(2)-(3)	92-12-4
68B.2(15)	92-12-4
68B.3	92-12-2
68B.4	92-12-2
68B.5	92-12-2
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68B.10	92-12-2
68B.22	92-12-4
68B.31(4)(b)	92-12-4
88.6(1)	92-12-1(L)
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172C.1(10)	92-11-6(L)
172C.1(11)	92-11-6(L)

1991 IOWA CODE

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 172C.5(1)
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OPINION (Con't)

92-11-6(L)
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1991 IOWA CODE SUPPLEMENT

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92-12-1(L)
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1992 IOWA ACTS, 74th G.A.

ch. 235
 ch. 1194, § 3
 ch. 1228

OPINION

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 92-12-1(L)
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