



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 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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Iowa Administrative Code

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Grimes State Office Building
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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(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).

Schedule for Rule Making 1994

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 3 '93	Dec. 22 '93	Jan. 11	Jan. 26	Feb. 16	Mar. 23	June 20
Dec. 17 '93	Jan. 5	Jan. 25	Feb. 9	Mar. 2	Apr. 6	July 4
Dec. 31 '93	Jan. 19	Feb. 8	Feb. 23	Mar. 16	Apr. 20	July 18
Jan. 14	Feb. 2	Feb. 22	Mar. 9	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	July 20	Aug. 24	Nov. 21
May 20	June 8	June 28	July 13	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 31	Oct. 5	Jan. 2 '95
July 1	July 20	Aug. 9	Aug. 24	Sept. 14	Oct. 19	Jan. 16 '95
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 28	Nov. 2	Jan. 30 '95
July 29	Aug. 17	Sept. 6	Sept. 21	Oct. 12	Nov. 16	Feb. 13 '95
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 26	Nov. 30	Feb. 27 '95
Aug. 26	Sept. 14	Oct. 4	Oct. 19	Nov. 9	Dec. 14	Mar. 13 '95
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 23	Dec. 28	Mar. 27 '95
Sept. 23	Oct. 12	Nov. 1	Nov. 16	Dec. 7	Jan. 11 '95	Apr. 10 '95
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 21	Jan. 25 '95	Apr. 24 '95
Oct. 21	Nov. 9	Nov. 29	Dec. 14	Jan. 4 '95	Feb. 8 '95	May 8 '95
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Jan. 18 '95	Feb. 22 '95	May 22 '95
Nov. 18	Dec. 7	Dec. 27	Jan. 11 '95	Feb. 1 '95	Mar. 8 '95	June 5 '95
Dec. 2	Dec. 21	Jan. 10 '95	Jan. 25 '95	Feb. 15 '95	Mar. 22 '95	June 19 '95
Dec. 16	Jan. 4 '95	Jan. 24 '95	Feb. 8 '95	Mar. 1 '95	Apr. 5 '95	July 3 '95
Dec. 30	Jan. 18 '95	Feb. 7 '95	Feb. 22 '95	Mar. 15 '95	Apr. 19 '95	July 17 '95

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.

<u>ISSUE NUMBER</u>	<u>PRINTING SCHEDULE FOR IAB SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 8, 1994	April 27, 1994
23	Friday, April 22, 1994	May 11, 1994
24	Friday, May 6, 1994	May 25, 1994

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:

1. We use a Windows environment with Lotus Ami Professional 3.0 as our word processing system and can import directly from any of the following:

Ami Pro 1.2	Manuscript	Rich Text Format
Ami Pro Macro	Microsoft Word	Samna Word
dBase	Microsoft Word for Windows	SmartWare
DCA/FFT	1.x, 2.0**	SuperCalc
DCA/RFT	MultiMate	Symphony Document
DIF	Navy DIF	Windows Write
Display Write 4	Office Writer	Word for Windows 1.x, 2.0**
Enable	Paradox	WordPerfect 4.1, 4.2, 5.0, 5.1*
Excel 3.0, 4.0	Peach Text	WordStar
Exec MemoMaker	Professional Write	WordStar 2000 ver 1.0, 3.0

* WordPerfect 6.0 filter is not yet available.

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2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" high density MSDOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

The Administrative Rules Review Committee will hold a special meeting which is tentatively scheduled for Monday, April 11, 1994, at 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:

Note: See also Supplemental Agenda published in the Iowa Administrative Bulletin on March 16, 1994.

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WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

Manufacturing technology outreach special projects fund, ch 13, Filed **ARC 4685A** 3/30/94

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
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Algona, Iowa 50511

Representative Janet Metcalf, Co-chair
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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 Rittner
3539 230th Street
DeWitt, Iowa 52742

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

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
BANKING DIVISION[187] Real estate lending for state-chartered banks, 9.2(5) IAB 3/16/94 ARC 4669A	Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 7, 1994 10 a.m.
EDUCATION DEPARTMENT[281] Special education, ch 41 IAB 3/2/94 ARC 4626A	Conference Rooms 1-4 Heartland Area Education Agency 6500 Corporate Drive Johnston, Iowa	April 25, 1994 6 p.m.
Child development coordinating council, 64.15, 64.20 IAB 3/2/94 ARC 4631A	Fine Arts Center, High School 819 N. 16th St. Denison, Iowa	May 2, 1994 6 p.m.
Innovative programs for at-risk early elementary students, 65.9(4) to 65.9(7) IAB 3/2/94 ARC 4630A	Auditorium Hempstead High School 3715 Pennsylvania Avenue Dubuque, Iowa	May 2, 1994 6 p.m.
Innovative programs for at-risk early elementary students, 65.9(4) to 65.9(7) IAB 3/2/94 ARC 4630A	Conference Room 3 North Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 31, 1994 2 p.m.
Innovative programs for at-risk early elementary students, 65.9(4) to 65.9(7) IAB 3/2/94 ARC 4630A	Conference Room 3 North Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 31, 1994 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]	Community Center Cherokee, Iowa	April 18, 1994 1 p.m.
Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 ARC 4678A	Community Meeting Room Clear Lake, Iowa	April 18, 1994 7 p.m.
Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 ARC 4678A	Community Room Farmers & Merchants Savings Bank Manchester, Iowa	April 19, 1994 1 p.m.
Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 ARC 4678A	YW Room Community YMCA Washington, Iowa	April 19, 1994 7 p.m.
Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 ARC 4678A	Municipal Utilities Bldg. Atlantic, Iowa	April 20, 1994 1 p.m.
Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 ARC 4678A	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	April 21, 1994 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Sanitary disposal projects — financial assurance, 103.2, ch 111 IAB 3/16/94 ARC 4679A	Conference Room — 5th Floor West Half Wallace State Office Bldg. Des Moines, Iowa	April 6, 1994 1 p.m.
Registration of groundwater professionals, 134.4 IAB 3/16/94 ARC 4677A	Community Hall Denison, Iowa	April 5, 1994 10 a.m.
	Public Library — Room B 123 S. Linn St. Iowa City, Iowa	April 6, 1994 10 a.m.
	Conference Room — 5th Floor West Half Wallace State Office Bldg. Des Moines, Iowa	April 7, 1994 1 p.m.
LABOR SERVICES DIVISION[347]		
General industry safety and health, 10.20 IAB 3/16/94 ARC 4664A	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	April 7, 1994 9 a.m. (If requested)
Construction safety and health, 26.1 IAB 3/16/94 ARC 4665A	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	April 7, 1994 9 a.m. (If requested)
Occupational safety and health standards for agriculture, 28.1 IAB 3/16/94 ARC 4666A	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	April 7, 1994 9 a.m. (If requested)
LAW ENFORCEMENT ACADEMY[501]		
Reserve officer weapons certification — criminal records check, 10.1(3)"b" IAB 3/16/94 ARC 4663A	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	April 5, 1994 10 a.m.
LIBRARIES AND INFORMATION SERVICES DIVISION[286]		
Organization, rescind 224—chs 1 to 6; adopt 286—chs 1 to 3 and 6 IAB 3/30/94 ARC 4687A (See also ARC 4680A herein)	Conference Room — 2nd Floor Old Historical Bldg. Des Moines, Iowa	May 3, 1994 1 p.m.
NATURAL RESOURCE COMMISSION[571]		
Game management areas, 51.7(2) IAB 3/30/94 ARC 4704A	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	April 19, 1994 2 p.m.
Waterfowl and coot hunting seasons, 91.1 to 91.4 IAB 3/2/94 ARC 4643A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Nonresident deer hunting, 94.1, 94.2, 94.7, 94.8 IAB 3/2/94 ARC 4644A	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1 to 96.3 IAB 3/2/94 ARC 4645A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4 IAB 3/2/94 ARC 4646A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Wild turkey fall hunting, 99.1, 99.4 IAB 3/2/94 ARC 4647A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Falconry regulations for hunting game, ch 102 IAB 3/2/94 ARC 4648A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Deer hunting, ch 106 IAB 3/2/94 ARC 4649A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Rabbit and squirrel hunting, 107.1 to 107.3 IAB 3/2/94 ARC 4650A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox, beaver, coyote, otter and spotted skunk seasons, 108.1 to 108.5 IAB 3/2/94 ARC 4651A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Nursing home administrators, chs 140 to 143, 146 to 148 IAB 3/16/94 ARC 4659A	Conference Room Fourth Floor West Lucas State Office Bldg. Des Moines, Iowa	April 5, 1994 1:30 to 4 p.m.
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PUBLIC HEALTH DEPARTMENT[641]

Employee drug testing — proficiency test survey specimens, 12.1 to 12.7, 12.11 to 12.15, 12.17 to 12.23 IAB 3/30/94 ARC 4681A	Conference Room (Side 2) Third Floor Lucas State Office Bldg. Des Moines, Iowa	April 19, 1994 1:30 p.m.
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RACING AND GAMING COMMISSION[491]

Thoroughbred racing — minimum wagers on exotic wagering, 8.2(20), 8.3(13)"h," 10.1, 10.5(2)"c" IAB 3/30/94 ARC 4686A	Commission Office Second Floor Lucas State Office Bldg. Des Moines, Iowa	April 19, 1994 9 a.m.
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UTILITIES DIVISION[199]

Ex parte communications, 7.14 IAB 3/30/94 ARC 4705A	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	May 10, 1994 10 a.m.
Consolidated purchased gas adjustment filings, 19.10 IAB 3/16/94 ARC 4672A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	April 12, 1994 10 a.m.

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]

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]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

Product Development Corporation[271]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

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]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HEALTH DATA COMMISSION[411]
 HUMAN RIGHTS DEPARTMENT[421]
 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 Division[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 Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[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]
 SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
 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.

Iowa Advance Funding Authority[515]

Records Commission[710]

* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs, which implemented state government reorganization.

NOTICE --- 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	Childhood Lead Poisoning Prevention Program		Local health departments or private non-profit child health agencies, or government or private non-profit housing agencies.	Provide environmental and medical case management of children identified as lead-poisoned or inspect homes for lead based paint hazards.	4-15-94	5-1-94 to 10-31-94

Request application packet from: Rita Gergely, Bureau of Environmental Health
 Division of Health Protection
 Iowa Department of Public Health
 Lucas Building
 Des Moines, Iowa 50319-0075
 Telephone Number: (515) 242-6340

The service area must include residential areas with homes built prior to 1960 that were or continue to be affected by flooding or;

The service area must have a large number of children identified as lead-poisoned or be expected to have a large number in the near future for whom Iowa Department of Public Health (IDPH) staff currently does or would be expected to provide environmental and medical case management. The numbers in the service area must be large enough that a substantial amount of IDPH staff time will be available to conduct childhood lead poisoning prevention activities in flooded areas if the local health department receiving the award can provide follow-up for their cases of childhood lead poisoning.

ARC 4699A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners gives Notice of Intended Action to adopt a new Chapter 8, "Sale of Goods and Services," Iowa Administrative Code.

The purpose of this amendment is to comply with Iowa Code section 68B.4. That statute requires the Board to adopt rules to grant blanket consent for certain classes of sales of goods and services by Board members.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 19, 1994. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

The proposed amendment is intended to implement Iowa Code section 68B.4.

The following amendment is proposed.

Adopt the following new chapter:

CHAPTER 8
SALE OF GOODS AND SERVICES

650—8.1(68B) Selling of goods or services by members of the board. The board member shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of public health except as authorized by this chapter.

650—8.2(68B) Conditions of consent for members.

8.2(1) Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department of public health unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department of public health.

d. The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association, or corporation.

8.2(2) Authorized sales.

a. A member of the board may sell goods or services to any individual, association, or corporation regulated by any division within the department of public health, other than the board on which that official serves. This consent is granted because the sale of such goods or services does

not affect the board member's duties or functions on the board.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the licensing board of which that person is a member, if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board. In the event an individual, association, or corporation to whom a board member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

8.2(3) Application for consent. Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department of public health, an official must obtain prior written consent unless the sale is specifically allowed in subrule 8.2(2). The request for consent must be in writing signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

8.2(4) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this chapter does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule.

It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

These rules are intended to implement Iowa Code section 68B.4.

ARC 4698A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners gives Notice of In-

DENTAL EXAMINERS BOARD[650](cont'd)

tended Action to amend Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

The purpose of this amendment is to address a concern relative to patients having access to their records once a dentist retires.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 19, 1994. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

The proposed amendment is intended to implement Iowa Code section 153.34.

The following amendment is proposed.

Amend 605—Chapter 27 by adding the following new rule:

650—27.10(153) Retirement or discontinuance of practice.

27.10(1) A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon leaving or moving from a community, shall notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of dentistry in the community, and shall encourage patients to seek the services of another licensee. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of dentistry, or leaving or moving from a community.

27.10(2) Nothing herein provided shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed dentist who is assuming a practice, provided that written notice is furnished to all patients as hereinbefore specified.

ARC 4706A

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

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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 4, "Discipline and Professional Conduct of Registrants," Iowa Administrative Code.

The proposed rule 4.28(272C) implements legislation authorizing professional licensing boards to charge a reg-

istrant a fee and certain costs incurred in disciplinary hearings resulting in disciplinary action against the registrant. The rule defines terms used, describes the fees and costs which may be charged, and provides that fees and costs collected shall be delivered to the Professional Licensing and Regulation Division.

Any interested person may make written comments on the proposed rule on or before April 19, 1994. Comments should be addressed to Patricia Peters, Iowa Engineering and Land Surveying Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

The proposed rule is intended to implement Iowa Code section 272C.6(6).

The following rule is proposed.

Amend 193C—Chapter 4 by adding the following new rule:

193C—4.28(272C) Disciplinary hearings—fees and costs.

4.28(1) The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the professional licensing and regulation division as provided in subrule 4.28(8).

4.28(2) In addition to this fee, the board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

4.28(3) Transcript.

a. The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

b. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

4.28(4) Witness fees and expenses.

a. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

b. The board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

d. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

e. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

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

f. The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under department of revenue and finance guidelines in effect on January 1, 1994.

4.28(5) Depositions.

a. The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

b. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

c. If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

4.28(6) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

4.28(7) A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed \$75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application will be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

4.28(8) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensing and regulation division.

4.28(9) Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

ARC 4691A**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 and 1994 Iowa Acts, Senate File 2034, sections 2 and 3, the Department of Human Services proposes to amend Chapter 153, "Social Services Block Grant and Funding for Local Services," appearing in the Iowa Administrative Code.

The Emergency Supplemental Appropriations Act of 1993, Public Law 103-75, appropriated \$75 million for a fund to support public health and social services provided in response to flooding along the Mississippi River and its tributaries. Iowa was awarded \$1,776,000 from this appropriation to be used in those areas of the state the President has declared a major disaster area. The funds were awarded under the same terms and conditions as Iowa's Fiscal Year 1993 Social Services Block Grant award.

The Seventy-fifth General Assembly, in 1994 Iowa Acts, Senate File 2034, appropriated these funds to the Department to be used in accordance with all applicable special federal conditions to provide emergency social services and to make grants to agencies, organizations, and other government entities for provision of emergency social services for flood relief.

These amendments outline the Department's plans and procedures for using the federal flood relief supplemental social services block grant funds. Seventy-five percent of the funds will be awarded as grants to county governments in the 25 most flood-impacted counties, based on the number of Federal Emergency Management Administration (FEMA) applications from persons per county. The 25 targeted counties account for over 81 percent of statewide FEMA applications. Each county's grant will be proportional to that county's percent of total applications from the 25 counties. Twenty-five percent of the funds will be used for social service block grant services provided through the Department and for administrative costs.

County governments were chosen as the entity to receive relief grants because the counties have an active role in providing services, coordinating planning, and accounting for governmental funds. There have been increases in demand for Department services such as child abuse investigations and counseling services due to flood-related stress. These funds will also offset this increase.

The substance of these amendments is being Adopted and Filed Emergency and is published herein as **ARC 4692A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Office Building, Des Moines, Iowa 50319-0114, on or before April 20, 1994.

These amendments are intended to implement Iowa Code section 234.6 and 1994 Iowa Acts, Senate File 2034, section 2.

ARC 4704A

**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.

ARC 4687A

**LIBRARIES AND INFORMATION
SERVICES DIVISION[286]**

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 chapter 17A and Iowa Code Supplement section 256.52, the State Commission of Libraries hereby gives Notice of Intended Action to rescind 224—Chapters 1 to 6 and adopt 286—Chapter 1, "Organization and Operation," Chapter 2, "Public Records and Fair Information Practices," Chapter 3, "Statewide Programs and Agreements Background," and Chapter 6, "Library Services and Construction Act (LSCA) Grant Program," Iowa Administrative Code.

The Division of Libraries and Information Services proposes to rescind rules of the Library Division 224—Chapters 1 to 6 and adopt 286—Chapters 1 to 3 and 6 under the umbrella of the Department of Education pursuant to Iowa Code Supplement section 256.51.

Any interested person may make written suggestions or comments on the proposed rules on or before April 19, 1994. Such written suggestions or comments on the proposed rules should be directed to the State Commission of Libraries, East 12th and Grand, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact Sharman Smith at (515)281-4105.

There will be a public hearing on May 3, 1994, at 1 p.m. in the Second Floor Conference Room of the Old Historical Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to confine their remarks to the subject of the rules.

The substance of these rules is being Adopted and Filed Emergency and is published herein as **ARC 4680A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code Supplement sections 256.50 to 256.56.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, "Game Management Areas," Iowa Administrative Code.

These amendments provide for removal of wording which places certain restrictions on the type of registered vehicle a permitted, nonambulatory person may use on a state game management area. Also, additional wording will restrict nonhandicapped companions of permit holders from being afforded the same allowances as described in the permit. The term "custodian" will be replaced by the term "technician or wildlife biologist."

Any interested person may make written suggestions or comments on the proposed amendments prior to April 19, 1994. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau by telephone at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 19, 1994, at 2 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 481A.6.

The following amendments are proposed.

ITEM 1. Amend 51.7(2)"a" as follows:

a. Definitions. For purposes of this subrule, 51.7(2), the following definition shall apply: "Motor vehicle" means any self-propelled vehicle having at least three wheels ~~designed for off-road use, weighing less than 1,000 pounds,~~ and registered as a motor vehicle under Iowa Code chapter 321.

ITEM 2. Amend 51.7(2)"b" as follows:

b. Permits. Each handicapped person must have a permit issued by the director in order to use motor vehicles on game management areas. Such permits will be issued without charge. Applicants must submit certificates from their doctors stating that the applicants meet the criteria describing handicapped persons. *Nonhandi-*

NATURAL RESOURCE COMMISSION[571](cont'd)

capped companions of permit holders are not covered under the conditions of the permit.

ITEM 3. Amend 51.7(2)"c" as follows:

c. Approved areas. A permit holder must contact the ~~eustodian~~ *technician or wildlife biologist* of the specific area(s) that the permit holder wishes to use annually. The ~~eustodian~~ *technician or wildlife biologist* will determine which areas or portions of areas will not be open to use by permittees, in order to protect the permittee from hazards or to protect certain natural resources of the area. The ~~eustodian~~ *technician or wildlife biologist* will assist by arranging access to the area and by designated specific sites on the area where the motor vehicle may be used, and where it may not be used. The ~~eustodian~~ *technician or wildlife biologist* will provide a map of the area showing the sites where use is permitted and bearing the ~~eustodian's~~ *signature of the technician or wildlife biologist* and the date.

ARC 4688A

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 272C.2, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 5, "Continuing Education," Iowa Administrative Code.

These amendments reflect the change resulting from computerization of the licensure examination in which year-round testing will occur, eliminating national test dates, and delete a restriction. These amendments will enable a licensee to collect continuing education credit as soon as the license is issued.

Any interested person may make written comments or suggestions on or before April 19, 1994. Such materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 E. Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the office at 1223 E. Court Avenue, by appointment.

These amendments are also Adopted and Filed Emergency and published herein as ARC 4690A. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 272C.1 and 272C.2.

ARC 4681A

PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.4 and 135.11, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 12, "Approval of Laboratories for Employee Drug Testing," Iowa Administrative Code.

These proposed amendments are necessitated by a change in the number of proficiency test survey specimens provided per test cycle and the frequency with which the test cycles occur. Effective January 1, 1994, recognized proficiency testing programs will provide participating laboratories with five test specimens every four months, instead of ten test specimens every three months. This is also an opportune time to amend the rules to: clarify definitions and language; delete incorrect, obsolete, and redundant language; and reduce laboratory and personnel record retention requirements from three years to two years.

NOTE: The following rules are unaffected by these proposed amendments and remain unchanged:

641—12.8(730) Specimen security and confidentiality of results.

641—12.9(730) Quality assurance procedure and procedure manual requirements.

641—12.10(730) Analytical quality control.

641—12.16(730) Collection of specimens.

Interested persons may submit written comments on or before Tuesday, April 19, 1994. Comments should be addressed to Mike Guely, Iowa Department of Public Health, Division of Substance Abuse and Health Promotion, Employee Drug Testing Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held at 1:30 p.m., Tuesday, April 19, 1994, in the Lucas State Office Building, Third Floor Conference Room (Side 2).

These proposed amendments are intended to implement Iowa Code section 730.5.

The following amendments are proposed.

ITEM 1. Amend rule 641—12.1(730) as follows:

641—12.1(730) Purpose. The purpose of this chapter is to describe the procedures that a laboratory must follow ~~for to receive~~ approval by the department of public health to analyze specimens for the detection of drugs and alcohol in job applicants and employees. The department shall approve laboratories that ~~screen test~~ specimens collected from employees for any of the following ~~certified~~ drugs:

Amphetamines	Ethanol
Barbiturates	Opiates
Cannabinoids	Phencyclidine
Cocaine	

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend rule 641—12.2(730) as follows:

641—12.2(730) Definitions. For the purpose of these rules, the following definitions shall apply:

~~"AACC" means American Association for Clinical Chemistry.~~

"Alcohol" means ethyl alcohol (ethanol).

~~"Applicant" means an individual who applies for employment.~~

~~"CAP" means College of American Pathologists.~~

~~"CLIA" means Clinical Laboratory Improvement Act.~~

"Confirmatory testing test" means a test for alcohol, a drug, or a drug's metabolites using a testing method as defined in rule 641—12.7(730) "Confirmation of positive results."

"Department" means Iowa department of public health.

"Director" means director of the Iowa department of public health.

"Drug and alcohol testing" means analysis of a specimen for the purpose of measuring the presence or absence of alcohol, certified drugs, or their metabolites in the sample tested.

"Drug test" means a test conducted for the purpose of detecting the presence of a certified drug in the fluid or tissue of an employee or job applicant.

"Employee" means a person who performs services for compensation, in whatever form, for an employer.

"Employer" means a person or entity located or doing business in Iowa and having one or more employees, and includes the state of Iowa and all political or other governmental subdivisions of this state.

"GC/MS" means gas chromatography-mass chromatography/mass spectrometry.

"HCFA" means Health Care Financing Administration.

~~"Initial screening Screening test" means a an initial drug or alcohol test which is capable of detecting the presence of specific certified drugs, or their metabolites.~~

"Laboratory" means a facility inside or outside the boundaries state of Iowa that analyzes specimens for the detection of chemical substances.

"NIDA" means National Institute of on Drug Abuse.

"Physician" means a person currently licensed pursuant to Iowa Code chapter 148, 150, 150A or the equivalent from other states.

"Specimen" means a sample of blood, urine, saliva, or skin tissue.

"UHL" means university (state) hygienic laboratory.

ITEM 3. Amend rule 641—12.3(135) as follows:

641—12.3(135 730) Powers and duties. The department shall be responsible for the following actions:

~~12.3(1) Annual approval of Processing applications from laboratories requesting approval to analyze specimens submitted by employers for the detection of drugs and alcohol as required by 1987 Iowa Code supplement section 730.5.~~

~~12.3(2) Development of Developing an application package:~~

a. The package shall be provided to all laboratories requesting approval to conduct drug and alcohol screening testing.

b. The package shall contain application procedures, administrative rules, standardized application forms and a self-inspection questionnaire.

The self-inspection questionnaire shall assist the department in assessing the quality of a laboratory's perform-

ance as a drug testing laboratory. This questionnaire will comprise the major, but not the sole objective criteria used for on-site inspections by the University of Iowa Hygienic Laboratory (UHL). Failure to perform in compliance with specific elements of this questionnaire will be graded as "Phase I" for minor deficiencies and "Phase II" for major deficiencies.

c. The package is *shall be* available upon request from the Iowa Department of Public Health, Division of Disease Prevention Substance Abuse and Health Promotion, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~12.3(3) Annual review of Reviewing each application submitted and determination of determining the adequacy for approval.~~

~~12.3(4) Designation of Designating the University of Iowa Hygienic Laboratory UHL to conduct an on-site inspection of each laboratory at least once every two years. Inspection may be waived by the director if the laboratory has been inspected and certified by NIDA for drug and alcohol testing.~~

~~12.3(5) Maintain Maintaining and publish providing upon request an updated list of all approved and temporarily approved laboratories.~~

~~12.3(6) The director shall give Providing written notice of approval and assign a laboratory site number and assigning an expiration date.~~

ITEM 4. Amend rule 641—12.4(730) as follows:

641—12.4(730) Application procedures.

~~12.4(1) Each laboratory Laboratories desiring to conduct drug testing for Iowa's employers shall apply annually for approval to the department for approval.~~

~~12.4(2) Laboratories requesting to be approved by the department which have been licensed certified by NIDA will receive Iowa approval following the submission of evidence of their current NIDA accreditation, results of their on-site inspection and copies of three sets of their most recent proficiency data certification.~~

~~12.4(3) Temporary approval. Temporary approval may be granted to a laboratory until the initial application and inspection process can be completed.~~

a. ~~Laboratories requesting temporary approval must indicate their intention in writing to the department within 60 days following the effective date of these rules.~~

b. ~~Requests for temporary approval must contain the following:~~

(1) ~~Name and address of laboratory.~~

(2) ~~Name and qualifications of laboratory director.~~

(3) ~~Evidence of satisfactory performance of proficiency testing.~~

(4) ~~Evidence of a satisfactory on-site inspection which must have been conducted within the last 24 months by a government agency or an approved national organization which the department recognizes as certifying, approving, or licensing laboratories to conduct general medical laboratory testing.~~

~~12.4(4) Temporary approval is valid for a period not to exceed six months. If the department is in the process of reviewing a laboratory's application, the temporary approval shall be extended by the department until determination of approval or denial.~~

ITEM 5. Amend rule 641—12.5(730) as follows:

641—12.5(730) Annual application Application requirements for drug and alcohol testing. Each labora-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

tory requesting ~~department~~ Iowa approval for drug and alcohol screening and testing shall provide the following to the department:

12.5(1) A completed laboratory survey checklist on a form ~~approved~~ provided by the department.

12.5(2) A completed self-inspection ~~manual~~ questionnaire provided by the department that includes:

- a. ~~List~~ A list of ~~certified~~ the drugs being tested.
- b. Copies of the ~~three~~ two most recent and relevant graded proficiency testing test reports from a recognized proficiency testing program.
- c. Personnel qualifications for all staff involved in the technical and administrative management of the drug testing laboratory.
- d. Sample copies of reports.
- e. Chain of custody ~~protect~~ protocols and sample forms.
- f. ~~Collection~~ Specimen collection procedures for specimens.
- g. Confirmation procedures, including name and address of any external reference laboratories used for confirmation.

12.5(3) Proof of enrollment in a recognized proficiency testing program. Recognized programs include those administered ~~approved~~ by CAP or AACC HCFA.

12.5(4) Acceptable performance over a 12-month period in all appropriate areas of proficiency testing for any of the ~~certified~~ drugs tested shall be documented and sent to the ~~department~~ UHL on an ongoing basis. Acceptable performance is as follows:

a. Initial ~~certification~~ approval shall require at least 80 percent accuracy in the last ~~three~~ two graded proficiency tests test cycles.

b. ~~Recertification~~ Renewal shall require at least 90 percent accuracy each year with a minimum of ~~ten~~ five survey specimens per ~~quarter~~ test cycle.

c. Laboratories performing confirmatory testing shall test a minimum of ~~ten~~ five survey specimens for each ~~certified~~ drug per ~~quarter~~ test cycle. No false positive results on survey specimens are permitted for laboratories performing confirmatory tests.

~~12.5(5) The state of Iowa agency that provides facility inspection, proficiency surveys, and general program oversight shall be prohibited from performing general employee drug test for private business and state of Iowa employees.~~

ITEM 6. Amend rule 641—12.6(730) as follows:

641—12.6(730) Methodology.

12.6(1) ~~Initial~~ Screening test. The initial screening test may utilize immunoassay, thin layer, high performance liquid or gas chromatography, or an equivalent technology. If the ~~initial screening~~ test utilizes immunoassay, the test kit must ~~meet the requirements of possess a 510(k) notification by the U.S. Food and Drug Administration.~~

12.6(2) Confirmation test. Samples which have tested ~~positive reactive~~ (above threshold or cut-off level) by ~~initial testing the screening test~~, with the exception of alcohol, shall be confirmed by ~~gas chromatography mass spectrometry GC/MS~~ or by a scientifically equivalent technique approved by the department.

ITEM 7. Amend rule 641—12.7(730) as follows:

641—12.7(730) Confirmation of positive results. All ~~initial positive reactive~~ drug screening test results, with the exception of alcohol, shall be confirmed by ~~gas chromatography mass spectrometry GC/MS~~ or an equivalent test approved by the department before being reported as positive (or negative).

1. All ~~initial positive reactive screening~~ test results for alcohol shall be confirmed by gas chromatography, or a test that is recognized by the department as an equivalent test before being reported as positive (or negative).

2. ~~Preliminary reports~~ Reports for drugs other than alcohol shall not be issued in the absence of confirmation by GC/MS or a scientifically equivalent test approved by the department.

3. ~~Specimens~~ Analysis of specimens for confirmation may ~~must be referred to reference~~ performed by laboratories which have been approved by the department.

4. Complete chain of custody procedures shall be used for referred specimens. ~~When sample volumes permit, it is recommended that only an aliquot of the original specimen be sent to a reference laboratory.~~

ITEM 8. Amend rule 641—12.11(730) as follows:

641—12.11(730) Documentation of testing process. The following documents for drug testing shall be retained and be made available for inspection for at least ~~three~~ two years:

12.11(1) Chain of custody documentation for each specimen tested, showing positive identification of specimen, person(s) handling and testing the specimen, storage of specimen, and disposal of specimen.

12.11(2) Analytical information for each batch assayed; instrument identification; calibrator; reagent and identification; quality control results; and any other pertinent information.

12.11(3) The UHL shall be designated ~~by the department~~ to receive copies of proficiency testing results ~~conducted by CAP, AACC or any other recognized agency~~ for ongoing monitoring and evaluation of each laboratory's performance.

12.11(4) Current procedure manuals must be maintained for all procedures.

12.11(5) An annual review of manuals by the ~~scientific laboratory~~ director or ~~director's supervisor~~ shall be performed and documented. Alterations and additions to procedures shall be incorporated into the manual before implementation.

ITEM 9. Amend rule 641—12.12(730) as follows:

641—12.12(730) Reporting of results to requesting medical physician.

12.12(1) Each report shall identify the drugs being tested ~~for~~ with the results of positive/negative or detected/nondetected clearly recorded.

12.12(2) Each laboratory shall have available a written summary of the established cutoff point for each screening test and the sensitivity levels used for confirmatory drug tests. This information need not be issued with each report.

12.12(3) Each laboratory shall have written procedures for making both written and telephone reports.

12.12(4) All test results must be reviewed ~~and signed~~ by the ~~scientific laboratory~~ director, or a qualified designee.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 10. Amend rule 641—12.13(730) as follows:

641—12.13(730) Requirements of laboratory personnel involved in the screening and confirmatory testing for drugs and alcohol.

12.13(1) The ~~scientific~~ *laboratory* director shall be a pathologist or doctoral level ~~individual~~ *scientist* who qualifies as a clinical laboratory director under CAP, HCFA, or CLIA regulations. ~~The scientific director or designee must have training in the chemical, biological or physical sciences, and specific training in the theory and practice of quality control procedures.~~

12.13(2) Supervisors of analysts shall possess at least a bachelor of science degree in chemistry, medical technology; or comparable education and two years of analytical drug screening experience. Supervisors must also have training in the theory and practice of the laboratory procedures and an understanding of quality control concepts. Annual verification of the supervisor's skills must be documented by the ~~scientific~~ *laboratory* director.

12.13(3) Analysts shall possess the necessary training and skills for assigned tasks. These individuals shall possess at least two years of college education in the physical or biological sciences. Analysts shall be a ~~graduate~~ *graduate* of a medical laboratory technician program which is recognized by the ~~IDPH~~ *department* or have at least two years of college with a minimum of nine semester hours in chemistry.

12.13(4) ~~In-service continuing education programs to meet the needs of all laboratory personnel shall be completed and documented.~~ *Scientific Laboratory* directors, supervisors and analysts involved in drug testing shall annually complete at least one in-service continuing education program related to drug testing. Dates of the completed course shall be documented and the information available for review.

12.13(5) The following information about each of the laboratory staff involved in employee drug testing shall be retained for ~~three~~ *two* years from date of termination and *shall* be available for review.

- a. Résumé of training and experience.
- b. ~~Certification~~ *Certificate* or license.
- c. Job description.

ITEM 11. Amend rule 641—12.14(730) as follows:

641—12.14(730) Changes from application during approval period. The following changes that occur during an approval period shall be submitted to the department within ten working days from the date the change took place:

1. Change in ~~scientific~~ *laboratory* director.
2. Change of address.
3. Change in supervisor.
4. Change in confirmation procedures.
5. Change in proficiency program.
6. Addition or subtraction of ~~certified~~ *drugs* being tested.
7. Change of ownership.

ITEM 12. Amend rule 641—12.15(730) as follows:

641—12.15(730) Renewal application. Approval to continue drug testing for Iowa employers must be ~~requested~~ *renewed* annually. Laboratories with Iowa approval shall submit their renewal ~~application~~ *request* within ~~90~~ *days* ~~request~~ prior to their expiration date. The ~~request~~ *request* for renewal ~~application~~ shall include the following:

12.15(1) Name and address of laboratory.

12.15(2) Copy of ~~current approval~~ and supporting documents if licensed, certified, or approved through reciprocity.

12.15(3) Appropriate information that reflects any change from ~~their~~ *the* most recent ~~application~~ *approval* period.

12.15(4) ~~Documentation of most recent on-site inspection by NIDA, the state of Iowa, or a state that is certifying, approving, or licensing laboratories for drug testing having standards equivalent to these rules.~~

12.15(5) ~~A completed department self-inspection questionnaire demonstrating no Phase I and Phase II deficiencies.~~

ITEM 13. Amend rule 641—12.17(730) as follows:

641—12.17(730) Enforcement. Upon a determination of noncompliance by the director that these rules have been violated by a laboratory, the director may immediately move to suspend, modify, or revoke any approval issued under these rules.

ITEM 14. Amend rule 641—12.18(730) as follows:

641—12.18(730) Denial or loss, suspension, modification or revocation of approval.

12.18(1) ~~Failure of the laboratory to meet any~~ *Any one* of the following can result in *denial*, suspension, modification, or ~~loss~~ *revocation* of approval. *Failure of the laboratory to:*

a. ~~Maintaining~~ *Maintain* the ~~requirement~~ *requirements* of the approval guidelines *these rules*.

b. ~~Providing~~ *Provide* documentation, including *documentation of laboratory personnel and proficiency test results*.

c. ~~Maintaining~~ *Maintain* confidentiality.

d. ~~Meeting~~ *criteria* for *Meet* proficiency testing *criteria*.

e. ~~Providing~~ *Provide* correct information.

f. Satisfactorily ~~completing~~ *complete* the ~~two~~ *most* recent recognized proficiency tests (*for initial approval*).

g. Correctly ~~representing~~ *represent* facts on a self-inspection questionnaire or ~~alteration of submitted other~~ *application data documents*.

h. ~~Passing~~ *Pass* an on-site inspection by NIDA, a ~~another state or an approved national organization requiring laboratory approval whose requirements are at least equal to Iowa's, or the UHL.~~

12.18(2) ~~The department shall publish in the Iowa Administrative Bulletin a change in approved laboratory drug testing status.~~

ITEM 15. Amend rule 641—12.19(730) as follows:

641—12.19(730) Restoration of approval. A laboratory whose approval has been suspended, modified, or revoked may be reinstated within 90 days following the receipt of the following:

1. Documentation of ~~corrected~~ *actions* ~~satisfying that~~ *correct* the reasons for suspension, modification, or revocation.

2. Documentation of a successful on-site inspection, *if necessary*, conducted by NIDA, *another state whose requirements are at least equal to Iowa's, or the University of Iowa Hygienic Laboratory UHL.*

ITEM 16. Amend rule 641—12.20(730) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—12.20(730) Complaints. The department shall accept complaints of alleged problems relating to laboratory procedures. The information shall state in as specific a manner as possible the basis for the complaint. The complaint shall be presented in writing, in person or by telephone to the Iowa Department of Public Health, Division of ~~Disease Prevention~~ Substance Abuse and Health Promotion, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Within 20 working days of the receipt of the complaint, the department shall communicate with the laboratory ~~scientific~~ director for initial evaluation of the specific matters alleged in the complaint. The laboratory shall receive a written report of the results of department activities relating to the complaint investigation. The complainant shall be informed of the results of the action taken by the department.

ITEM 17. Amend rule 641—12.21(730) as follows:

641—12.21(730) Reciprocity.

12.21(1) Laboratories certified, licensed, or approved by ~~any another~~ state or the federal government for drug testing shall receive Iowa approval through reciprocity if the following requirements are met:

a. The laboratory is approved, certified, or licensed by another state or the federal government for drug testing. ~~The In addition, the requirements of other states and another state or the federal government shall be at least equivalent to the Iowa rules for drug and alcohol testing.~~

b. The application must include the following:

- (1) Name and address of laboratory.
- (2) Name and qualifications of ~~scientific~~ laboratory director.
- (3) A copy of the current certification, license, or approval.

~~(4) A copy of the most recent on-site inspection results.~~

12.21(2) Laboratories ~~that are~~ approved through reciprocity ~~and that~~ lose their certification, license or approval shall notify the department within five working days.

ITEM 18. Amend rule 641—12.22(730) as follows:

641—12.22(730) Approval and renewal fee fees. Each laboratory shall at the time of application and each year thereafter shall remit to the department a fee in an amount sufficient to reimburse the department for expenses incurred to administer the laboratory approval program. All fees shall be made payable to the Iowa department of public health and are as follows:

~~12.22(1) Temporary approval. An administration fee of \$150 is required for temporary approval.~~

12.22(2 1) Approval. An administration fee of \$600 is required for new applications and for laboratories approved by ~~through~~ reciprocity.

12.22(3 2) Reapproval Renewal. An administration fee of \$300 is required ~~for reapproval to renew laboratory approval.~~

12.22(-4 3) Approval and ~~reapproval~~ renewal fee fees for NIDA ~~accredited labs certified laboratories~~. An administration fee of \$100 is required ~~for~~ in both instances.

12.22(5 4) Inspections. Reimbursement for actual ~~on-site inspection and related~~ expenses shall be assessed ~~on~~ to each laboratory after the completion of each laboratory inspection. Expenses ~~related to the on-site inspection~~ will be reimbursed to the ~~University of Iowa Hygienic Laboratory for UHL.~~ These expenses shall reflect the actual cost

incurred for personnel time and travel expenses consistent with state of Iowa travel reimbursement policies and procedures. *These expenses shall also include the time necessary for UHL inspection staff to:*

- a. Review the application and related laboratory materials in preparation for the on-site inspection,
- b. Generate the written laboratory report regarding inspection findings,
- c. Conduct postinspection follow-up activities, if any, and
- d. Review on an ongoing basis proficiency test results.

ITEM 19. Amend rule 641—12.23(730) as follows:

641—12.23(730) Appeals process.

12.23(1) Denial. Laboratories shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for denial. The applicant, ~~within adverse action shall become effective 30 days of after receipt of the notice, may give unless the applicant, within 30 days,~~ gives written notice to the department requesting a hearing. *In that event, the notice shall be deemed to be suspended.*

12.23(2) Suspension, modification, or revocation. Laboratories shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for suspension, modification, or revocation. The adverse action shall become effective 30 days after receipt of the notice unless the ~~applicant aggrieved party,~~ within 30 days, gives written notice to the department requesting a hearing. In that event, the notice shall be deemed to be suspended.

12.23(3) Contested cases. The procedures for contested cases as set out in Iowa Code chapter 17A and the rules adopted by the department in 641—Chapter 173 shall be followed in all cases where proper notice has been made to the department of the intent to formally contest any denial, suspension, modification, or revocation of approval.

ARC 4686A

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 99D.7, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 8, "Mutuel Department," and Chapter 10, "Thoroughbred Racing," Iowa Administrative Code.

The amendments to Chapter 8 allow for minimum wagers on all exotic wagering to be reduced from \$2 to \$1.

The amendments to Chapter 10 allow for entries of two or more horses with the same trainer to be uncoupled for wagering purposes.

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

Any person may make written suggestions or comments on the proposed amendments on or before April 19, 1994. Written material should be directed to the Racing and Gaming Commission, Lucas State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on April 19, 1994, at 9 a.m. in the office of the Racing and Gaming Commission, Lucas State Office Building, Second Floor, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapter 99D.

The following amendments are proposed.

ITEM 1. Rescind subrule 8.2(20) and insert in lieu thereof the following new subrule:

8.2(20) Minimum wager and payoff. The minimum wager to be accepted by any licensed association for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be \$2.20. For all other wagers, the minimum wager to be accepted by any licensed association shall be \$1. The minimum payoff for a \$1 wager shall be \$1.10. Any deviation from this must be approved by the administrator. In cases where a minus pool occurs, the association is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

ITEM 2. Rescind subrule **8.3(13)**, paragraph "h."

~~h. Coupled entries and mutuel fields shall be prohibited in superfecta contests.~~

ITEM 3. Amend rule **491—10.1(99D)**, definition of "Entry," as follows:

"Entry" means a horse entered for a race, or two or more horses entered and joined for the same race for pari-mutuel wagering purposes because of common ties of ownership; ~~or lease or training.~~

ITEM 4. Amend subrule **10.5(2)**, paragraph "c," subparagraphs (1) and (3), as follows:

(1) Entry coupling. When one ~~trainer or owner or lessee~~ enters more than one horse in the same race, the horses shall be coupled as an entry. Horses shall be regarded as having a common owner where an owner of ~~own one~~ horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, shall have an ownership interest in another horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation.

(3) Coupling of entries by stewards. The stewards shall couple as a single entry any horses which, in the determination of the stewards, are connected by common ownership or by a common ~~trainer lessee~~ or when the stewards determine that coupling is necessary in the interest of the regulation of the pari-mutuel wagering industry or necessary to the public confidence in racing ~~except when a trainer enters two or more horses in a stake, handicap, futurity, or other special event under beneficial separate ownerships, the horse may, at the request of the association and with the approval of the commission or stewards, be permitted to race as a separate wagering entity.~~

ITEM 5. Rescind subrule **10.5(2)**, paragraph "c," subparagraph (4), and insert in lieu thereof the following new subparagraph:

(4) Exclusion of single interest. Horses having the same owner, lessee or trainer shall not be permitted to enter or start if the effect would deprive a single interest from starting in overnight races.

ARC 4682A**STATE PUBLIC DEFENDER[493]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 13B.4(7) and 17A.4(1)"b," the State Public Defender terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on September 29, 1993, as **ARC 4283A**, adopting Chapter 13, "Court-Appointed Counsel—Eligibility Guidelines and Repayment," Iowa Administrative Code.

These rules were also Adopted and Filed Emergency as **ARC 4284A**. The State Public Defender has determined that the comments received in response to the Notice do not warrant changes to the emergency-adopted rules. Therefore, there is no need to proceed with rule making and **ARC 4283A** is hereby terminated.

ARC 4705A**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 476.1, 476.2, and 17A.17, the Utilities Board (Board) gives notice that on March 10, 1994, the Board issued an order in Docket No. RMU-94-2, In Re: Ex Parte Communications, "Order Commencing Rule Making," to consider the adoption of 199 IAC 7.14(17A).

The purpose of this rule making is to define a prohibited ex parte communication and establish procedures for disclosure of any prohibited communication. The rule making also establishes penalties for making a prohibited communication. At present the Board does not have rules addressing these topics. While the Iowa Code provides some guidance on the matter, the Board believes it is appropriate to establish more complete procedures for disclosure in the event a prohibited communication occurs. The Board believes it is better to address this issue now before any ex parte communication occurs rather than wait for a potentially difficult circumstance to arise before adopting standards.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of posi-

UTILITIES DIVISION[199](cont'd)

tion pertaining to the proposed rule. The statement must be filed on or before April 19, 1994, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and address and make specific reference to this docket. All communications shall be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled on May 10, 1994, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving comments. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

This amendment is intended to implement Iowa Code section 17A.17.

The following amendment is proposed.

Amend 199—Chapter 7 by adding the following **new** rule:

199—7.14 (17A) Ex parte communications.

7.14(1) Communications prohibited. Unless required for the disposition of ex parte matters specifically authorized by statute, an individual assigned to render a proposed or final decision or to make findings of fact or conclusions of law in a contested case, or a declaratory ruling in which there are two or more parties, shall not communicate directly or indirectly with any person or party, nor shall any person or party communicate directly or indirectly with such an individual concerning any issues of fact or law pending in that case unless each party or its representative is given prior written notice of the communication. The notice 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.

7.14(2) Disclosure of prohibited communications. Any communication between a party and an individual as-

signed to render a proposed or final decision, or to make findings of fact or conclusions of law in a contested case, or a declaratory ruling where there are two or more parties, which is made under circumstances and procedures which do not substantially comply with those set forth in subrule 7.14(1), is a prohibited communication. The recipient of a prohibited communication is required to submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the proceeding. After such submission, all parties shall have the right, upon written demand, to respond to the communication.

7.14(3) Penalty for prohibited communications.

a. The penalty for making a prohibited communication may be censure, suspension, or revocation of the privilege to practice before the board in the case of a party or the party's representative; and reprimand, suspension, or dismissal in the case of agency personnel. In the case of a party or the party's representative, the penalty may also include a decision against the party or dismissal of the proceeding.

b. In the case of a party or the party's representative, imposition of any penalty due to an alleged violation of the prohibition against ex parte communications shall be considered in a contested case after notice and opportunity to be heard.

7.14(4) For purposes of this rule, an individual assigned to render a proposed or final decision or to make findings of fact or conclusions of law in a contested case or declaratory ruling includes the board, an administrative law judge, or a board member acting as an administrative law judge.

7.14(5) Written objections authorized by Iowa Code section 476.6(5) which are received before the case is docketed as a formal proceeding are not prohibited communications.

7.14(6) A prohibited communication does not include communication by the board, the administrative law judge, or a board member acting as an administrative law judge with members of the utilities division as described in Iowa Code section 17A.17(1).

ARC 4711A

ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]

Formerly: CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board (the Board) adopts a new Chapter 11, "Personal Financial Disclosure," Iowa Administrative Code.

The new chapter identifies executive branch persons required to file personal financial disclosure reports and specifies the time, requirements, and procedure for such filing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 1994, as **ARC 4581A**. A public hearing on this chapter was held on February 24, 1994. In addition, prenotice comment on a substantially identical draft was solicited from interested persons during December 1993 and January 1994 by direct distribution to representatives of all agencies of the executive branch of state government.

This chapter is substantially identical to the chapter as published under Notice of Intended Action, with the following changes based upon public comment received: the grammatical rephrasing of the third sentence of 11.1(4); the correction of one title and the addition of one position under the Department of Economic Development, Product Development Corporation; the addition of one position under the Department of Personnel; the addition of four positions under Community Colleges, Area XI-DMACC; and the addition of a filing exemption procedure.

As noted in the Notice of Intended Action, the chapter imposes a filing date of April 30, 1994; April 30 was chosen to coincide with the filing deadline for state income tax returns, thus benefiting affected persons by allowing them to prepare their personal financial disclosure statement while referring to their tax records and by minimizing confusion as to filing deadlines. This benefit, as well as the benefit of making statutorily required financial disclosure available to the public on a timely basis, justifies the need for an early effective date under Iowa Code section 17A.5(2)"b"(2). Therefore, as had been anticipated in the Notice of Intended Action, the Board has adopted these rules Emergency After Notice with an April 1, 1994, effective date.

These rules are intended to implement Iowa Code Supplement section 68B.35.

The following new chapter is adopted:

CHAPTER 11
PERSONAL FINANCIAL DISCLOSURE

351—11.1(68B) Filing requirements and procedures.

11.1(1) All persons who are required to file a personal financial disclosure statement with the board pursuant to Iowa Code Supplement section 68B.35(2) shall file the statements with the board on or before April 30 of each year following a year during which the person holds a designated position, without regard to the length of time the position was occupied by the person. A person who

fills a designated position in an "acting" capacity shall also file a personal financial disclosure statement in the subsequent year. A person who held a designated position who leaves that position or state employment shall have a continuing obligation to file the statement for all years or portions of a year the position was held prior to termination.

11.1(2) Persons who are candidates for statewide office shall file reports with the board no later than 30 days after the date on which a person is required to file nomination papers for state office under Iowa Code section 43.11.

11.1(3) Statements shall be filed on Form PFD as designated by the board and shall cover the immediately preceding calendar year.

11.1(4) For the purpose of completing Form PFD, income sources which shall be reported include those sources which are held jointly with one or more persons and which in total generate more than \$1000 of income. "Jointly" means that the ownership of the income source is undivided among the owners, and that all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income which are co-owned but with ownership interests which are legally divisible, without full rights of use or enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds \$1000.

11.1(5) For purposes of completing Form PFD, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as an income source.

11.1(6) The forms may be filed with the board by mailing the form to: IECDB, Box 28E, Hoover State Office Building, Des Moines, Iowa 50319. These forms will be recorded through electronic means, and the electronic image of the forms will be retained in active files for a period of at least two years, after which time the imaged forms will be placed in electronic data archives for a period of at least ten years. The paper form will be destroyed after form imaging and electronic data backup. The electronic image of the form shall be available for inspection through the board's office. Printed copies of imaged forms may be obtained from the board in the same manner as for copies of other public records of the board.

11.1(7) Temporary provisions. For the 1993 calendar year, reports filed on or before April 30, 1994, shall cover the portion of 1993 from and including May 28, 1993, through December 31, 1993. This subrule is intended to implement 1993 Iowa Acts, chapter 163, section 35, subsection (4).

This subrule is rescinded effective December 31, 1994.

351—11.2(68B) Persons who are required to file with the board—by agency. For the purpose of Iowa Code Supplement section 68B.35(2), persons who hold positions described below are designated as subject to personal financial disclosure requirements. An agency in which a position is modified, created, or deleted such that the agency's position designations below should be modified should notify the board of the change in writing, requesting the board modify its rules. Persons who are aware of an undesignated position which appears to meet a criteria in Iowa Code Supplement section 68B.35(2) may make inquiry regarding that position to the board.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

<u>POSITION TITLE</u>	<u>Iowa Code Supplement Authority</u>	<u>Credit Union Division</u>	
1. AGRICULTURE AND LAND STEWARDSHIP, DEPARTMENT OF		p. Superintendent	§68B.35(2)"b"
a. Secretary of Agriculture	§68B.35(2)"a"	q. Credit Union Review Board Member - 1	§68B.35(2)"e"
b. Deputy Secretary of Agriculture	§68B.35(2)"c"	r. Credit Union Review Board Member - 2	§68B.35(2)"e"
c. Director, Administrative Division	§68B.35(2)"d"	s. Credit Union Review Board Member - 3	§68B.35(2)"e"
d. Director, Regulatory Division	§68B.35(2)"d"	t. Credit Union Review Board Member - 4	§68B.35(2)"e"
e. Director, Laboratory Division	§68B.35(2)"d"	u. Credit Union Review Board Member - 5	§68B.35(2)"e"
f. Director, Soil Conservation Division	§68B.35(2)"d"	v. Credit Union Review Board Member - 6	§68B.35(2)"e"
g. Director, Ag. Development Authority	§68B.35(2)"d"	w. Credit Union Review Board Member - 7	§68B.35(2)"e"
h. State Veterinarian	§68B.35(2)"d"		
i. Bureau Chief, Accounting Bureau	§68B.35(2)"d"	<u>Insurance Division</u>	
j. Bureau Chief, Agricultural Marketing Bureau	§68B.35(2)"d"	x. Insurance Commissioner	§68B.35(2)"b"
2. AUDITOR'S OFFICE		y. Deputy Comm'r., Prop./Casualty-Life/Health	§68B.35(2)"c"
a. Auditor of State	§68B.35(2)"a"	z. Superintendent of Securities	§68B.35(2)"d"
b. Deputy Auditor of State	§68B.35(2)"c"	aa. Administrator, Insurance Co. Examinations	§68B.35(2)"d"
c. Deputy, Administrative Division	§68B.35(2)"c"	<u>Professional Licensing Division</u>	
d. Deputy, Audit Division	§68B.35(2)"c"	ab. Administrator	§68B.35(2)"b"
e. Audit Director	§68B.35(2)"d"	<u>Utilities Division</u>	
f. Technical Services Director	§68B.35(2)"d"	ac. Utilities Board Member - 1	§68B.35(2)"e"
3. BLIND, DEPARTMENT FOR THE		ad. Utilities Board Member - 2	§68B.35(2)"e"
a. Director	§68B.35(2)"b"	ae. Utilities Board Member - 3	§68B.35(2)"e"
b. Sr. Program Administrator, Fiscal & Admin.	§68B.35(2)"d"	af. General Counsel - Bureau Chief	§68B.35(2)"d"
c. Program Administrator, Field Operations Div.	§68B.35(2)"d"	ag. Rate & Safety Evaluation Bureau Chief	§68B.35(2)"d"
d. Program Administrator, Bus. Ent. Prog.	§68B.35(2)"d"	7. CORRECTIONS, DEPARTMENT OF	
4. CIVIL RIGHTS COMMISSION		a. Director	§68B.35(2)"b"
a. Executive Director	§68B.35(2)"b"	b. Deputy Director - Community Services	§68B.35(2)"c"
b. Internal Administrative Law Judge	§68B.35(2)"d"	c. Deputy Director - Industries	§68B.35(2)"c"
5. COLLEGE STUDENT AID COMMISSION		d. Deputy Director - Institutions	§68B.35(2)"c"
a. Executive Director	§68B.35(2)"b"	e. Deputy Director - Administration	§68B.35(2)"c"
b. Director, Finance and Claims Administration	§68B.35(2)"d"	f. Director, Community Corrections, Dist. 1	§68B.35(2)"d"
6. COMMERCE, DEPARTMENT OF		g. Director, Community Corrections, Dist. 2	§68B.35(2)"d"
a. Director	§68B.35(2)"b"	h. Director, Community Corrections, Dist. 3	§68B.35(2)"d"
<u>Alcoholic Beverages Division</u>		i. Director, Community Corrections, Dist. 4	§68B.35(2)"d"
b. Administrator	§68B.35(2)"b"	j. Director, Community Corrections, Dist. 5	§68B.35(2)"d"
c. Customer Services Bureau Chief	§68B.35(2)"d"	k. Director, Community Corrections, Dist. 6	§68B.35(2)"d"
d. Licensing & Regulatory Bureau Chief	§68B.35(2)"d"	l. Director, Community Corrections, Dist. 7	§68B.35(2)"d"
e. Operations Management Bureau Chief	§68B.35(2)"d"	m. Director, Community Corrections, Dist. 8	§68B.35(2)"d"
<u>Banking Division</u>		n. Warden, Anamosa Correctional Facility	§68B.35(2)"d"
f. Superintendent of Banking	§68B.35(2)"b"	o. Warden, Ft. Madison Correctional Facility	§68B.35(2)"d"
g. Deputy Superintendent of Banking	§68B.35(2)"c"	p. Warden, Mitchellville Correctional Facility	§68B.35(2)"d"
h. Asst. Superintendent/Personnel	§68B.35(2)"d"		
i. Asst. Superintendent/Budget	§68B.35(2)"d"		
j. Banking Board Member - 1	§68B.35(2)"e"		
k. Banking Board Member - 2	§68B.35(2)"e"		
l. Banking Board Member - 3	§68B.35(2)"e"		
m. Banking Board Member - 4	§68B.35(2)"e"		
n. Banking Board Member - 5	§68B.35(2)"e"		
o. Banking Board Member - 6	§68B.35(2)"e"		

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

q.	Warden, Newton Correctional Facility	§68B.35(2)"d"	ae.	Product Development Corp. Director - 1	§68B.35(2)"e"
r.	Warden, Oakdale Correctional Facility	§68B.35(2)"d"	af.	Product Development Corp. Director - 2	§68B.35(2)"e"
s.	Warden, Rockwell City Correctional Facility	§68B.35(2)"d"	ag.	Product Development Corp. Director - 3	§68B.35(2)"e"
t.	Superintendent, Clarinda Corr. Facility	§68B.35(2)"d"	ah.	Product Development Corp. Director - 4	§68B.35(2)"e"
u.	Superintendent, Mt. Pleasant Corr. Facility	§68B.35(2)"d"	ai.	Product Development Corp. Director - 5	§68B.35(2)"e"
8.	CULTURAL AFFAIRS, DEPARTMENT OF		aj.	Product Development Corp. Director - 6	§68B.35(2)"e"
a.	Director	§68B.35(2)"b"	ak.	Product Development Corp. Director - 7	§68B.35(2)"e"
b.	Historical Society Administrator	§68B.35(2)"d"			
9.	ECONOMIC DEVELOPMENT, DEPARTMENT OF			<u>Business Investment Corporation</u>	
a.	Director	§68B.35(2)"b"	al.	Business Investment Corp. Director - 1	§68B.35(2)"e"
b.	Deputy Director	§68B.35(2)"c"	am.	Business Investment Corp. Director - 2	§68B.35(2)"e"
c.	Administrator, Admin. Services Division	§68B.35(2)"d"	an.	Business Investment Corp. Director - 3	§68B.35(2)"e"
d.	Administrator, Business Development Division	§68B.35(2)"d"			
e.	Administrator, Community & Rural Devel. Div.	§68B.35(2)"d"		<u>Iowa Finance Authority</u>	
f.	Administrator, International Division	§68B.35(2)"d"	ao.	Executive Director	§68B.35(2)"b"
g.	Administrator, Tourism Division	§68B.35(2)"d"	ap.	Deputy Director	§68B.35(2)"c"
h.	Administrator, Workforce Devel. Division	§68B.35(2)"d"	aq.	Chief Financial Officer	§68B.35(2)"d"
i.	Chief, Planning & Research Bureau	§68B.35(2)"d"	ar.	Title Guarantee Division Director	§68B.35(2)"d"
j.	Chief, Communications Bureau	§68B.35(2)"d"	as.	Finance Authority Member - 1	§68B.35(2)"e"
k.	Manager, Film Office	§68B.35(2)"d"	at.	Finance Authority Member - 2	§68B.35(2)"e"
l.	Chief, Business Expansions Bureau	§68B.35(2)"d"	au.	Finance Authority Member - 3	§68B.35(2)"e"
m.	Chief, Small Business Development Bureau	§68B.35(2)"d"	av.	Finance Authority Member - 4	§68B.35(2)"e"
n.	Chief, Business Finance Bureau	§68B.35(2)"d"	aw.	Finance Authority Member - 5	§68B.35(2)"e"
o.	Chief, Community Financing Bureau	§68B.35(2)"d"	ax.	Finance Authority Member - 6	§68B.35(2)"e"
p.	Chief, Community Assistance Bureau	§68B.35(2)"d"	ay.	Finance Authority Member - 7	§68B.35(2)"e"
q.	Chief, State Programs Bureau	§68B.35(2)"d"	az.	Finance Authority Member - 8	§68B.35(2)"e"
r.	Chief, Federal Programs Bureau	§68B.35(2)"d"	ba.	Finance Authority Member - 9	§68B.35(2)"e"
s.	Chief, Support Services Bureau	§68B.35(2)"d"	10.	EDUCATION, DEPARTMENT OF	
	<u>Economic Development Board</u> (Ten voting members appointed by governor)		a.	Director	§68B.35(2)"b"
t.	Economic Development Board Member - 1	§68B.35(2)"e"	b.	Administrator, Library Services Division	§68B.35(2)"d"
u.	Economic Development Board Member - 2	§68B.35(2)"e"	c.	Administrator, Voc. Rehab. Serv. Division	§68B.35(2)"d"
v.	Economic Development Board Member - 3	§68B.35(2)"e"	d.	Administrator, Community Colleges Division	§68B.35(2)"d"
w.	Economic Development Board Member - 4	§68B.35(2)"e"	e.	Administrator, Fin. & Inf. Services Division	§68B.35(2)"d"
x.	Economic Development Board Member - 5	§68B.35(2)"e"	f.	Administrator, Elem. & Secondary Ed. Div.	§68B.35(2)"d"
y.	Economic Development Board Member - 6	§68B.35(2)"e"	g.	Administrator, Office of Educ. Services	§68B.35(2)"d"
z.	Economic Development Board Member - 7	§68B.35(2)"e"			
aa.	Economic Development Board Member - 8	§68B.35(2)"e"		<u>Vocational Education Council</u>	
ab.	Economic Development Board Member - 9	§68B.35(2)"e"	h.	Executive Director	§68B.35(2)"b"
ac.	Economic Development Board Member - 10	§68B.35(2)"e"			
	<u>Product Development Corporation</u>			<u>Educational Examiners Board</u>	
ad.	President	§68B.35(2)"b"	i.	Executive Director	§68B.35(2)"b"
				<u>FINE Foundation</u>	
			j.	Executive Director	§68B.35(2)"b"
			11.	ELDER AFFAIRS, DEPARTMENT OF	
			a.	Executive Director	§68B.35(2)"b"
			b.	Administrator, Administration Division	§68B.35(2)"d"
			c.	Administrator, Operations Division	§68B.35(2)"d"

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

12. EMPLOYMENT SERVICES, DEPARTMENT OF
- a. Director §68B.35(2)"b"
- b. Chief, Staff Services Bureau §68B.35(2)"d"
- c. Chief, Administrative Services Bureau §68B.35(2)"d"
- d. Chief, Strategic Planning & Finance Bureau §68B.35(2)"d"
- Job Services Division
- e. Commissioner §68B.35(2)"b"
- f. Chief, Job Insurance Bureau §68B.35(2)"d"
- g. Chief, Field Operations Bureau §68B.35(2)"d"
- h. Supervisor, Field Operations Region 1 §68B.35(2)"d"
- i. Supervisor, Field Operations Region 2 §68B.35(2)"d"
- j. Supervisor, Field Operations Region 3 §68B.35(2)"d"
- k. Supervisor, Field Operations Region 4 §68B.35(2)"d"
- Labor Services Division
- l. Commissioner §68B.35(2)"b"
- m. Chief, Occupational Safety & Health Bureau §68B.35(2)"d"
- n. Chief, Consultation & Education Bureau §68B.35(2)"d"
- o. Chief, Employee Protection Bureau §68B.35(2)"d"
- p. Chief, Inspections & Reporting Bureau §68B.35(2)"d"
- Industrial Services Division
- q. Commissioner §68B.35(2)"b"
- r. Assistant Industrial Commissioner §68B.35(2)"c"
13. ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA
- a. ECD Board Member - 1 §68B.35(2)"e"
- b. ECD Board Member - 2 §68B.35(2)"e"
- c. ECD Board Member - 3 §68B.35(2)"e"
- d. ECD Board Member - 4 §68B.35(2)"e"
- e. ECD Board Member - 5 §68B.35(2)"e"
- f. ECD Board Member - 6 §68B.35(2)"e"
- g. Executive Director §68B.35(2)"b"
14. GENERAL SERVICES, DEPARTMENT OF
- a. Director §68B.35(2)"b"
- b. Administrator, Communications Division §68B.35(2)"d"
- c. Administrator, Admin. Services Division §68B.35(2)"d"
- d. Administrator, Information Services Div. §68B.35(2)"d"
- e. Administrator, Property Management Division §68B.35(2)"d"
- f. Administrator, Purch. & Mats. Mgmt. Div. §68B.35(2)"d"
- g. Superintendent, Printing/Mail/Records Div. §68B.35(2)"d"
- h. Vehicle Dispatcher §68B.35(2)"d"
15. GOVERNOR'S ALLIANCE ON SUBSTANCE ABUSE
- a. Director §68B.35(2)"b"
16. GOVERNOR'S OFFICE
- a. Governor §68B.35(2)"a"
- b. Lieutenant Governor §68B.35(2)"a"
- c. Chief of Staff §68B.35(2)"d"
17. HUMAN RIGHTS, DEPARTMENT OF
- a. Director §68B.35(2)"b"
- b. Div. Administrator, Comm. Action Agencies §68B.35(2)"d"
- c. Div. Administrator, Crim. & Juv. Just. Plng. §68B.35(2)"d"
- d. Div. Administrator, Deaf Services §68B.35(2)"d"
- e. Div. Administrator, Latino Affairs §68B.35(2)"d"
- f. Div. Administrator, Persons w/ Disabilities §68B.35(2)"d"
- g. Div. Administrator, Status of African Amer. §68B.35(2)"d"
- h. Div. Administrator, Status of Women §68B.35(2)"d"
18. HUMAN SERVICES, DEPARTMENT OF
- a. Director §68B.35(2)"b"
- b. Deputy Director for Administration §68B.35(2)"c"
- c. Deputy Director for Services §68B.35(2)"c"
- d. Administrator, Fiscal Management Division §68B.35(2)"d"
- e. Administrator, Support Services Division §68B.35(2)"d"
- f. Administrator, Data Management Division §68B.35(2)"d"
- g. Administrator, MH/MR/DD Division §68B.35(2)"d"
- h. Administrator, Medical Services Division §68B.35(2)"d"
- i. Administrator, Policy Coordination Division §68B.35(2)"d"
- j. Administrator, Economic Assistance Division §68B.35(2)"d"
- k. Administrator, Adult/Child./Fam. Serv. Div. §68B.35(2)"d"
- l. Superintendent, Glenwood State Hosp.-School §68B.35(2)"d"
- m. Superintendent, Woodward State Hosp.-School §68B.35(2)"d"
- n. Superintendent, Cherokee Mental Health Inst. §68B.35(2)"d"
- o. Superintendent, Clarinda Mental Health Inst. §68B.35(2)"d"
- p. Superintendent, Independence M.H.I. §68B.35(2)"d"
- q. Superintendent, Mt. Pleasant M.H.I. §68B.35(2)"d"
- r. Superintendent, Iowa Juvenile Home (Toledo) §68B.35(2)"d"
- s. Superintendent, Iowa State Training School §68B.35(2)"d"
- t. Regional Administrator, Cedar Rapids Region §68B.35(2)"d"
- u. Regional Administrator, Council Bluffs Reg. §68B.35(2)"d"
- v. Regional Administrator, Des Moines Region §68B.35(2)"d"
- w. Regional Administrator, Sioux City Region §68B.35(2)"d"
- x. Regional Administrator, Waterloo Region §68B.35(2)"d"
19. INSPECTIONS AND APPEALS, DEPARTMENT OF
- a. Director §68B.35(2)"b"
- b. Deputy Director §68B.35(2)"c"
- c. Administrator, Appeals Division §68B.35(2)"d"
- d. Administrator, Audits Division §68B.35(2)"d"

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

e. Administrator, Investigations Division	§68B.35(2)"d"	e. Deputy Attorney General - Crim. Justice Bur.	§68B.35(2)"d"
f. Administrator, Health Facilities Division	§68B.35(2)"d"	f. Director, Revenue Division	§68B.35(2)"d"
g. Administrator, Finance Division	§68B.35(2)"d"	g. Director, Special Litigation Division	§68B.35(2)"d"
h. Chief, Budget & Accounting Bureau	§68B.35(2)"d"	h. Director, Transportation Division	§68B.35(2)"d"
i. Employment Appeal Board Member - 1	§68B.35(2)"e"	i. Director, Regents & Human Services	§68B.35(2)"d"
j. Employment Appeal Board Member - 2	§68B.35(2)"e"	j. Director, Environmental Law Division	§68B.35(2)"d"
k. Employment Appeal Board Member - 3	§68B.35(2)"e"	k. Director, Consumer Protection Division	§68B.35(2)"d"
l. Administrator, Racing & Gaming Commission	§68B.35(2)"d"	l. Director, Licensing & Admin. Law Division	§68B.35(2)"d"
m. Racing & Gaming Commission - Member 1	§68B.35(2)"e"	m. Director, Criminal Appeals Division	§68B.35(2)"d"
n. Racing & Gaming Commission - Member 2	§68B.35(2)"e"	n. Director, Area Prosecution Division	§68B.35(2)"d"
o. Racing & Gaming Commission - Member 3	§68B.35(2)"e"	o. Administrator, Crime Victims Assist. Prog.	§68B.35(2)"d"
p. Racing & Gaming Commission - Member 4	§68B.35(2)"e"	p. Coordinator, Pros. Att'ys Training Council	§68B.35(2)"d"
q. Racing & Gaming Commission - Member 5	§68B.35(2)"e"	q. Consumer Advocate	§ 68B.35(2)"e"
r. State Public Defender	§68B.35(2)"b"	22. LAW ENFORCEMENT ACADEMY	
s. State Appellate Defender	§68B.35(2)"d"	a. Director	§68B.35(2)"b"
t. Public Defender Supervisor, Black Hawk Co.	§68B.35(2)"d"	b. Law Enforcement Training Coordinator	§68B.35(2)"d"
u. Public Defender Supervisor, Cerro Gordo Co.	§68B.35(2)"d"	c. Administrative Officer	§68B.35(2)"d"
v. Public Defender Supervisor, Des Moines Co.	§68B.35(2)"d"	23. MANAGEMENT, DEPARTMENT OF	
w. Public Defender Supervisor, Dubuque Co.	§68B.35(2)"d"	a. Director	§68B.35(2)"b"
x. Public Defender Supervisor, Lee Co.	§68B.35(2)"d"	b. Director, Local Budget Division	§68B.35(2)"d"
y. Public Defender Supervisor, Linn Co.	§68B.35(2)"d"	c. Director, State Budget Division	§68B.35(2)"d"
z. Public Defender Supervisor, Polk Co.-Adult	§68B.35(2)"d"	24. NATURAL RESOURCES, DEPARTMENT OF	
aa. Public Defender Supervisor, Polk Co.-Juv.	§68B.35(2)"d"	a. Director	§68B.35(2)"b"
ab. Public Defender Supervisor, Pottawattamie Co.	§68B.35(2)"d"	b. Deputy Director	§68B.35(2)"d"
ac. Public Defender Supervisor, Story Co.	§68B.35(2)"d"	c. Administrator, Administrative Services Div.	§68B.35(2)"d"
ad. Public Defender Supervisor, Woodbury Co.	§68B.35(2)"d"	d. Administrator, Waste Mgmt. Assist. Division	§68B.35(2)"d"
ae. Director, Foster Care Review Board	§68B.35(2)"d"	e. Administrator, Environmental Protection Div.	§68B.35(2)"d"
20. IOWA PUBLIC TELEVISION		f. Administrator, Energy & Geological Res. Div.	§68B.35(2)"d"
a. Executive Director	§68B.35(2)"b"	g. Administrator, Fish & Wildlife Division	§68B.35(2)"d"
b. Director of Administration	§68B.35(2)"d"	h. Administrator, Forests & Forestry Division	§68B.35(2)"d"
c. Director of Development	§68B.35(2)"d"	i. Administrator, Parks, Rec. & Preserves Div.	§68B.35(2)"d"
d. Director of Engineering	§68B.35(2)"d"	j. Chief, Env. Prot. Compliance & Enf'mnt Bur.	§68B.35(2)"d"
e. Director of Educational Telecommunications	§68B.35(2)"d"	k. Chief, Fish & Wildlife Law Enf'mnt Bureau	§68B.35(2)"d"
f. Director of Programming	§8B.35(2)"d"	<u>Environmental Protection Commission</u>	
21. JUSTICE, DEPARTMENT OF		l. Environmental Protection Comm'n Member - 1	§68B.35(2)"e"
a. Attorney General	§68B.35(2)"a"	m. Environmental Protection Comm'n Member - 2	§68B.35(2)"e"
b. Executive Deputy Attorney General	§68B.35(2)"d"	n. Environmental Protection Comm'n Member - 3	§68B.35(2)"e"
c. Deputy Attorney General - Civil Justice Bur.	§68B.35(2)"d"	o. Environmental Protection Comm'n Member - 4	§68B.35(2)"e"
d. Deputy Attorney General - Public Prot. Bur.	§68B.35(2)"d"	p. Environmental Protection Comm'n Member - 5	§68B.35(2)"e"
		q. Environmental Protection Comm'n Member - 6	§68B.35(2)"e"

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

r. Environmental Protection Comm'n Member - 7	§68B.35(2)"e"	27. PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE	
s. Environmental Protection Comm'n Member - 8	§68B.35(2)"e"	a. Public Member - 1	§68B.35(2)"e"
t. Environmental Protection Comm'n Member - 9	§68B.35(2)"e"	b. Public Member - 2	§68B.35(2)"e"
<u>Natural Resource Commission</u>		c. DNR Dir.'s Designee unless otherwise covered	§68B.35(2)"e"
u. Natural Resource Comm'n Member - 1	§68B.35(2)"e"	d. Treas.'s Designee unless otherwise covered	§ 8B.35(2)"e"
v. Natural Resource Comm'n Member - 2	§68B.35(2)"e"	e. Ins. Cmr.'s Designee unless otherwise covered	§8B.35(2)"e"
w. Natural Resource Comm'n Member - 3	§68B.35(2)"e"	28. PUBLIC DEFENSE, DEPARTMENT OF	
x. Natural Resource Comm'n Member - 4	§68B.35(2)"e"	a. Adjutant General	§68B.35(2)"b"
y. Natural Resource Comm'n Member - 5	§68B.35(2)"e"	b. Deputy Adjutant General	§68B.35(2)"c"
z. Natural Resource Comm'n Member - 6	§68B.35(2)"e"	c. Director, Emergency Management Division	§68B.35(2)"d"
aa. Natural Resource Comm'n Member - 7	§68B.35(2)"e"	29. PUBLIC EMPLOYMENT RELATIONS BOARD	
25. PAROLE BOARD		a. PER Board Member - 1	§68B.35(2)"e"
a. Executive Director	§68B.35(2)"b"	b. PER Board Member - 2	§68B.35(2)"e"
b. Parole Board Member - 1	§68B.35(2)"e"	c. PER Board Member - 3	§ 68B.35(2)"e"
c. Parole Board Member - 2	§68B.35(2)"e"	30. PUBLIC HEALTH, DEPARTMENT OF	
d. Parole Board Member - 3	§68B.35(2)"e"	a. Director	§68B.35(2)"b"
e. Parole Board Member - 4	§68B.35(2)"e"	b. Deputy Director	§68B.35(2)"c"
f. Parole Board Member - 5	§68B.35(2)"e"	c. Director, Subst. Abuse & Health Prom. Div.	§68B.35(2)"d"
26. PERSONNEL, DEPARTMENT OF		d. Director, Family & Comm. Health Division	§68B.35(2)"d"
a. Director	§68B.35(2)"b"	e. Director, Health Protection Division	§68B.35(2)"d"
b. Chief, Personnel Services Bureau	§68B.35(2)"d"	f. Chief, Fiscal Bureau	§68B.35(2)"d"
c. Chief, Emplmt. Law & Labor Relations Bureau	§68B.35(2)"d"	g. Health Facilities Council Member - 1	§68B.35(2)"e"
d. Chief, Compensation & Benefits Bureau	§68B.35(2)"d"	h. Health Facilities Council Member - 2	§68B.35(2)"e"
e. Chief, Data & Word Processing Bureau	§68B.35(2)"d"	i. Health Facilities Council Member - 3	§68B.35(2)"e"
f. Chief, Employment Bureau	§68B.35(2)"d"	j. Health Facilities Council Member - 4	§68B.35(2)"e"
g. Chief, Investments Bureau	§68B.35(2)"d"	k. Health Facilities Council Member - 5	§68B.35(2)"e"
h. Chief, Retirement Benefits Bureau	§68B.35(2)"d"	<u>Board of Dental Examiners</u>	
i. Chief, Administration Bureau	§68B.35(2)"d"	l. Executive Director	§68B.35(2)"b"
<u>Public Employees Retirement System Board</u>		<u>Board of Medical Examiners</u>	
j. IPERS Investment Board Member - 1	§68B.35(2)"e"	m. Executive Director	§68B.35(2)"b"
k. IPERS Investment Board Member - 2	§68B.35(2)"e"	<u>Board of Nursing Examiners</u>	
l. IPERS Investment Board Member - 3	§68B.35(2)"e"	n. Executive Director	§68B.35(2)"b"
m. IPERS Investment Board Member - 4	§68B.35(2)"e"	<u>Board of Pharmacy Examiners</u>	
n. IPERS Investment Board Member - 5	§68B.35(2)"e"	o. Executive Director	§68B.35(2)"b"
o. IPERS Investment Board Member - 6	§68B.35(2)"e"	31. PUBLIC SAFETY, DEPARTMENT OF	
p. IPERS Investment Board Member - 7	§68B.35(2)"e"	a. Commissioner	§68B.35(2)"b"
q. IPERS Investment Board Member - 8	§68B.35(2)"e"	b. Executive Assistant	§68B.35(2)"c"
r. IPERS Investment Board Member - 9	§68B.35(2)"e"	c. State Medical Examiner	§68B.35(2)"d"
		d. State Fire Marshal	§68B.35(2)"d"
		e. Chief of the State Patrol	§68B.35(2)"d"
		f. Director of Capitol Police	§68B.35(2)"d"
		g. Director, Narcotics Enforcement Division	§68B.35(2)"d"
		h. Director, Administration Division	§68B.35(2)"d"
		i. Director, Criminal Investigation Division	§68B.35(2)"d"
		j. Chief, Governor's Traffic Safety Bureau	§68B.35(2)"d"
		k. Chief, Communications Bureau (State Patrol)	§68B.35(2)"d"

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

32. REGENTS, BOARD OF

a.	Executive Director	§68B.35(2)"b"
b.	Deputy Executive Director	§68B.35(2)"c"
c.	Regents Board Member - 1	§68B.35(2)"e"
d.	Regents Board Member - 2	§68B.35(2)"e"
e.	Regents Board Member - 3	§68B.35(2)"e"
f.	Regents Board Member - 4	§68B.35(2)"e"
g.	Regents Board Member - 5	§68B.35(2)"e"
h.	Regents Board Member - 6	§68B.35(2)"e"
i.	Regents Board Member - 7	§68B.35(2)"e"
j.	Regents Board Member - 8	§68B.35(2)"e"
k.	Regents Board Member - 9	§68B.35(2)"e"

University of Iowa

l.	President	§68B.35(2)"b"
m.	Provost	§68B.35(2)"c"
n.	Vice President for Finance and Treasurer	§68B.35(2)"d"
o.	Vice President for Health Services	§68B.35(2)"d"
p.	Vice President for Research	§68B.35(2)"d"
q.	Vice President for Statewide Health Serv.	§68B.35(2)"d"
r.	Vice President for University Relations	§68B.35(2)"d"
s.	Business Manager	§68B.35(2)"d"
t.	Director of Financial Mgmt./ Budget and Sec.	§68B.35(2)"d"
u.	Director of University Hospitals & Clinics	§68B.35(2)"d"
v.	Director of Purchasing	§68B.35(2)"d"

Iowa State University of Science & Technology

w.	President	§68B.35(2)"b"
x.	Vice President for External Affairs	§68B.35(2)"d"
y.	Vice President for Business and Finance	§68B.35(2)"d"
z.	Vice President for Student Affairs	§68B.35(2)"d"
aa.	Provost	§68B.35(2)"c"
ab.	Vice Provost for Extension	§68B.35(2)"d"
ac.	Vice Provost for Research & Advanced Studies	§68B.35(2)"d"
ad.	Director, Physical Res. & Tech. Institute	§68B.35(2)"d"
ae.	Secretary	§68B.35(2)"d"
af.	Treasurer	§68B.35(2)"d"
ag.	Director of Business Affairs	§68B.35(2)"d"

University of Northern Iowa

ah.	President	§68B.35(2)"b"
ai.	Vice President for Acad. Affairs & Provost	§68B.35(2)"c"
aj.	Vice President for Administration & Finance	§68B.35(2)"d"
ak.	Vice President for Ed. & Student Serv.	§68B.35(2)"d"
al.	Vice President for Development	§68B.35(2)"d"
am.	Executive Assistant to the President	§68B.35(2)"d"
an.	Controller and Secretary	§68B.35(2)"d"
ao.	Director of Purchasing	§68B.35(2)"d"

Iowa School for the Deaf

ap.	Superintendent	§68B.35(2)"b"
aq.	Assistant Superintendent	§68B.35(2)"c"
ar.	Director of Business Operations	§68B.35(2)"d"

Iowa Braille and Sight Saving School

as.	Superintendent	§68B.35(2)"b"
at.	Director of Administrative Services	§68B.35(2)"d"

33. REVENUE AND FINANCE, DEPARTMENT OF

a.	Director	§68B.35(2)"b"
b.	Deputy Director	§68B.35(2)"c"
c.	Administrator, Administration Division	§68B.35(2)"d"
d.	Administrator, Local Gov. Serv. Division	§68B.35(2)"d"
e.	Administrator, Info. & Mgmt. Serv. Division	§68B.35(2)"d"
f.	Administrator, Audit & Compliance Division	§68B.35(2)"d"
g.	Administrator, Technical Services Division	§68B.35(2)"d"
h.	Administrator, Financial Mgmt. Division	§68B.35(2)"d"
<u>Tax Review Board</u>		
i.	Tax Review Board Member - 1	§68B.35(2)"e"
j.	Tax Review Board Member - 2	§68B.35(2)"e"
k.	Tax Review Board Member - 3	§68B.35(2)"e"

Lottery Division

l.	Commissioner	§68B.35(2)"b"
m.	Assistant Commissioner	§68B.35(2)"c"
n.	Chief, Security Bureau	§68B.35(2)"d"
o.	Chief, Marketing Bureau/ Dir. of Marketing	§68B.35(2)"d"
p.	Chief, Financial Bureau/ Financial Manager	§68B.35(2)"d"
q.	Sales Manager	§68B.35(2)"d"
r.	Lottery Board Member - 1	§68B.35(2)"e"
s.	Lottery Board Member - 2	§68B.35(2)"e"
t.	Lottery Board Member - 3	§68B.35(2)"e"
u.	Lottery Board Member - 4	§68B.35(2)"e"
v.	Lottery Board Member - 5	§68B.35(2)"e"

34. SECRETARY OF STATE'S OFFICE

a.	Secretary of State	§68B.35(2)"a"
b.	First Deputy Secretary of State	§68B.35(2)"c"
c.	Deputy Assistant for Business Services	§68B.35(2)"c"
d.	Deputy Assistant for Elections & Pub. Inf.	§68B.35(2)"c"
e.	Director, Admin. & Commercial Services	§68B.35(2)"d"

35. STATE FAIR BOARD

a.	General Manager	§68B.35(2)"b"
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36. TRANSPORTATION, DEPARTMENT OF

a.	Director	§68B.35(2)"b"
b.	Deputy Director	§68B.35(2)"c"
c.	Director, Management Bureau	§68B.35(2)"d"
d.	Director, Policy and Information Bureau	§68B.35(2)"d"
e.	Director, Transportation Safety Bureau	§68B.35(2)"d"
f.	Director, Administration Division	§68B.35(2)"d"
g.	Director, Planning & Research Division	§68B.35(2)"d"
h.	Director, Air & Transit Division	§68B.35(2)"d"
i.	Director, Highway Division	§68B.35(2)"d"
j.	Director, Rail and Water Division	§68B.35(2)"d"
k.	Director, Motor Vehicle Division	§68B.35(2)"d"

Transportation Commission

l.	Transp. Comm'n Member - 1	§68B.35(2)"e"
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ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

m.	Transp. Comm'n Member - 2	§68B.35(2)"e"	
n.	Transp. Comm'n Member - 3	§68B.35(2)"e"	
o.	Transp. Comm'n Member - 4	§68B.35(2)"e"	
p.	Transp. Comm'n Member - 5	§68B.35(2)"e"	
q.	Transp. Comm'n Member - 6	§68B.35(2)"e"	
r.	Transp. Comm'n Member - 7	§68B.35(2)"e"	
37.	TREASURER OF STATE'S OFFICE		
a.	Treasurer of State	§68B.35(2)"b"	
b.	First Deputy Treasurer of State	§68B.35(2)"c"	
c.	Second Deputy Treasurer of State	§68B.35(2)"c"	
d.	Deputy Assistant	§68B.35(2)"d"	
38.	VETERANS AFFAIRS, COMMISSION OF		
a.	Executive Director	§68B.35(2)"b"	
b.	Commandant, Iowa Veterans Home	§68B.35(2)"d"	
c.	Business Manager, Iowa Veterans Home	§68B.35(2)"d"	
39.	COMMUNITY COLLEGES		
	<u>AREA I - NICC</u>		
a.	President	§68B.35(2)"b"	
b.	Vice President for Educational Services	§68B.35(2)"d"	
	<u>AREA II - NIACC</u>		
c.	President	§68B.35(2)"b"	
d.	Vice President for Academic Affairs	§68B.35(2)"d"	
	<u>AREA III - ILCC</u>		
e.	President	§68B.35(2)"b"	
f.	Executive Vice President	§68B.35(2)"c"	
g.	Vice President for Academic Affairs	§68B.35(2)"d"	
	<u>AREA IV - NCC</u>		
h.	President	§68B.35(2)"b"	
i.	Dean, Instructional Services	§68B.35(2)"d"	
	<u>AREA V - ICC</u>		
j.	President	§68B.35(2)"b"	
k.	Vice President of Academic Affairs	§68B.35(2)"d"	
	<u>AREA VI - IVCC District</u>		
l.	President	§68B.35(2)"b"	
m.	Executive Vice President	§68B.35(2)"c"	
n.	Dean, Ellsworth Community College/Vice President for Student Services	§68B.35(2) "b","d"	
o.	Dean, Marshalltown Community College/Vice President for Academic Services	§68B.35(2) "b","d"	
p.	Vice President of C.E. & Community Services/ Vice President of Marketing	§68B.35(2) "b","d"	
q.	MCC Dean of Instruction	§68B.35(2)"d"	
r.	ECC Dean of Instruction	§68B.35(2)"d"	
	<u>AREA VII - HCC</u>		
s.	President	§68B.35(2)"b"	
t.	Vice President for Academic Affairs	§68B.35(2)"d"	
	<u>AREA IX - EICC District</u>		
u.	Chancellor	§68B.35(2)"b"	
v.	President, Clinton Comm. College/Vice Chancellor for Academic Affairs & Planning	§68B.35(2) "b","d"	
w.	President, Muscatine Community College/Vice Chancellor for Ancillary Services	§68B.35(2) "b","d"	
x.	President, Scott Community College/Vice Chancellor for Student Devel. & Technology	§68B.35(2) "b","d"	
	<u>AREA X - KCC</u>		
y.	President	§68B.35(2)"b"	
z.	Vice President for Instruction	§68B.35(2)"d"	
aa.	Vice President for Administration	§68B.35(2)"d"	
	<u>AREA XI - DMACC</u>		
ab.	President	§68B.35(2)"b"	
ac.	Vice President, Ankeny Campus	§68B.35(2)"d"	
ad.	Vice President, Operations	§68B.35(2)"d"	
ae.	Executive Dean, Academic/ Student Services	§68B.35(2)"d"	
af.	Executive Dean, Boone Campus	§68B.35(2)"d"	
ag.	Executive Dean, Carroll Campus	§68B.35(2)"d"	
ah.	Executive Dean, Newton Campus	§68B.35(2)"d"	
ai.	Executive Dean, Urban Campus	§68B.35(2)"d"	
	<u>AREA XII - WITCC</u>		
aj.	President	§68B.35(2)"b"	
ak.	Exec. Vice President for Instruction	§68B.35(2)"d"	
	<u>AREA XIII - IWCC</u>		
al.	President	§68B.35(2)"b"	
am.	Vice President for Instructional Services	§68B.35(2)"d"	
	<u>AREA XIV - SWCC</u>		
an.	Superintendent/President	§68B.35(2)"b"	
ao.	Vice President of Instruction	§68B.35(2)"d"	
	<u>AREA XV - IHCC</u>		
ap.	President	§68B.35(2)"b"	
aq.	Exec. Vice President/Dean, Finance & Records	§68B.35(2)"d"	
ar.	Executive Dean for Instruction	§68B.35(2)"d"	
	<u>AREA XVI - SCC</u>		
as.	President	§68B.35(2)"b"	
at.	Dean of Instruction	§68B.35(2)"d"	
	351—11.3(68B) Annual filing exemption—procedure.		
	A person occupying a position identified in rule 11.2(68B) may request an annual filing exemption by making written application to the board no later than October 1 of each year. The application shall be accompanied by affidavits signed by the person's immediate supervisor and the executive or administrative head of the agency (if different) which attest that the person's position does not involve a substantial exercise of administrative discretion or the expenditure of public funds. Upon receipt of the application and affidavit(s), the board may require the person to make an individual appearance before the board. On or before December 31 of each year, the board shall issue a notice of exemption to persons to whom exemptions are granted. A person who receives an exemption is not required to file a personal financial disclosure statement covering the year in which the exemption is granted. A person is not precluded from making application for an exemption in subsequent years.		
	These rules are intended to implement Iowa Code Supplement section 68B.35.		
	[Filed Emergency After Notice 3/11/94, effective 4/1/94] [Published 3/30/94]		
	EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.		

ARC 4692A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 1994 Iowa Acts, Senate File 2034, sections 2 and 3, the Department of Human Services hereby amends Chapter 153, "Social Services Block Grant and Funding for Local Services," appearing in the Iowa Administrative Code.

The Emergency Supplemental Appropriations Act of 1993, Public Law 103-75, appropriated \$75 million for a fund to support public health and social services provided in response to flooding along the Mississippi River and its tributaries. Iowa was awarded \$1,776,000 from this appropriation to be used in those areas of the state the President has declared a major disaster area. The funds were awarded under the same terms and conditions as Iowa's Fiscal Year 1993 Social Services Block Grant award.

The Seventy-fifth General Assembly, in 1994 Iowa Acts, Senate File 2034, appropriated these funds to the Department to be used in accordance with all applicable special federal conditions to provide emergency social services and to make grants to agencies, organizations, and other government entities for provision of emergency social services for flood relief.

These amendments outline the Department's plans and procedures for using the federal flood relief supplemental social services block grant funds. Seventy-five percent of the funds will be awarded as grants to county governments in the 25 most flood-impacted counties, based on the number of Federal Emergency Management Administration (FEMA) applications from persons per county. The 25 targeted counties account for over 81 percent of statewide FEMA applications. Each county's grant will be proportional to that county's percent of total applications from the 25 counties. Twenty-five percent of the funds will be used for social service block grant services provided through the Department and for administrative costs.

County governments were chosen as the entity to receive relief grants because the counties have an active role in providing services, coordinating planning, and accounting for governmental funds. There have been increases in demand for Department services such as child abuse investigations and counseling services due to flood-related stress. These funds will also offset this increase.

The Department of Human Services finds that these amendments implement 1994 Iowa Acts, Senate File 2034, section 2, and that 1994 Iowa Acts, Senate File 2034, section 3, authorizes the Department to adopt rules to implement 1994 Iowa Acts, Senate File 2034, section 2, under Iowa Code sections 17A.4(2) and 17A.5(2)"b," without notice and public participation to become effective immediately upon filing, unless a later effective date is specified in the rules.

These amendments are also published herein as a Notice of Intended Action, **ARC 4691A**, to allow for public comment.

The Council on Human Services adopted these amendments March 9, 1994.

These amendments are intended to implement Iowa Code section 234.6 and 1994 Iowa Acts, Senate File 2034, section 2.

These amendments became effective March 10, 1994.

Amend 441—Chapter 153 by adopting the following new rule:

441—153.8(234) Federal flood relief supplemental social services block grant funds for emergency social services. The department shall be authorized to develop spending plans for federal flood relief social services block grant funds appropriated to the department for the fiscal year beginning July 1, 1993, and ending June 30, 1994. These funds may be used by the department, in accordance with all applicable special federal conditions, to provide emergency social services and to award grants to agencies, organizations, and other government entities for the provision of emergency social services for flood relief. Funds shall be used for the provision of emergency social services to persons, families, and children experiencing stress or impairments to functioning as a result of flood-related damage to their residence, temporary or permanent loss of employment or income, or temporary or permanent displacement from their home community. The department shall coordinate expenditure of these funds with other relief efforts. This relief program shall be implemented in accordance with the following provisions:

153.8(1) Funding to counties. The department shall utilize 75 percent of the flood relief supplemental appropriation to award grants for emergency social services to county governments in the 25 most severely impacted counties, based on the number of Federal Emergency Management Administration (FEMA) individual applications submitted from each Iowa county as of February 15, 1994. These counties are: Polk, Linn, Black Hawk, Pottawattamie, Boone, Johnson, Scott, Wapello, Story, Muscatine, Dickinson, Tama, Louisa, Greene, Fremont, Crawford, Lee, Dallas, Jasper, Des Moines, Van Buren, Carroll, Warren, Clay, Marshall. This grant program shall be implemented subject to the following conditions:

a. Each of the 25 counties shall be awarded a grant based on that county's respective proportion of the total FEMA individual applications submitted from the 25 counties.

b. County government shall use these funds to provide any combination, based on local needs, of the following services: congregate meals; counseling; day care for children; employment services; health-related and home health services; home-based services; home delivered meals; housing services; pregnancy and parenting services for young parents; prevention and intervention services; recreational services; special services for youth involved in, or at risk of involvement in, criminal activity; substance abuse services; transportation services; and wrap-around services.

c. The department shall develop a program description for these grant awards which shall further define the allowable services listed in paragraph "b."

d. The department shall execute a Grant Agreement, Form 470-3128, with the board of supervisors in each of the 25 counties receiving grant funds and shall implement payment and reporting procedures for the program. Counties shall submit quarterly progress and fiscal reports to the department which shall describe plans for the use of grant funds, eligibility criteria used by the county, services provided, the number of persons receiving services, and expenditures for services delivered.

e. The department shall work with the counties receiving grants to ensure the most effective utilization of these funds for flood relief emergency social services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

153.8(2) Funding to department. The department shall utilize 25 percent of the flood relief supplemental appropriation to provide social services block grant services for flood relief in the five departmental regions and for reasonable administrative costs incurred by the department as a result of this supplemental appropriation. This program shall be implemented in accordance with the following procedures:

a. The department shall allocate these funds among the five regions based upon each region's respective proportion of the statewide number of individual Federal Emergency Management Administration (FEMA) applications submitted through February 15, 1994.

b. Each regional office of the department shall use their share of these funds to provide direct or purchased social services to individuals and families.

c. These funds shall be used by the regions for any of the following services: child abuse investigations, home-based services, day care for children, and wrap-around services.

d. Individuals receiving department services through this allocation shall meet existing eligibility criteria for the services they receive and service delivery shall follow appropriate service procedures.

e. Each department regional administrator shall target these funds to those counties and individuals most adversely affected by the 1993 flood crisis based on each county's respective number of FEMA applications.

f. Department expenses involved in the administration of these supplemental funds shall be charged against this portion of the total relief appropriation. Administrative costs, including costs of department direct service provision, shall not exceed 10 percent of the total federal supplemental allocation.

g. If demand for services through this allocation is insufficient to expend these funds, the department shall be authorized to divert funds into the county grant program outlined in 153.8(1) to either add to existing grants or make additional grants to counties based on their number of FEMA applications.

h. Any funds allocated under this subrule that are not spent by the department as of September 30, 1994, shall be returned to the federal government in accordance with the federal conditions for this appropriation.

This rule is intended to implement Iowa Code section 234.6 and 1994 Iowa Acts, Senate File 2034, section 2.

[Filed Emergency 3/10/94, effective 3/10/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4680A

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code chapter 17A and Iowa Code Supplement section 256.52, the State Commission of Libraries hereby rescinds 224—Chapters 1 to 6 and adopts 286—Chapter 1, "Organization and Operation," Chapter 2, "Public Records and Fair Informa-

tion Practices," Chapter 3, "Statewide Programs and Agreements Background," and Chapter 6, "Library Services and Construction Act (LSCA) Grant Program," Iowa Administrative Code.

The Division of Libraries and Information Services proposes to rescind rules of the Library Division 224—Chapters 1 to 6 and adopt 286—Chapters 1 to 3 and 6 under the umbrella of the Department of Education pursuant to Iowa Code Supplement section 256.51.

In compliance with Iowa Code section 17A.4(2), the State Commission of Libraries finds that notice and public participation are impracticable and contrary to the public interest because of the statutory requirement of administrative rules to detail the library's rules and operations.

The Commission 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 made effective upon filing with the Administrative Rules Coordinator because the rules confer a benefit on the public by establishing the agency's operations in rule form and making them readily available for public inspection.

Notice of Intended Action is published herein as **ARC 4687A** to solicit public comment on these rules.

These rules will become effective March 30, 1994.

These rules are intended to implement Iowa Code Supplement sections 256.50 to 256.56.

Rescind **224—Chapters 1 and 6** and adopt the following **new** chapters in lieu thereof:

CHAPTER 1 ORGANIZATION AND OPERATION

286—1.1(256) Definitions. The definitions used in Iowa Code chapters 17A and 256 will apply for terms used throughout this chapter. In addition, the following definitions will apply:

"ADA" means the Americans with Disabilities Act of 1990.

"Administrator" means the state librarian, who shall serve as the administrator of the division of libraries of the department of education.

"Department" means the department of education.

"Director" means the director of the department of education.

"LSCA" means the Library Services and Construction Act Grant Program as defined by P.L. 101-254 (1990).

"State librarian" means the chief operating officer of the state library.

"State library" means the library agency within the division of libraries of the department of education.

286—1.2(256) Mission. The mission of the state library is to promote excellence in libraries and library services to Iowans; foster the development of statewide cooperative services and shared resources among libraries; and meet the informational needs of the three branches of government and Iowa's medical and legal communities.

286—1.3(256) Organization and operation.

1.3(1) Location. The state library is located at East 12th Street and Grand Avenue, Des Moines, Iowa 50319; telephone (515)281-4105; fax (515)281-6191. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays.

1.3(2) Sections. The state library consists of eight sections: library development (includes the Library Services and Construction Act Grant Program, library accreditation, library staff certification, Open Access,

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Access Plus, continuing education and consulting); networking (includes the Iowa Locator, the Iowa Fax Network, and Iowa Resources and Information Sharing (IRIS)); information services (includes the state medical, federal documents, state documents, and patents depository collections); the state law library; technical services (includes the state documents depository program); the state data center; audiovisual services; and administration.

1.3(3) Commission on libraries. The commission on libraries consists of seven members as defined in Iowa Code section 256.52. The commission shall meet at a time and place specified by the chair. Notice of a meeting and the agenda will be posted at the state library at least ten days prior to the meeting and shall be mailed to any interested individual or organization upon request. The operation of commission meetings shall be governed by the following procedures:

a. A quorum shall consist of four members.

b. Any action taken by the commission requires an affirmative vote by at least four members.

c. Persons wishing to appear before the commission shall submit a written request to the state librarian not less than 14 days prior to a meeting. Presentations shall be allowed at the discretion of the chair. Persons wishing to submit written material shall do so at least 14 days prior to a meeting so that commission members have adequate time to receive and evaluate the material.

d. Near the conclusion of each meeting, the chair shall set the date, time and location of the next meeting.

1.3(4) Minutes. Minutes of commission meetings are available for inspection at the state librarian's office during regular business hours. Copies of minutes are available upon request at no charge, allowing for reasonable transcription time.

286—1.4(256) Information delivery.

1.4(1) Photocopies of library materials for Iowa residents. The state library will provide library service to any resident of Iowa. To ensure the availability of high-demand library materials for in-house use, the state library may choose not to lend specific library items. In lieu of lending the original item, the library may choose to provide a photocopy of the requested material at a nominal charge. Fax and priority delivery services may also be requested by the borrower at additional expense.

1.4(2) Photocopies of library materials for nonresidents of Iowa. To encourage interstate resource sharing, the state library may enter into reciprocal free interlibrary loan photocopy agreements with out-of-state libraries. For other out-of-state businesses and residents, the state library will charge the following fees:

first 10 pages	\$ 5.00 minimum
11-20	6.50
21-30	8.00
31-50	10.00
over 50	10.00 plus 15¢ per page

Fax and priority delivery services may also be requested by the borrower at additional cost to the borrower.

This rule shall not preclude the state library from participating in interstate library compacts to support reciprocal resource sharing.

286—1.5(256) Access to library's collections.

1.5(1) The state library's materials collections are housed in the Historical Building, East 12th Street and Grand Avenue, Des Moines, and in the State Capitol

Building. Both buildings are listed on the National Register of Historic Places under the National Historic Preservation Act and are accessible to the disabled.

1.5(2) Primary research and study areas of the library's two locations are accessible to the disabled; however, upper tiers are generally closed to all public access. Staff may authorize access on a case-by-case basis or will retrieve materials requested by library users.

286—1.6(256) Collection policy of the library. Purpose is to define the intended coverage and clientele; establish collection management and selection policies; provide staff with the means to ensure consistency, responsiveness, and wise use of funds in collection building; assist in development of performance measures; establish priorities to guide budget allocations and cataloging and preservation decisions; and document the library's commitment to intellectual freedom.

SEE: Collection Policy. State Library of Iowa, May 28, 1993.

These rules are intended to implement Iowa Code Supplement sections 256.50 to 256.56.

CHAPTER 2

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The library division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices, which are printed in the first Volume of the Iowa Administrative Code:

286—2.1(17A,22) Definitions. As used in this chapter: "Agency." In lieu of the words "(official or body issuing these rules)", insert "library division".

286—2.3(17A,22) Requests for access to records.

2.3(1) Location of record. In lieu of the words "(insert agency head)", insert "state librarian". Also in lieu of the words "(insert agency name and address)", insert "State Librarian, State Library of Iowa, East 12th Street and Grand Avenue, Des Moines, Iowa 50319".

2.3(2) Office hours. In lieu of the words "(insert customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays".

286—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 2.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law

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enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

286—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

286—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

286—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the agency need not release the following records:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to

the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

Other records will be released in accordance with the Iowa Code.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

286—2.13(17A,22) Availability of records.

2.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure under Iowa Code section 22.7;

b. Minutes of closed meetings of a government body as provided in Iowa Code section 21.5(4);

c. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law;
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency;

(See Iowa Code sections 17A.2 and 17A.3)

d. Individual ranking sheets (except for requester's own) of grant application evaluators; or

e. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

286—2.14(17A,22) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system

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with personally identifiable information in another record system. The record systems maintained by the agency are:

2.14(1) Personnel records. These records concern departmental employees and their families, as well as applicants for employment with the department. The system contains material on health, dental, life, and long-term disability insurance; pay and benefit documents; tax withholding; position description questionnaires; affirmative action and equal employment opportunity; disciplinary information; grievances and appeals; performance planning and evaluation; training; deferred compensation; worker's compensation; payroll records; and other materials relating to the employees of the department. Some of the information may be confidential under Iowa Code section 22.7(11) and other legal provisions. These records contain names, social security numbers and other identifying numbers, and are collected in paper form and through the state's automated data processing system.

2.14(2) Reserved.

286—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 2.13(17A,22). The records listed may contain information about individuals.

2.15(1) Council, board, and commission records. Agendas, minutes, and materials presented to the state library commission are available from the state library, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

2.15(2) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2.15(3) Publications. This office receives a number of books, periodicals, newsletters, government documents, annual reports and brochures related to its mission. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the library division.

2.15(4) Office publications. This office issues a variety of materials including promotional and grants brochures and pamphlets, press releases, project and annual reports, and newsletters which may contain information about individuals, staff or members of boards, councils, or commissions.

2.15(5) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

2.15(6) Other records. Other records are disclosed to the public unless otherwise exempted by law.

286—2.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

286—2.17(17A,22) Applicability. This chapter does not:

2.17(1) Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2.17(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

2.17(3) Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

2.17(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

2.17(5) Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

CHAPTER 3

STATEWIDE PROGRAMS AND AGREEMENTS BACKGROUND

The state library is charged with developing long-range plans for the continued improvement of library services in the state. The most recent long-range plan was entitled "Iowa Libraries: A Time to Grow, 1985-90." The major accomplishments from that planning effort include the development of the interlibrary loan system and the statewide computerized card catalog, the establishment of a voluntary certification program for public librarians, and the establishment of standards for public libraries which includes a voluntary accreditation program.

Based on existing programs and services, the current planning effort addresses the state library's role in promoting and developing library services in the state, coordinating interlibrary cooperation, and providing Iowans with access to the publications of state government. The state library's other roles, such as meeting the information needs of the three branches of state government and providing census, patent, legal and medical information, are not addressed in this document.

SEE: Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992.

286—3.1(256) Iowa Resources and Information Sharing (IRIS). Purpose is to facilitate resource sharing in Iowa by providing an electronic interlibrary loan system for the sharing of interlibrary loans and the transfer of information (such as reference questions and the answers to those questions).

SEE: Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992.

286—3.2(256) Iowa Locator. Purpose is to increase Iowa citizens' access to holdings of Iowa libraries and to encourage multitype library cooperation in the state of Iowa.

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SEE: Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992; Library Services and Construction Act grant applications and agreements. State Library of Iowa.

286—3.3(256) Open Access. Purpose is to provide Iowa citizens with direct access to more library materials and information resources. It is a reciprocal borrowing program that enables users from participating libraries to directly check out materials from other participating libraries.

SEE: Open Access Program Letter of Agreement. State Library of Iowa.

286—3.4(256) Access Plus. Purpose is to provide Iowa citizens with equal access to library resources by encouraging and supporting multitype resource sharing. Access Plus subsidizes participating libraries for each interlibrary loan, from the first loan, made to an eligible Iowa library.

SEE: Access Plus Program Letter of Agreement. State Library of Iowa.

286—3.5(256) Iowa Fax Network. Purpose of the Iowa Fax Network is to expedite responses to library users' requests by standardizing the use of telefacsimile (fax) for the sending and receiving of requests or information between participating libraries.

SEE: Iowa Fax Network Letter of Agreement. State Library of Iowa.

286—3.6(256) In Service to Iowa: Public Library Measures of Quality. Purpose is to provide performance measures to encourage the ongoing development of quality library service in the state. By identifying policies, service levels, role selection and output measures, consistency and quality in all aspects of library service can be achieved.

SEE: In Service to Iowa: Public Library Measures of Quality. 2d ed. State Library of Iowa, 1989.

286—3.7(256) Iowa Certification Program for Public Librarians. Purpose is to improve library service in Iowa by encouraging public librarians to acquire, maintain and develop skills through basic and continuing education, by recognizing librarians who update skills, by improving the public image of librarians, and by providing guidelines for public library boards to use in developing hiring policies.

SEE: Iowa Certification Program for Public Libraries. State Library of Iowa, 1993.

286—3.8(256) Summer library program.

3.8(1) Purpose is to assist public libraries in planning summer reading programs by producing promotional and programming materials, locally adaptable, to help improve library service to youth in Iowa and to improve skills of librarians.

3.8(2) Procedures.

a. The manual and promotional materials are developed around a theme.

b. Participating libraries receive a base package of materials (manual, posters, bookmarks, and related materials). Additional quantities are available for purchase. Orders for materials are cumulated prior to printing.

c. Program materials are publicized and promoted through announcements in "Footnotes," the state library newsletter.

286—3.9(256) Iowa Depository for Iowa Publications Purpose. The depository library center is established within the state library to serve as the central agency for the collection and distribution of publications issued by state agencies to depository libraries.

3.9(1) Definitions.

"Core depository" shall receive only those publications found on the periodically compiled core list.

"Core list" of Iowa state documents is a selected list intended to meet the basic document needs of libraries.

"Depository library" means a library designated for the deposit of state publications.

"Depository library center" shall be the headquarters for the state documents depository program and shall also be referred to as the "state documents center."

"Full depository" shall be a library receiving everything collected by the depository library center.

"Permanent depository" shall be a library receiving and permanently maintaining two copies of each state publication.

"State agency" means a legislative, executive, or judicial office of the state and all of its respective offices, departments, divisions, bureaus, boards, commissions, committees, and state institutions of higher education governed by the state board of regents.

"State information products" are defined as any multiply produced informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. State information products specifically include, but are not limited to, public documents appearing as reports, directories, statistical compendiums, bibliographies, lists, state plans, statutes, codes, laws and bills, rules, regulations, transcripts of public hearings, journals, newsletters, bulletins, periodicals, books, pamphlets, brochures, charts, maps, surveys, other printed matter, audiovisual materials, microfilm, microfiche, and all electronic information sources in all electronic formats. State information products do not include correspondence and memoranda intended solely for internal use within the agency or between agencies, materials designated by law as being confidential, materials excluded from this definition by the department through the adoption and enforcement of rules, and materials determined by the depository library center staff to be exempt.

3.9(2) Administration of the depository program.

a. The state documents depository program shall be administered by the depository librarian under the direction of the state librarian.

b. A nine-member advisory council shall be organized to advise the state library regarding this program. The advisory council may be composed of members of state agencies, representatives of depository and nondepository libraries, and the general public. The council shall be appointed by the state librarian with the recommendation of the depository librarian.

c. The state library/depository library center shall serve as the last copy depository for predepository state information products and for those products never deposited with the center since its 1979 inception.

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3.9(3) State agency requirements.

a. Upon issuance of a state publication a state agency shall deposit with the depository library center, at no cost to the center, 75 copies of the publication, or a lesser amount if specified by the center.

b. It shall be the responsibility of the issuing state agency to create duplicate copies of publications in limited supply to meet the minimal copy requirements of the depository library center as specified by the center.

3.9(4) Designation of depositories.

a. The state library and the University of Iowa shall be designated as the two permanent depositories for Iowa state publications.

b. The Library of Congress shall receive one copy of each state publication collected.

c. Depository status of additional libraries shall be determined by the state librarian upon written application by a library. A library may be designated as either a full depository or core depository based upon the judgment of the depository library center and the preference of the library.

d. Depository libraries may be selected on the basis of one or more of the following criteria:

(1) Geographic location consistent with a policy of distributing depositories so as to minimize the distance a user would need to travel.

(2) Demonstrated ability to handle the receipts desired based on size of collection, identified need of the library's clientele, and the availability of space, staff and equipment.

(3) Present federal depository status.

(4) Upon approval of the application, a contract between the depository library shall be completed.

3.9(5) Depository library requirements.

a. The permanent depositories shall permanently maintain two copies of each publication. One copy shall be considered archival and will not circulate. The other copy shall be available for loan.

b. All publications received under this program by the full depository and core depository libraries shall be retained for a minimum period of three years unless a lesser retention period is designated for an item or items by the depository library center.

c. The depository agrees to make the documents available for free public use.

d. Materials missing from depository shipments shall be claimed from the depository library center within one month of receipt of the shipment. After that time, requests shall be made directly to the issuing agency or the state printer.

3.9(6) Withdrawal of a library from the program.

a. A full depository library may withdraw from the depository program by sending written notice to the depository library center 60 days prior to such withdrawal.

b. A core depository library may withdraw from this program by sending written notice to the depository library center.

c. A library's depository designation may be withdrawn for failure to conform to the terms of the contract.

d. Upon termination of the contract the depository documents become the property of the depository library center and must be returned to the center or to such other depositories as may be specified by the center.

SEE: Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992.

These rules are intended to implement Iowa Code sections 256.50 to 256.55.

CHAPTERS 4 and 5

Reserved

CHAPTER 6

LIBRARY SERVICES AND CONSTRUCTION
ACT (LSCA) GRANT PROGRAM

286—6.1(256) Description. The Library Services and Construction Act (LSCA) Grant Program is an annual, federally funded, competitive grant program which provides assistance to local libraries and library programs in Iowa. The LSCA program is authorized by P.L. 101-254 (1990) and consists of Titles I, II, and III.

6.1(1) Title I grants. Title I grants assist public libraries by:

a. Extending public library services to areas and populations lacking these services;

b. Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations;

c. Making public library services accessible to individuals who are disadvantaged (e.g., handicap, age, literacy level, limited English-speaking proficiency) at the same levels such services are made available to the public;

d. Improving public library service through effective use of technology;

e. Strengthening state library programs for public libraries.

6.1(2) Title II grants. Title II grants assist public libraries in the construction, renovation, and technological enhancement of public library buildings.

6.1(3) Title III grants. Title III grants provide funds to facilitate statewide resource sharing between public libraries and other types of libraries.

286—6.2(256) State LSCA advisory council. As authorized by P.L. 101-254 (1990), the state LSCA advisory council shall consist of a minimum of nine members appointed by the state librarian. The council may be enlarged in membership by the state librarian in order to extend representation of the library and information resources of the state.

6.2(1) Membership. The membership of the LSCA advisory council shall include representatives of each of the following:

- a. Public libraries;
- b. School libraries;
- c. Academic libraries;
- d. Special libraries such as legal or medical libraries;
- e. Institutional libraries such as reformatory or state hospital libraries;
- f. Libraries serving the handicapped in the state;
- g. Library users. These users shall comprise at least one-third of the membership with at least one member being a representative of disadvantaged persons.

6.2(2) Duties of the state LSCA advisory council. The council advises the state library on the development of the state plan of library service, including the prepara-

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tion of annual and long-range programs required by the U.S. Department of Education, and assists the state library in evaluating LSCA programs and activities.

286—6.3(256) Grant process. The state library shall establish one or more application cycles for the LSCA program each year funds are available. The annual competitive grant award procedure for LSCA funds is announced in "Footnotes," the state library's newsletter, and the LSCA grant handbook. Copies of the handbook are available from the state library without charge.

6.3(1) Letter of intent. A letter of intent to apply for LSCA funds shall precede each completed application. Specific instructions on the letter of intent, application form, and annual deadlines are published in the State Library of Iowa LSCA Program Handbook. All letters of intent and completed applications shall be addressed to: Library Development, State Library of Iowa, East 12th Street and Grand Avenue, Des Moines, Iowa 50319; telephone (515)281-4400 or (800)248-4483. All LSCA applications shall be submitted on forms prescribed by the state library.

6.3(2) Eligibility. The eligibility requirements for the LSCA grant program are as follows:

a. Title I applicants shall be public libraries or organizations incorporated under the Iowa nonprofit corporation Act who are applying for funding for projects which will benefit public libraries;

b. Title II applicants shall be public libraries;

c. Title III applicants shall be Iowa libraries of all types or nonprofit organizations that are applying for funding for projects which benefit public libraries;

d. A public library applying for any LSCA grant must have submitted to the state library a copy of its enabling ordinance; a current Public Library Information Survey, which is annually distributed by the state library; and a current Application and Report Form for Accreditation, which also is annually distributed by the state library. Note that a public library is not required to be accredited to be eligible to apply for an LSCA grant, but it must complete and submit the Application and Report Form for Accreditation.

6.3(3) Grants review. LSCA applications are reviewed by state library personnel for determination of eligibility. Eligible applications are reviewed by the state LSCA advisory council according to the schedule in the annual handbook. When the volume of LSCA applications is excessive, peer review teams may assist the council in the evaluation of the applications using the evaluation form printed in the LSCA handbook. Following any preliminary evaluation of the review teams, the LSCA advisory council reviews applications and reports scores and recommendations to the state librarian who shall make final grant award decisions according to the schedule in the LSCA handbook.

6.3(4) Preliminary review team evaluation. The LSCA grant application guidelines outline the criteria used to evaluate applications.

6.3(5) LSCA advisory council evaluation. Applications are evaluated based on the criteria outlined in the LSCA grant application guidelines.

6.3(6) Reporting procedures. All LSCA grant recipients shall submit to the state library documentation of all LSCA project-related expenses and periodic and final project reports as provided for in the LSCA handbook and

as required by the U.S. Department of Education. LSCA funded projects are subject to on-site monitoring by state library personnel.

6.3(7) Notification of award. The state library shall, within 15 calendar days of the decision, notify all LSCA grant applicants of the results of their application.

6.3(8) Informal appeals. Informal appeals shall be made on procedural grounds only. Such grounds include alleged conflicts of interest, unfair or impartial treatment of applications, or procedures not uniformly applied to all applicants. Applicants may, within 15 calendar days of receipt of written notice of decision, request information regarding reasons why the application was not selected in the competitive process.

6.3(9) Informal appeal hearing. A written request for an informal appeal hearing with the state librarian shall be made within 10 calendar days of receipt of information regarding reasons why the applicant was declined funding. The hearing shall be held within 15 calendar days of the date of the request during regular business hours of the state library. The hearing shall be held before the state librarian or such members of a review board as the state librarian designates. The state librarian shall:

a. Notify the appellant as to the day, hour, and location of the hearing;

b. Inform the appellant of the right to submit any written documents regarding the application;

c. Inform the appellant that a spokesperson must be appointed if the appeal involves more than one person per project. The state librarian or designee shall direct questions only to the spokesperson during the hearing. Any other discussion or comments shall be reserved for a closed executive session. No indication of decision shall be given at the time of the hearing;

d. Notify the appellant in writing of the decision of the state librarian or designee within five calendar days of the hearing.

6.3(10) Formal appeal. A formal appeal of an LSCA decision may be made to the Director of the Department of Education, Grimes Building, Capitol Complex, Des Moines, Iowa 50319, within 15 calendar days of the appeal decision.

a. The appellant's argument should contain:

(1) The facts of the appeal;

(2) An argument in favor of the appeal;

(3) The remedy sought.

b. Appeals will be allowed on the procedural grounds that:

(1) Staff or review committee acted outside the statutory authority;

(2) Staff or review committee violated published policy or rules;

(3) Staff or review committee failed to provide adequate public notice;

(4) Staff or review committee altered the review or approval process to the detriment of the applicant without adequate prior notice;

(5) Staff or review committee was influenced to act as a result of a conflict of interest;

(6) Staff or review committee acted in a biased or unfair manner.

c. The director of the department of education will consider and rule on the appeal after receiving all documentation from the appellant and will notify the appellant in writing of the decisions within 30 days. The decision

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of the director of the department of education is final except as provided for in Iowa Code sections 17A.19 and 17A.20.

These rules are intended to implement Iowa Code Supplement section 256.51(2)"b."

[Filed Emergency 3/3/94, effective 3/30/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4690A

NURSING BOARD[655]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 272C.2, the Iowa Board of Nursing hereby adopts amendments to Chapter 5, "Continuing Education," Iowa Administrative Code.

These amendments reflect the change resulting from computerization of the licensure examination in which year-round testing will occur, eliminating national test dates, and delete a restriction. These amendments will enable a licensee to collect continuing education credit as soon as the license is issued.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable since these amendments simply reflect editorial changes and are noncontroversial.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on March 9, 1994, as they confer a benefit upon the public by ensuring that the rules to be enforced are printed correctly and are available for public distribution.

The Iowa Board of Nursing adopted these amendments on March 4, 1994.

These amendments are also published herein under Notice of Intended Action as **ARC 4688A** to allow for public comment. This emergency filing permits the Board to distribute correct copies of Chapter 5.

These amendments are intended to implement Iowa Code sections 272C.1 and 272C.2.

The following amendments are adopted.

ITEM 1. Amend **655—Chapter 5** by striking "258A" and inserting "272C" wherever it appears to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend subrule **5.2(2)**, paragraph "b," as follows:

b. The hours specified in paragraph "a" shall be completed in the license period for which the license was issued. ~~New graduates may collect hours beginning with the first day of the month following the licensure examination.~~ Credit will not be accepted for a duplication of informal or formal offerings within a license period.

[Filed Emergency 3/9/94, effective 3/9/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4707A

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of Iowa Code section 912.2A(2), the Crime Victim Assistance Board hereby amends Chapter 9, "Victim Assistance Program," Iowa Administrative Code.

The proposed action rescinds Division I, "Administration," and creates a new Division I with the same heading.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 8, 1993, as **ARC 4479A**. A public hearing was held on December 28, 1993. The Crime Victim Assistance Board adopted these rules on February 18, 1994.

There are changes in the adopted rules as a result of the public hearing and consideration by the Administrative Rules Review Committee of the Legislature. Language in the adopted rules not previously contained in the rules published under the Notice of Intended Action includes:

Subrule 9.3(2) establishes that Crime Victim Assistance Board members are eligible for a per diem to conform with guidelines established by the Department of Revenue and Finance.

Subrule 9.4(2), which stated that the chair of the Crime Victim Assistance Board would abstain from voting except to break a tie vote, was deleted.

Paragraph 9.10(1)"e," which defined when and how the Department would become involved in crime crisis response in Iowa, was deleted.

Subrule 9.10(2), relative to compensation of a crime victim center, was deleted.

These rules are intended to implement Iowa Code chapter 912.

These rules will become effective May 6, 1994.

The following rules are adopted.

Amend **61—Chapter 9** by rescinding Division I, "Administration," and inserting the following new Division I in lieu thereof:

DIVISION I ADMINISTRATION

61—9.1(912) Definitions.

"Board" means crime victim assistance board.

"Department" means Iowa department of justice.

"Director" means director of the crime victim assistance division established in the department of justice.

61—9.2(912) Board.

9.2(1) A crime victim assistance board is established pursuant to Iowa Code section 912.2A.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(912) Expenses.

9.3(1) Board members shall be reimbursed from the victim's compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated

by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue and finance.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem which conforms with guidelines established by the department of revenue and finance.

9.3(3) Expenses of the board and individual members shall be submitted to the director.

61—9.4(912) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(912) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

c. If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

d. The attorney general at the attorney general's discretion may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(912) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(912) Meetings. The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

61—9.8(912) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the crime victim assistance division including the adoption of administrative rules relating to the following:

1. Administration of grants received under the federal Victims of Crime Act of 1984 pursuant to Pub. L. No.

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98-473, title 2, chapter 14, 42 U.S.C. Section 10601, as amended by the Children's Justice and Assistance Act of 1986, Pub. L. No. 99-401, 100 Stat. 903 and as amended by the Anti-Drug Abuse Act of 1988, title VII, subtitle D, Pub. L. No. 100-690.

2. Administration of the Family Violence Prevention and Services Act grant pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. Section 10401, reauthorized in 1988, Pub. L. No. 100-294.

3. Administration of the domestic abuse and rape crisis funds and the Iowa domestic abuse hotline funds provided in Iowa Code chapter 236.

4. Administration of other grants or funds available by public law for victim assistance and administered by the department.

5. Administration of the victim compensation program provided in Iowa Code chapter 912.

6. Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.

7. Appeal procedures for victim compensation claims denied by the department.

8. Appeal procedures for grants administered by the department and denied by the board.

61—9.9(912) Director and staff. The attorney general shall employ a director and staff for the victim assistance division and they shall be employees of the department.

61—9.10(912) Duties of department. In addition to the duties contained in Iowa Code section 13.13, the department shall:

1. Administer other funds, grants, or programs for victim assistance created by public law or the department.

2. Provide administrative support to the board.

3. Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.

4. Accept, use, and dispose of contributions of money, services, and property, which are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual, that are specifically designated for crime victim assistance programs.

[Filed 3/11/94, effective 5/6/94]

[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4715A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 256.7(5) and 17A.3, the Iowa State Board of Education hereby adopts an amendment to Chapter 2, "Petitions for Rule Making," Iowa Administrative Code.

Notice of Intended Action was published in the December 8, 1993, Iowa Administrative Bulletin as **ARC**

4481A. The State Board of Education adopted this amendment on March 10, 1994.

This amendment is being made to reflect the current title for legal consultant of the Department of Education.

This amendment implements Iowa Code section 17A.3.

This amendment will become effective May 4, 1994.

The following amendment is adopted:

Amend rule **281—2.3(17A)** by deleting the word "Administrative".

[Filed 3/11/94, effective 5/4/94]

[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4714A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby adopts amendments to Chapter 6, "Appeal Procedures," Iowa Administrative Code.

These amendments include specific amendments that reflect current hearing procedures and incorporate some of the Uniform Rules on contested cases.

Notice of Intended Action was published in the February 2, 1994, Iowa Administrative Bulletin as **ARC 4590A**. Changes following the Notice include deletion of "appeal" in Item 8 and addition of ", if required," in Item 13.

Interested persons were allowed to submit suggestions or comments on the proposed amendments. A public hearing was held on February 22, 1994. No comments were received. These amendments were adopted by the State Board of Education on March 10, 1994.

These amendments implement Iowa Code sections 17A.11 to 17A.17, 256.7(6), 275.16, 282.18, 282.32, 285.12, and Iowa Code chapter 290.

These amendments will become effective May 4, 1994.

The following amendments are adopted.

ITEM 1. Amend rule 281—6.2(290) as follows:

281—6.2(290) Type of appeal. The rules of this chapter are applicable to all *hearing requests* ~~appeals filed~~ seeking appellate review by the state board of education, the director of education, or the department of education.

ITEM 2. Amend subrule 6.3(1) as follows:

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark or the date personal service is made. *Delivery of the affidavit or other request for appeal shall not be*

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made by facsimile (fax). Time shall be computed as provided in Iowa Code subsection 4.1(22).

ITEM 3. Amend rule 281—6.3(290,17A) by adding a new subrule 6.3(6) as follows:

6.3(6) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

ITEM 4. Amend subrule 6.4(1) as follows:

6.4(1) The director, on behalf of the board, has the power to issue subpoenas for witnesses, to compel the attendance of those witnesses, and the giving of evidence by them, in the same manner and to the same extent as the district court may do. *An agency subpoena shall be issued to a party on written request made at least ten days prior to the hearing. Parties are responsible for obtaining service of their own subpoenas.*

ITEM 5. Amend subrule 6.4(2) as follows:

6.4(2) Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. ~~Compensation shall be paid out of the general fund of the proper school corporation upon the certificate of the director on behalf of the state board to and warrant of the proper official unless subrule 6.4(3) is applicable.~~ *The witness's fees and mileage are considered costs of the appeal under Iowa Code section 290.4; costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.*

ITEM 6. Amend rule 281—6.5(17A) as follows:

281—6.5(17A) Discovery. Discovery procedures applicable to civil actions are available to all parties in contested cases before the department. Evidence obtained in discovery may be used in the hearing before the department if that evidence would otherwise be admissible in the hearing. ~~Subpoenas shall be issued to a party on request.~~

Any deviations from the time periods established for compliance with discovery in the Iowa Rules of Civil Procedure shall be determined by the administrative law judge upon opportunity for all parties to be heard.

ITEM 7. Add the following new rule and renumber existing rules **6.6(17A)** to **6.13(17A)** as **6.7(17A)** to **6.14(17A)** as follows:

281—6.6(17A) Consolidation—severance.

6.6(1) Consolidation. The administrative law judge may consolidate any or all matters at issue in two or more appeals 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 of those proceedings.

6.6(2) Severance. The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

ITEM 8. Amend renumbered subrule **6.8(1)**, paragraph "b," as follows:

b. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When

any absent party has been properly notified, ~~it~~ *this fact* shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was *sent* in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

ITEM 9. Amend renumbered subrule **6.8(2)**, paragraphs "a," "c," and "e," as follows:

a. The appellant ~~shall~~ *may* begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. *The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.*

e. Each witness shall be administered an oath by the administrative law judge. The oath ~~may~~ *shall* be in the following form: "~~You do~~ *Do you* solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth-?"

ITEM 10. Add new subrule 6.8(3) as follows:

6.8(3) Telephone hearings. Upon agreement of the parties, a hearing may take place by telephone conference call.

ITEM 11. Amend renumbered subrule **6.10(3)**, paragraph "e," as follows:

e. All proposed findings of fact and ~~exceptions conclusions~~ *conclusions of law.*

ITEM 12. Amend renumbered subrule 6.11(1) as follows:

6.11(1) The administrative law judge, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. *This proposed decision shall be mailed to the parties or their representatives by regular mail.*

ITEM 13. Amend renumbered subrule 6.11(5) as follows:

6.11(5) Copies of a ~~the~~ final decision ~~will~~ *shall* be sent to the parties ~~or their representatives by regular mail~~ *within 20 5 days after state board action, if required, on the proposed decision.*

ITEM 14. Amend renumbered rule 281—6.13(17A) as follows:

281—6.13(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the administrative law judge stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been de-

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nied unless the board grants the application within 20 days after its filing.

ITEM 15. Amend the implementation paragraph at the end of **281—Chapter 6** as follows:

These rules are intended to implement Iowa Code sections ~~17A.11, 17A.12, 17A.16, to 17A.17, 256.7(6), 260.2, 275.16, 282.18, 282.32, 285.12, and 290.4 and Iowa Code chapter 290.~~

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4712A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby rescinds Chapter 16, "Educational Opportunities Outside a Student's Resident District," Iowa Administrative Code.

The rescission of Chapter 16 is in recognition of the fact that Iowa Code section 280.16, "Open enrollment," has been repealed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 1994, as **ARC 4592A**. As this amendment does not affect the general public, no public hearing was held. Interested persons were allowed to make written suggestions or comments by February 22, 1994. The State Board of Education adopted this amendment on March 10, 1994.

This amendment is intended to implement Iowa Code section 256.7(3).

The amendment shall become effective May 4, 1994.

The following amendment is adopted:

Rescind and reserve **281—Chapter 16**.

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4713A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby adopts amendments to Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

The amendments provide a religious exemption from the physical examination requirement; change the ter-

minology from "qualified" to "licensed" physician assistant and delete language regarding the circumstances under which physician assistants conduct physical examinations; and clarify that a transfer for school purposes (which encompasses the current language "for athletic purposes") is a ground for denial of eligibility.

Notice of Intended Action was published in the December 8, 1993, Iowa Administrative Bulletin as **ARC 4498A**. The State Board of Education adopted these amendments on March 10, 1994.

Interested persons were allowed to comment on the proposed amendments and a public hearing was held on December 28, 1993. No written or oral comments were received, and these amendments are identical to those published under Notice with exception of Item 2 where "will" was changed to "shall".

These amendments will become effective May 4, 1994.

These amendments implement Iowa Code section 280.13.

The following amendments are adopted.

ITEM 1. Amend subrule 36.14(1) as follows:

36.14(1) Physical examination. Every year each student shall present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, ~~qualified licensed~~ physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

~~Each physician assistant who performs examinations of athletes shall possess an approval certificate issued by the board of physician assistant examiners and shall conduct physicals under the statutory and regulatory terms established by Iowa law and administrative rules.~~

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 days is allowed for expired physical certifications.

A student shall not be required to submit to a physical examination if the student's parent or 18-year-old student submits to a school administrator an affidavit that the physical examination requirement conflicts with the tenets and practice of a recognized religious denomination of which the student is an adherent or member.

ITEM 2. Amend subparagraph **36.15(3)"b"(4)** as follows:

(4) In ruling upon the transfer of students who have been emancipated by marriage or by reaching the age of majority, the executive board is empowered to consider all circumstances with regard to the transfer to determine if it is principally for ~~the purpose school or athletic purposes of participation in interscholastic athletics~~, in which case participation ~~will~~ shall not be approved. If facts showing a valid purpose for the transfer are established, the executive board may declare the student eligible.

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ARC 4701A

ELDER AFFAIRS
DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Department of Elder Affairs hereby adopts Chapter 24, "Adult Day Care and Facility-Based Respite Care," and Chapter 25, "Nonfacility-Based Respite Care," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 10, 1993, as ARC 4417A. A public hearing was conducted on November 30, 1993. The Commission on Elder Affairs adopted these new chapters on March 2, 1994. There were several changes made from the Notice of Intended Action as a result of three oral comments and six written comments and further consideration by a special committee.

These changes are as follows:

The titles of the two new chapters are changed to "Adult Day Care and Facility-Based Respite Care" and "Nonfacility-Based Respite Care," respectively. This change to "facility" from "institutional" in the title and references in the rules is to help differentiate these programs from the licensed health care institutions over which another department has oversight.

Revisions included the rescinding of portions of subrules and paragraphs which are appropriately perceived to be standards or guidelines and not rules.

Changes were made in the language of rules that were too stringent or regulatory and make it very difficult for some facilities to comply.

The terminology in paragraph 24.7(1)"e" was expanded to accommodate the various nutrition services and the recommended dietary allowances (RDAs).

These new chapters will provide an expanded explanation of the services available through these two programs. In addition, they will help ensure that a quality assurance component is part of every program by offering a uniform set of rules for consistent delivery of care.

These rules are intended to implement Iowa Code section 231.3(4).

These rules shall become effective May 4, 1994.

The following new chapters are adopted:

CHAPTER 24

ADULT DAY CARE AND
FACILITY-BASED RESPITE CARE

321—24.1(231) Scope and purpose. The purpose of adult day care and facility-based respite care services is to promote a maximum level of independence to functionally impaired adults living in the community. This is accomplished through a coordinated program of preventative, maintenance and rehabilitative services in a facility outside an individual's home and based on the individual's needs.

Adult day care and facility-based respite care is a participant-centered and participant-oriented community-based service. An adult day care center is facility-based, as opposed to in-home based.

321—24.2(231) Definitions. As used in this chapter:

"Adult day care and facility-based respite care" means an organized program of supportive care in a group

environment to persons who need supervision or assistance or both. Services may include but shall not be limited to nursing and rehabilitative services, personal care, transportation services, social or recreational activities and preventative or restorative services. The programs provide short-term care, adult day care being less than a 24-hour period and facility-based respite care greater than 24 hours but less than 14 days.

"Adult with functional impairments" means an adult who has a psychological, cognitive or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.

"Care conference" means a meeting of the service provider, participant, the family or caregiver of the participant, and the interdisciplinary team for the purpose of discussing, identifying, addressing, implementing, and reviewing plans to meet needs regarding the participant's care.

"Care plan" means the document that organizes the services to meet the needs identified in the assessment.

"Department" means the Iowa department of elder affairs.

"Facility" means the physical plant and equipment of an adult day care or facility-based respite care center whose program has been approved as meeting the standards established in these rules. Examples include, but are not limited to, adult day care facilities, respite care facilities, nursing facilities, and hospitals.

"Governing body" means an individual or group of individuals having administrative or contractual responsibility for the programs and services.

"Interdisciplinary team" means a team which may be composed of permanent staff, consultants, or a combination of both.

"Participant" means an eligible adult with specialized or challenging mental, physical, behavioral, or cognitive needs who benefits from participating in the adult day care or facility-based respite care program.

"Plan of care" means the process by which the participant's needs are assessed and addressed from intake through discharge.

"Provider" means any adult day care or facility-based respite care facility which meets the standards established in these rules.

"Representative" means the primary contact(s) in relation to care planning, support system, or decision making.

"Staff" means the administrator, director, or any person considered part of the staff ratio.

"Volunteer" means an individual who is not a paid staff member who performs specific duties and works directly under the supervision of a designated staff member.

321—24.3(231) Target population. The target population for adult day care or facility-based respite care service will be functionally impaired adults who require supervision and assistance or both.

Each center shall define the target populations it is able to serve, considering the needs of the participants and the scope and intensity of services the center can provide.

321—24.4(231) Plan of care. Each individual shall have an assessment conducted and a written care plan developed based upon the needs of the participant and the services available. This process shall include:

1. Intake screening.

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2. Preadmission assessment.
3. Medical information.
4. Assessment.
5. Written individual care plan.
6. Service documentation.
7. Updated assessment and care plan.

321—24.5(231) Record keeping. Participant and administrative records shall be maintained.

1. Participant records.
2. Administrative records.
3. Written policies and procedures.
4. Quality assurance component.

321—24.6(231) Staffing.

24.6(1) Basic requirements of staff. Each staff member shall be competent and qualified for the position held.

24.6(2) Staff. Staff shall be adequate in number and skills to provide essential core services. Each center that is co-located with another program in the same facility shall have staff with hours that are committed to the adult day care or facility-based respite care program.

24.6(3) Staff training and evaluation. All staff, paid and volunteer, shall receive:

- a. A general orientation.
- b. Training.
- c. A written probationary evaluation within six months and a written performance evaluation periodically thereafter.

d. Opportunities to participate in in-service training.

24.6(4) Staff-to-participant ratio. The staff-to-participant ratio shall be a minimum of one to six (1:6). Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualification standards of the organization, and have designated responsibilities.

321—24.7(231) Services offered. All adult day care or facility-based respite care centers shall arrange for services by direct provision, purchase or consultation.

24.7(1) Essential core services. These services shall be provided.

a. Personal care shall include assistance with activities of daily living such as walking, eating, grooming, toileting, and bathing.

b. Nursing services shall include assessing, monitoring, intervention and evaluating the participant's overall health status.

c. Social services shall be provided to participants and their representatives to help them with personal, family and psychosocial concerns that relate to the effectiveness of the treatment plan.

d. Therapeutic activities shall provide purposeful activities to meet the participant's assessed needs and interests adapted to the participant's optimal level of function.

e. Nutrition services and special diets shall be provided which meet a five-day averaged intake of one-third of the daily recommended dietary allowances (RDAs). If multiple meals are served each day, the combined meals must meet two-thirds RDA for two meals and 100 percent RDA for three meals. Fluids and snacks shall be offered as appropriate to meet the participant's liquid and nutritional needs.

f. Emergency services shall provide instructions for dealing with emergency situations and shall include a

written agreement with the participant or representative regarding arrangements for emergency care and ambulance transportation.

g. Therapeutic services shall include:

- (1) Medical services.
- (2) Physical therapy.
- (3) Speech therapy.
- (4) Occupational therapy.

24.7(2) Standards. All services offered in an adult day care or facility-based respite care center shall meet applicable federal, state, department, local and professional requirements.

321—24.8(231) Physical plant. The adult day care or facility-based respite care center shall comply with all applicable federal, state and local building regulations and zoning, fire, and health codes or ordinances.

24.8(1) Each adult day care or facility-based respite care center, when it is co-located in a facility housing other services, shall have its own separate identifiable space for main activity areas during operational hours.

24.8(2) The facility shall have sufficient space to accommodate the full range of program activities and services.

a. Program space includes the activity areas commonly used by the participants.

(1) Dining and kitchen areas are to be included only if used by participants for activities other than meals.

(2) Reception areas, storage areas, offices, restrooms, passageways, treatment rooms, service areas, or specialized areas used for therapies are not to be included when calculating square footage.

b. There shall be a minimum of 60 square feet of program space per participant.

c. Facilities serving participants with cognitive impairment or who use adaptive equipment should provide at least 80 square feet.

d. There shall be a minimum of one restroom per ten participants. Facilities serving participants with cognitive impairment or who use adaptive equipment should provide at least one restroom for each eight participants.

321—24.9(231) Reporting. Fiscal and performance reports shall be submitted to the department by the appropriate area agency on aging in compliance with the general and specific conditions of the contract with the Iowa department of elder affairs.

321—24.10(231) Waiver. An adult day care or facility-based respite care facility may submit a written request for a waiver, which includes a statement of reasons for noncompliance of a rule and assurances that the needs of the participants will be met and their safety not compromised by the waiver.

CHAPTER 25

NONFACILITY-BASED RESPITE CARE

321—25.1(231) Scope and purpose. The purpose of nonfacility-based respite care is to sustain the family or other primary caregiver of a functionally impaired individual by providing the caregiver with time-limited and temporary relief from the ongoing responsibility of care. Respite is intermittent and brief, two to three hours in duration, or longer than 24 hours. The care may take place in a variety of settings, such as a family or caregiver's home, or in the respite giver's home.

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321—25.2(231) Definition. As used in this chapter, "respite care" means care which provides temporary relief to the caregiver of a functionally impaired individual.

321—25.3(231) Target population. The target population is the family or caregiver of a functionally impaired individual. While the service is provided to the person with the disability, the primary benefits are derived by the family or primary caregiver.

321—25.4(231) Plan of care. An application shall be completed for each individual which determines eligibility and identifies information needed to provide nonfacility-based respite care.

321—25.5(231) Record keeping. The following participant and administrative records shall be maintained:

1. Participant records.
2. Administrative records.
3. Written policies and procedures.
4. Quality assurance component.

321—25.6(231) Staff training and evaluation. Staff shall be adequate in number and skills to provide care services while maintaining continuity of family life. All staff, paid and volunteer, shall receive:

1. General orientation.
2. Training.
3. Periodic written evaluations.
4. Opportunities to participate in in-service training.

321—25.7(231) Standards. All services offered by the nonfacility-based respite care program shall meet all applicable federal, state, department, local, and professional requirements.

321—25.8(231) Reporting. Fiscal and performance reports shall be submitted to the department by the appropriate area agency on aging in compliance with the general and specific conditions of the contract with the department.

321—25.9(231) Waiver. A nonfacility-based respite program may submit a written request for a waiver, which includes a statement of reasons for noncompliance of a rule and assurances that the needs of the participants will be met and their safety not be compromised by the waiver.

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ARC 4710A

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Formerly: CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board (the Board) adopts

miscellaneous changes to Chapters 1 to 10, amending references to the prior Commission and transferring the chapters from [121] to agency number [351].

Item 3 requires committees to file a bank statement with their January 20 report. The report covers the entire preceding calendar year, and the bank statement is being required to verify the account balance as of December 31.

Item 4 evidences a policy change by the Board to encourage timely filing even by facsimile by omitting the late penalty. Originals are still requested to replace the facsimiles to avoid copying problems sometimes presented by facsimiles.

Item 5 requires committee expenditures or reimbursements to be by check and not in cash. This is necessary to ensure proper tracking and reporting of expenditures, as well as verification of campaign expenditure purposes.

Items 6 and 7 clarify that while generally committees may not pay for anyone other than the candidate to attend a fundraiser meal, the committee may pay for a candidate's spouse who attends with the candidate.

Item 8 clarifies that placement of a yard sign on property controlled by a corporation is deemed to be a prohibited corporate contribution.

Item 9 creates a presumption that transactions between a corporation and a candidate are a political contribution, but allows the candidate to rebut that, for example, by showing that the same arrangement was available to the opponent or to the public generally.

Item 10 updates the name of the agency.

Item 11 updates the general agency description to reflect the change from commission to board, modernizes an outdated reference to the open meetings law, and includes the new duties of the Board.

Item 12 removes a duplicative rule regarding petitions for rule making, also covered under the Board's adoption of the Uniform Rules in Chapter 8; removes a duplicative rule regarding obtaining information, also covered under the Board's adoption of the Uniform Rules on Fair Information Practices in Chapter 10; removes outdated language regarding providing information to the Board as other language more accurately addressing this issue appears in Chapter 1 and in Iowa Code Supplement section 68B.32B; removes a duplicative rule regarding declaratory rulings, also covered under the Board's adoption of the Uniform Rules in Chapter 9; and removes outdated language regarding investigative powers, as other language more accurately addressing this issue appears in Chapter 1 and in Iowa Code Supplement section 68B.32B.

Item 13 removes conflicting language regarding copying costs and fees, but provides that the Board will conduct annual review of its costs and fees.

Item 14 rescinds Chapter 7 dealing with "fourteen-day reports," which were legislatively eliminated.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4542A**. No public comments were received. As a result of comments raised by the Administrative Rules Review Committee, two nonsubstantive changes were made to the rules as published under Notice of Intended Action: Item 5, by clarifying that reimbursements from a committee bank account by check can be made to cover personal cash transactions made on behalf of a committee, subject to the normal reporting requirements; and Item 6, by making grammatical corrections. Item 11 was modified upon the Board's own initiative to clarify that Iowa Code section 21.4 requires 24-hour notice of a Board meeting

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but, where possible, one week's notice will be given. The item appearing in the Notice as Item 14 was omitted, as a change in the rule is premature until final legislative action has been taken to change the postmark requirement to the date of the actual filing deadline, rather than the day prior.

These amendments were adopted by the Board on March 8, 1994, and will become effective on May 4, 1994.

These amendments are intended to implement Iowa Code sections 56.6, 56.41, and 56.42 and Iowa Code Supplemental sections 68B.32, 68B.32A and 68B.32B.

The following amendments are adopted:

ITEM 1. Transfer 121—Chapters 1 to 10 to 351—Chapters 1 to 10.

ITEM 2. Amend 351—Chapters 1 to 10 by deleting references to the "commission" or "state commission" and inserting in lieu thereof the term "board" and deleting references to the "Iowa Campaign Finance Disclosure Commission, 507 Tenth Street, 7th Floor, Des Moines, Iowa 50309" and inserting "Iowa Ethics and Campaign Disclosure Board, 507 Tenth Street, 7th Floor, Des Moines, Iowa 50309".

ITEM 3. Amend rule 351—4.1(56) by adding the following new subrule:

4.1(5) All committees required by Iowa Code section 56.6 to file a disclosure report on or by January of each year shall attach to that disclosure report a copy of the committee's bank statement which includes December 31 of the year reported. If the bank statement cycle is such that the committee has not received the statement including December 31 by the date for filing the January report, the committee shall separately file the bank statement within ten days after receipt. Supplemental information may be requested by board staff in order to conduct reconciliation for the December 31 balance.

ITEM 4. Amend rule 351—4.2(56), introductory paragraph, as follows:

351—4.2(56) Disclosure reporting forms. The disclosure reporting forms provided by the state board or county commissioner of elections shall be the official forms on which the disclosure reports shall be submitted. Machine copies of original campaign finance disclosure reports are acceptable. Filing by electronic facsimile is ~~not acceptable except as a temporary measure to serve the public interest, and must receive prior telephone approval of the director.~~ Facsimile reports must be replaced as soon as possible with original forms, ~~and FAX reports do not avoid assessment of fines for delinquent filings.~~ All report entries shall be listed on Schedules A, B, C, D, E and F in either chronological or alphabetical order. Computer-generated disclosure reports are acceptable, subject to prior state board approval.

ITEM 5. Amend 351—4.3(56) as follows:

351—4.3(56) Deposit of funds, notification of treasurer receipts and timely deposit—documentation by check.

4.3(1) All funds of a committee shall be deposited in a separate banking account in a financial institution, and the name of that financial institution shall be disclosed on the statement of organization form. For the purpose of this rule, "financial institution" means a depository for the

safekeeping and transmission of campaign funds, such as a bank, credit union, savings and loan association, for example. Any person who receives or collects a contribution in excess of \$100 in support of or opposition to a candidate for public office or a ballot issue shall transmit the contribution to the committee treasurer within 15 calendar days of receipt and provide necessary information for disclosure reports. Receipts of all committees shall be deposited by the treasurer in the committee's financial institution account within seven business days of receipt. For candidates' committees required to file supplemental reports prior to a primary, special or general election, receipts must be deposited current to correspond with the supplemental report's covered period.

4.3(2) *All committee expenditures and reimbursements shall be made by check from the committee account, and cash expenditures are prohibited.*

This rule is intended to implement Iowa Code sections 56.3, ~~and~~ 56.6, 56.41, and 56.42.

ITEM 6. Amend subrule 4.6(7) to read as follows:

4.6(7) Contributions to political party committees and payment for fundraiser tickets for meals for events a candidate attends provided the payment for the meal is limited to the actual cost of the ticket or \$25, whichever is less. *If a candidate determines that attendance by the candidate's spouse would promote or enhance the candidacy, a ticket for the spouse's meal is a legitimate campaign expense, provided that the candidate and spouse actually attend, and that payment for each meal is limited to the cost of a ticket or \$25, whichever is less.*

ITEM 7. Amend subrule 4.6(15) to read as follows:

4.6(15) Payment for food expenses and supplies for campaign related activities, such as the purchase of food, beverages and table service for fundraising events or campaign volunteers. However, *except as provided in subrule 4.6(7)*, the purchase of tickets for meals or fundraising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate's family is also prohibited.

ITEM 8. Amend subrule 4.23(2) to read as follows:

4.23(2) The placement of a yard sign on the lawn or grounds of property belonging to, *controlled by, or leased to* a corporate entity, unless the property is rented or leased to an individual for residential purposes.

ITEM 9. Amend rule 351—4.23(56) by adding the following new subrule:

4.23(7) Any other transaction conducted between a corporation and a candidate's or political committee is presumed to be a corporate contribution unless the candidate or political committee establishes to the contrary.

ITEM 10. Amend the title to 351—Chapter 5 as follows:

~~CAMPAIGN FINANCE DISCLOSURE COMMISSION~~
ETHICS AND CAMPAIGN DISCLOSURE BOARD

ITEM 11. Rescind rule 351—5.1(56) and insert in lieu thereof the following new rule:

351—5.1(56,68B) General agency description.

5.1(1) The ethics and campaign disclosure board consists of six members appointed by the governor and confirmed by the senate. At the first meeting in each calendar year the members elect a chair and a vice chair, each to serve a one-year term. Meetings of the board are

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held, usually in alternate months, at the call of the chair at the time, place and date set by the chair. Meetings may occasionally be conducted by electronic means. When possible, meetings are announced at least one week in advance; however, when one week's notice is not possible, meetings shall be announced at least 24 hours prior to the commencement of the meeting, in conformance with Iowa Code section 21.4. Notice of meetings shall be given by public notice to the media and also posted in the lobby of the board's offices and in the office of the Governor, Statehouse, Des Moines, Iowa. The notice contains the tentative agenda of the meeting. Four board members constitute a quorum for conducting business of the board. Any interested party may attend and observe board meetings except for the portion that may be closed in accordance with Iowa Code section 21.5. Observers may use cameras or recording devices during the course of a meeting so long as the use of the devices does not materially hinder the proceedings. The meetings shall be generally conducted according to rules of parliamentary procedure. If possible, open session proceedings shall be electronically recorded by the board, and closed session proceedings shall be electronically recorded by the board. Minutes of meetings are available for viewing at the board offices. Copies may be obtained pursuant to the applicable copy fee schedule.

5.1(2) Duties of the board include the receipt, examination, and the preservation of documents required to be filed at the state level, the receipt and processing of complaints alleging violations of Iowa Code chapters 56 (campaign finance) and 68B (ethics), the holding of administrative hearings, the development and disseminations of information and educational materials related to the law. The board jointly administers the income tax check-off with the Iowa department of management and the director of the Iowa department of revenue and finance. The board employs an executive secretary/director and other staff as it deems necessary to carry out the provisions of the law and the policies of the board. The executive secretary/director is responsible to the board and is responsible for administrative matters and general supervision of board staff.

This rule is intended to implement Iowa Code Supplement sections 68B.32 and 68B.32A.

ITEM 12. Rescind and reserve **351—5.2(56)** to **351—5.5(56)** and **351—5.7(56)**.

ITEM 13. Rescind **351—5.10(56)** and insert in lieu thereof the following new rule:

351—5.10(22,56,68B) Copying costs and fees. As provided by **351—subrule 10.3(7)**, price schedules for copying costs and fees shall be posted in the board office. The price schedule shall be reviewed by the board at least annually.

ITEM 14. Rescind **351—Chapter 7**.

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ARC 4708A

**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]**

Formerly: CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board adopts a new Chapter 12, "Codes of Conduct," Iowa Administrative Code.

Rule 12.1(68B) contains the internal code to which the board members and employees must adhere, addressing such issues as political participation and conflict of interest. Rule 12.2(68B) relates to the sale of goods and services by board members and employees. This rule is required by Iowa Code section 68B.4. Rule 12.3(68B) establishes a code of ethics for executive branch officials, employees, and statewide candidates, as required by Iowa Code section 68B.32A(12).

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4541A**. As the result of public comments received, the following changes were made to the rules as published under Notice of Intended Action: grammatical rephrasing of rule 12.1(68B), introductory paragraph, and subrules 12.1(9), 12.1(10), and 12.1(11); clarifications made in rule 12.2(68B) to more clearly identify prohibited sales of goods and services by board members and employees and to clarify that permitted sales may be subject to review; clarification is made to the catchwords of rule 12.3(68B) to underscore that the rules apply only to state executive branch officials and employees and statewide candidates. Subrule 12.3(2) is expanded to specify circumstances which do not fall within the prohibition. Subrule 12.3(3) is supplemented to clarify that political paraphernalia worn on a person is not subject to the prohibition. Subrule 12.3(6) is grammatically rephrased and an example is provided of permitted versus prohibited activity. Subrule 12.3(7) is revised to make clear that outside employment must be in compliance with Iowa Code section 68B.4.

These rules were adopted by the Board on March 8, 1994, and will become effective on May 4, 1994.

These rules are intended to implement Iowa Code section 68B.4 and Iowa Code Supplement sections 68B.32 and 68B.32A.

The following new chapter is adopted:

**CHAPTER 12
CODES OF CONDUCT**

351—12.1(68B) Board code of ethics. Board members and employees shall abide by the code of ethics for the executive branch set out in rule 12.3(68B), as well as to the code of ethics set out in this rule.

12.1(1) Making monetary and in-kind contributions to the committees of candidates for Iowa public office is prohibited, including statewide, general assembly, county, municipal and school board candidates. Contributions are permitted to be made to Iowa candidates for federal office since the board has no jurisdiction over federal candidates.

12.1(2) Serving as an officer or member of a candidate's committee of a candidate for Iowa public office is prohibited, whether the service is volunteer or paid.

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12.1(3) Making monetary or in-kind contributions to political party committees or political action committees (PACs) at the state, county or local level is prohibited, including local ballot issue committees.

12.1(4) Running for or serving as an officer or member of any political committee or PAC is prohibited (including serving as an officer or member of a state political party committee, county political party committee or local political party committee).

12.1(5) Public personal endorsement of a candidate or publicly taking a position in support or opposition of a ballot issue question is prohibited.

12.1(6) Running for or holding elective public office is prohibited.

12.1(7) Attendance at a political party or candidate event is permitted.

12.1(8) Serving as a delegate to a county or state political party convention is prohibited. Serving as a delegate to a national political party convention is permitted since the board has no jurisdiction over national political party activities.

12.1(9) If a board member or employee is aware of a disqualifying conflict of interest, that member or employee must provide notice of recusal stating the reason for recusal, and must refrain from any participation in the matter.

12.1(10) Board employees shall not engage in any outside employment which creates a potential conflict of interest or which creates the appearance of a conflict without the authorization of the board.

12.1(11) None of the prohibitions applicable to board members and employees apply to the spouse or other family members. However, actions by a spouse or other family member may create a potential conflict of interest on the part of the board member or employee which may necessitate recusal from a matter.

This rule is intended to implement Iowa Code section 68B.4 and Iowa Code Supplement sections 68B.2A and 68B.32A.

351—12.2(68B) Board sales of goods and services. Board members and employees shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board except as authorized by this rule. However, the sale of services of political consulting or advising regarding Iowa Code chapters 56 and 68B, or the sale of materials regarding politics or chapters 56 and 68B, shall not be permitted.

12.2(1) Conditions of consent. Consent shall be given by a majority of the members of the board. Consent shall not be given to a member or employee to sell goods or services to an individual, association, or corporation regulated by the board unless all of the following conditions are met:

a. The person requesting consent does not have authority to determine whether consent should be given.

b. The person's duties or functions are not related to the board's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the person's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the board.

d. The selling of the good or service does not result in the person selling a good or service to the board on behalf of the individual, association, or corporation.

12.2(2) Authorized sales.

a. A member or employee of the board may sell goods or services to an individual, association, or corporation regulated by the board if those goods or services are routinely provided to the general public as part of that person's regular business practice. This consent is granted because the sale of such goods or services does not affect the board member or employee's duties or functions on the board. However, upon request by the board, the member or employee shall make full factual disclosure regarding the sales and shall permit view to ensure compliance with the test set out in subrule 12.2(1) and Iowa Code section 68B.4.

b. Individual application and approval are not required for the sales authorized by this subrule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

12.2(3) Application for consent. Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the board, a member or employee must obtain prior written consent unless the sale is specifically allowed in subrule 12.2(2). The request for consent must be in writing signed by the person requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

12.2(4) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the person. A consent provided under these rules does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the member or employee requesting consent to ensure compliance with all other applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

351—12.3(68B) Code of ethics for state executive branch officials and employees and statewide candidates.

12.3(1) Unless otherwise prohibited by state or federal statute or rule, officials, employees and candidates are permitted to make contributions to candidates, political parties and political committees of their choice at all levels, but no such person under color of office shall influence another person to make contributions.

12.3(2) Officials, employees and candidates are prohibited from the use of facilities, equipment or materials paid for by public funds for any political purpose, including the use of employee time during regular working hours. "Political purpose" means activities directly related to a campaign, election, political party or nonparty political organization, and does not include activities which are primarily applications of public policy decisions with potential political implications. This prohibition does

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

not bar the use of public facilities, equipment or materials where such use is commonly available to the general public or where the facilities constitute a public forum. This prohibition does not preclude a use combining a public purpose with a political purpose so long as the primary use is public and reimbursement to the state is made of any and all expenses resulting from the secondary political purpose. As elected officials do not have regular working hour criteria, this prohibition does not restrict the use of time of statewide elected officials.

12.3(3) Officials, employees and candidates are prohibited from displaying campaign promotional materials on state government property. "Campaign promotional materials" do not include political buttons or other political paraphernalia if they are worn on the person.

12.3(4) Officials, employees and candidates may display bumper stickers and campaign signs on personal vehicles which are parked in state public or employee parking lots of facilities in which the persons are either employed or are visiting to conduct business. Vehicles with campaign signs cannot be parked in state parking lots for periods exceeding 24 consecutive hours.

12.3(5) State-owned vehicles are prohibited from being used to store or transport campaign or political materials, and officials, employees and candidates are prohibited from driving state vehicles while primarily engaged in political activities.

12.3(6) State officials and employees shall not use their positions for private purpose or personal gain. For the purpose of this subrule, use for private purpose or personal gain includes the direct use of the color of office to gain an improper election advantage. For example, state officials or employees who are candidates may provide constituency services consistent with their position, but may not use their position or title to directly seek political support. Related criminal prohibitions appear in Iowa Code sections 721.2 and 721.3.

12.3(7) State officials and employees shall not engage in outside employment except as permitted by Iowa Code section 68B.2A. Outside employment shall be approved by the person's appointing authority.

This rule is intended to implement Iowa Code Supplement section 68B.32A.

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4709A

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Formerly: CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board (the Board) adopts a new Chapter 13, "Executive Branch Lobbyists," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4540A**. A public hearing on these rules was held on January 25, 1994. The chapter contains a code of ethics and conduct for executive branch lobbyists, as required by Iowa Code section 68B.32A(12). In answer to frequent questions, examples are given of activities which are not considered lobbying. Penalties are established for failing to register as an executive branch lobbyist and for failing to file lobbyist reports and client reports. Unusual circumstances may result in the assessment of additional penalties. Persons may seek waiver or reduction of assessed penalties.

As a result of public comments and suggestions received, the following changes have been made to the chapter as published under Notice of Intended Action:

1. Clarifying in the title to the chapter and in some internal references that this chapter applies only to executive branch lobbyists.

2. Removing an undefined term, "administrative action," and replacing it with the statutory language, "an administrative rule or an executive order by an executive branch agency or a statewide elected official".

3. Removing proposed subrule 13.1(5) as unnecessary since the subject matter of conflict of interest by a board or commission member is adequately addressed by Iowa Code section 68B.2A. Subrule 13.1(6) is renumbered as 13.1(5) and rewritten to more clearly express the intended prohibition against a lobbyist making campaign contributions with a client's money in the lobbyist's name at the direction of the client.

4. Based upon the comment received that the definitions rule had included the term "designated lobbyist," which was not a term used in the chapter, this language was removed and placed in a new rule 13.3(68B) "Designated representatives." This language is incorporated to provide requested guidance to agencies and organizations as to how to "designate" persons for the purposes of Iowa Code Supplement section 68B.2(13)"a," subparagraphs (2) and (3). Subsequent rules are renumbered accordingly.

5. Based upon the comment received that proposed rule 13.3(68B) appeared to be an exclusive representation of activities which were not considered lobbying, this rule, renumbered as 13.4(68B), references the Iowa Code Supplement section identifying persons not considered to be lobbyists and clarifies that the noted activities are merely examples of nonlobbyist activities. Clarification is also made that the submission of written comments on proposed rules is not lobbying. This rule is included to provide requested guidance on commonly asked questions.

6. In rule 13.5(68B), noticed as 13.4(68B), language attempting to restate the definition of lobbying is removed and replaced with the term "lobbies". This is done in response to comments that the noticed terminology could cause confusion by differing from the statutory terminology.

7. Noticed rule 13.7(68B) was renumbered as 13.9(68B) and rewritten to clarify that any penalty assessed under the chapter could be considered by the Board for waiver or reduction.

This chapter is intended to implement Iowa Code section 68B.4 and Iowa Code Supplement sections 68B.32 and 68B.32A.

This chapter was adopted by the Board on March 8, 1994, and will become effective on May 4, 1994.

The following new chapter is adopted:

CHAPTER 13
EXECUTIVE BRANCH LOBBYISTS

351—13.1(68B) Lobbyist code of ethics—executive branch lobbyists.

1. A person shall not engage in any activity as an executive branch lobbyist, nor accept compensation from the client, until registration has been completed. A lobbyist may register on or after December 1 for the following year.

2. A lobbyist shall not intentionally deceive or attempt to deceive any public official with regard to any material fact pertinent to an administrative rule or an executive order by an executive branch state agency.

3. A lobbyist shall not cause a communication to be sent to a public official in the name of any fictitious person or in the name of any real person except with the consent of that person.

4. A lobbyist shall not accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed administrative rule or an executive order by an executive branch state agency or a statewide elected official.

5. A lobbyist shall not accept money from a client designated by the client for the purpose of making campaign contributions in the name of the lobbyist.

351—13.2(68B) Definitions.

"Filed" means the date of physical receipt or the date of a United States Postal Service postmark, whichever is earlier.

351—13.3(68B) Designated representatives. For the purpose of Iowa Code section 68B.2(13)"a," subparagraphs (2) and (3), the representative(s) designated by an organization or a federal, state, or local agency for the purpose of encouraging the passage, defeat, approval, veto, or modification of a rule or an executive order by a state agency or a statewide elected official shall be appointed in writing by the head of the organization or agency.

351—13.4(68B) Nonlobbying activities. Nonlobbying activities are set forth in Iowa Code section 68B.2(13)"b." The following are examples of activities which are not considered to be lobbying activities:

1. Annual budget presentations to the office of the governor and department of management.

2. Collaborative and cooperative activities between and among state agencies.

3. Public hearing testimony and written comments solicited by a state agency on proposed rules under Notice of Intended Action. However, testimony presented to a state agency in a setting or format other than that contemplated by Iowa Code section 17A.4(1) is considered to be lobbying.

351—13.5(68B) Penalties for failure to register. A person who lobbies an executive branch state agency without registering in advance shall be suspended from any future lobbying activities for a period of time to be determined by the board, but not less than 30 days. The board may also impose a civil penalty not to exceed \$1,000.

351—13.6(68B) Penalties for late lobbyist reports. A person who registers as a lobbyist in the executive branch of Iowa government but fails to timely file a lobbyist's pe-

riodic report shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	1st Occurrence	2nd Occurrence	Subsequent Occurrences
1 to 5	\$ 25	\$100	\$ 250
6 to 30	100	250	500
31 and over	250	500	1,000

351—13.7(68B) Penalties for late client reports. A client who fails to timely file a client's report shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	1st Occurrence	2nd Occurrence	Subsequent Occurrences
1 to 5	\$ 25	\$100	\$ 250
6 to 30	100	250	500
31 and over	250	500	1,000

351—13.8(68B) Discretionary penalties. In its discretion the board may assess penalties in lieu of or in addition to the automatic fines based upon the inappropriate or unusual circumstances of the delinquency.

351—13.9(68B) Requests for waiver or reduction of assessed penalties. Any person who is assessed a penalty under this chapter may apply to the Iowa ethics and campaign disclosure board for consideration of a waiver or reduction of the assessed amount.

These rules are intended to implement Iowa Code section 68B.4 and Iowa Code Supplement sections 68B.32 and 68B.32A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4695A

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed

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

The Council on Human Services adopted this amendment March 9, 1994. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on February 2, 1994, as **ARC 4574A**.

This amendment changes the resource policy for 12 Medicaid coverage groups to include an additional resource exemption for persons aged 65 and older in a medical institution who have purchased and used a long-term care policy precertified and approved by the Department of Commerce, Division of Insurance. The Department will disregard \$1 in assets for each \$1 of insurance proceeds paid out for long-term care or home care.

The long-term care asset preservation program was enacted by the Seventy-fifth General Assembly in response

HUMAN SERVICES DEPARTMENT[441](cont'd)

to a recommendation made by the Department of Management's Medicaid Task Force. Iowa Code Supplement chapter 249G requires the Department to implement the long-term care asset preservation program to provide incentives for a person to insure against the costs of providing for the person's own long-term care needs and to assist in alleviating the financial burden on the state's Medicaid program by encouraging the pursuit of private long-term care payment initiatives.

The Department of Commerce, Division of Insurance, is in the process of promulgating rules to establish and monitor standards for private insurance policies that will qualify for the asset disregard. The Department of Elder Affairs will be responsible for education and outreach regarding the new program.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 249A.4 and Iowa Code Supplement chapter 249G.

This amendment shall become effective June 1, 1994.

The following amendment is adopted.

Amend rule 441—75.5(249A) by adding the following new subrule:

75.5(5) Consideration of resources for persons in a medical institution who have purchased and used a precertified or approved long-term care insurance policy pursuant to department of commerce, division of insurance, rules 191—Chapter 72. A person 65 years of age or older who is either the beneficiary of a certified long-term care policy or enrolled in a prepaid health care delivery plan that provides long-term care services pursuant to 191—Chapter 72 and who is eligible for medical assistance under 75.1(3), 75.1(4), 75.1(5), 75.1(6), 75.1(7), 75.1(9), 75.1(12), 75.1(13), 75.1(17), 75.1(18), 75.1(23) or 75.1(27) except for excess resources may be eligible for medical assistance under this subrule if the excess resources causing ineligibility under the listed coverage groups do not exceed the "asset adjustment" provided in this subrule. "Asset adjustment" shall mean a \$1 disregard of resources for each \$1 that has been paid out under the person's long-term care policy for qualified Medicaid long-term care services.

[Filed 3/10/94, effective 6/1/94]

[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4693A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 9, 1994.

These amendments combine three Notices of Intended Action. Notices of Intended Action regarding these amendments were published in the Iowa Administrative Bulletin on January 19, 1994, as **ARC 4564A**, and on February 2, 1994, as **ARC 4573A** and **ARC 4576A**.

1. The amendments noticed as **ARC 4564A** add further controls to Medicaid reimbursement of community-based intermediate care facilities for the mentally retarded (ICFs/MR) by extending the eightieth percentile maximum rate to all facilities, and limiting administrative costs to 18 percent of total facility costs. It is estimated the maximum per diem rate will be \$245 for the approximately 77 ICFs/MR.

These amendments will prevent facilities from claiming excessive reimbursement through Iowa Medicaid and should contribute to the leveling of costs which now range from \$114.30 to \$334.94 per day.

It is estimated that imposing a maximum rate at the eightieth percentile will result in a savings of \$1,700,000 per year (\$600,000 county share) and that reducing the allowable administrative costs from 20 percent to 18 percent will result in estimated savings of \$260,000 per year (\$95,000 county share). Additional savings not possible to determine will result from additional limits placed on allowable rent or lease expense.

2. The amendments noticed as **ARC 4573A** remove the current limit for respite care of 30 units per year for the Model Waiver, the Elderly Waiver, and the AIDS/HIV Waiver. In addition, these amendments provide that respite providers certified under the HCBS/MR and HCBS/MR/OBRA waivers may provide respite under the Model Waiver and the AIDS/HIV Waiver and provide that respite providers certified under the HCBS/MR and HCBS/MR/OBRA waivers providing respite to recipients of the Model Waiver, the Elderly Waiver, or the AIDS/HIV Waiver shall be paid according to the rate they are paid under the HCBS/MR and HCBS/MR/OBRA waivers. These amendments also provide that respite care will not be paid while the usual caregiver is employed.

The removal of the limit for respite care for the Model Waiver is being made in response to a Petition for Rule Making received from the Child Health Specialty Clinics in Iowa City.

3. The amendment noticed as **ARC 4576A** corrects language in the new skilled rebasing rule. The rules as previously adopted provided that no facility or swing bed hospital shall receive more than 150 percent of the ceiling rate for its facility classification. This language is being deleted as there are three facilities which were enrolled in the Iowa Medicaid program prior to May 31, 1993, which exceed 150 percent of the ceiling rate for the facility classification. The ceiling rate for freestanding facilities is established at the sixty-ninth percentile, or \$99.70 per day. The proposed language provides that for ventilator care a facility may not receive a rate that exceeds the ceiling rate for its facility classification plus \$50 per day. This language was the Department's original intent.

The following revisions were made to the amendments noticed as **ARC 4576A** in response to public comments. In addition, the Department agrees to evaluate the impact of the eightieth percentile maximum rate on an annual basis and determine at the end of the first rebasing period (i.e., June 30, 1996) whether continuation of this provision is needed.

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Subrule 79.1(2) was revised to use the cost reports on file December 31, 1993, rather than June 30, 1994, in establishing the eightieth percentile maximum rate as providers indicated they would prefer to know six months in advance of the effective date what the eightieth percentile maximum rate will be. This will make no change in the impact of the proposed rule since the same cost reports would be used in either case.

The revision to subrule 82.5(4) was rescinded as the Department determined that the proposed amendment to subrule 82.5(4) was in conflict with Iowa Code section 249A.16. This change would have made all ICF/MR rate changes effective July 1 of each year.

Subrule 82.5(11), paragraph "f," was revised to add home office costs to the clarification provided by this paragraph. The same definition of allowable costs is applicable to both management fees and home office costs.

Subrule 82.5(14), paragraph "e," was revised to clarify the facility cost or rate figures to be used in setting the eightieth percentile maximum rate. It was the Department's intention to use the unadjusted total per diem cost figure from each facility rate sheet as the basis for the calculation. The change regarding the use of cost reports on file December 31 of the previous year is also made in this paragraph.

Subrule 82.5(16), paragraph "e," was also revised to clarify the definition of administrative costs. All salaries, benefits, equipment, and supplies which can be allocated to specific functional parts of a facility's operation should be so allocated. Only those salaries, benefits, equipment, and supplies directly related to the administration of the facility should be included in administrative costs.

The following revision was made to the amendments noticed as ARC 4573A in response to a public comment.

Subrule 78.34(5), paragraph "d," was revised in response to comments to clarify that respite care may be provided while the usual caregiver is employed if the respite care provider is a camp.

No revisions were made to the amendment noticed as ARC 4576A.

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

These amendments shall become effective June 1, 1994.

The following amendments are adopted.

ITEM 1. Amend subrule 77.30(5) by adding the following new paragraph "b":

b. Respite providers certified under the HCBS/MR and HCBS/MR/OBRA waivers.

ITEM 2. Amend subrule 77.34(5) as follows:

77.34(5) Respite care providers. In-home respite care providers shall be agencies which meet the conditions of participation set forth in subrule 77.34(2). Out-of-home respite care providers shall be nursing facilities which are certified to meet the standards set forth in 441—Chapter 81 or hospitals certified to participate in the Medicaid program. *Respite care may also be provided by respite providers certified under the HCBS/MR and HCBS/MR/OBRA waivers.*

ITEM 3. Amend subrule 78.34(5) as follows:

Amend paragraph "c" as follows:

c. A unit of service is either one 24-hour day for out-of-home respite care provided by a facility, or one 4- to 8-hour day for in-home respite care, provided by a home

health aid agency, or one hour for respite care provided by an HCBS/MR or HCBS/MR/OBRA waiver provider.

Rescind paragraph "d" and insert the following new paragraph in lieu thereof:

d. Respite care is not to be provided during the hours in which the usual caregiver is employed except when the provider is a camp.

ITEM 4. Amend subrule 78.37(6) as follows:

Amend paragraph "c" as follows:

c. A unit of service is either one 24-hour day for out-of-home respite care provided by a facility, or one 4- to 8-hour day for in-home respite care provided by a home health aid agency, or one hour for respite care provided by an HCBS/MR or HCBS/MR/OBRA waiver provider.

Rescind and reserve paragraph "d."

ITEM 5. Amend subrule 78.38(5) as follows:

Amend paragraph "c" as follows:

c. A unit of service is either one 24-hour day for out-of-home respite care provided by a facility, or one 4- to 8-hour day for in-home respite care provided by a home health aid agency, or one hour for respite care provided by an HCBS/MR or HCBS/MR/OBRA waiver provider.

Rescind and reserve paragraph "d."

ITEM 6. Amend subrule 79.1(2) as follows:

Amend the provider category of "AIDS/HIV waiver service providers" by adding the following new provider at the end of numbered paragraph "5," "Respite care":

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
(HCBS/MR and HCBS/MR/OBRA waiver providers)	Fee schedule See 79.1(15)	\$9.27 per hour

Amend the provider category of "Elderly waiver service providers" by adding the following new provider at the end of numbered paragraph "6," "Respite care providers":

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
(HCBS/MR and HCBS/MR/OBRA waiver providers)	Fee schedule See 79.1(15)	\$9.27 per hour

Amend the provider category of "Intermediate care facilities for the mentally retarded" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5 (249A)	Individual facility's base year cost increased annually by the CPI for all urban consumers Eightieth percentile of facility costs as calculated from 12/31/93 cost reports

Amend the provider category of "Model Waiver service providers" by adding the following new provider at the end of numbered paragraph "4," "Respite care providers":

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
(HCBS/MR and HCBS/MR/OBRA waiver providers)	Fee schedule See 79.1(15)	\$9.27 per hour

ITEM 7. Amend subrule 79.1(9), paragraph "b," as follows:

b. In-state facilities serving Medicaid eligibles who require a ventilator at least six hours every day, are inappropriate for home care, have a failed attempt at weaning or are inappropriate for weaning, and have medical needs that require skilled care as determined by the Iowa foundation for medical care shall receive a \$50 per day incentive factor. ~~No facility or swing bed hospital shall receive more than 150 percent of the ceiling rates for its facility classification. For ventilator care a facility may not receive a rate that exceeds the ceiling rate for its facility classification plus \$50 per day.~~ The facility may continue to receive the payment for 30 days for any person weaned from a respirator who continues to reside in the facility and continues to meet skilled criteria for those 30 days.

ITEM 8. Amend subrule 82.5(11), paragraph "f," as follows:

f. ~~Management fees and home office costs shall be computed on the same basis as the administrator's salary, but shall have the amount paid the resident administrator deducted allowed only to the extent that they are related to patient care and replace or enhance but do not duplicate functions otherwise carried out in a facility. When the parent company can separately identify accounting costs, the costs are allowed.~~

Further amend subrule 82.5(11) by rescinding paragraph "j" and inserting the following new paragraph "j" in lieu thereof:

j. A facility entering into a new or renewed rent or lease agreement on or after June 1, 1994, shall be subject to the provisions of this paragraph.

When the operator of a participating facility rents from a nonrelated party, the amount of rent expense allowable on the cost report shall be the lesser of the actual rent payments made under the terms of the lease or an annual reasonable rate of return applied to the cost of the facility. The cost of the facility shall be determined as the historical cost of the facility in the hands of the owner when the facility first entered the Iowa Medicaid program. Where the facility has previously participated in the program, the cost of the facility shall be determined as the historical cost of the facility, as above, less accumulated depreciation claimed for cost reimbursement under the program. The annual reasonable rate of return shall be defined as one and one-half times the annualized interest rate of 30-year Treasury bonds as reported by the Federal Reserve Board on a weekly-average basis, at the date the lease was entered into.

When the operator of a participating facility rents the building from a related party, the amount of rent expense allowable on the cost report shall be limited to the lesser of the actual rent payments made under the terms of the lease or the amount of property costs that would otherwise have been allowable under the Iowa Medicaid program to an owner-provider of that facility.

The lessee shall submit a copy of the lease agreement, documentation of the cost basis used and a schedule dem-

onstrating that the limitations have been met with the first cost report filed for which lease costs are claimed.

ITEM 9. Amend subrule 82.5(14) by relettering paragraphs "e" and "f" as "f" and "g," respectively, and inserting the following new paragraph "e" as follows:

e. Maximum rate. Facilities shall be subject to a maximum rate set at the eightieth percentile of the total per diem cost of all participating community-based ICFs/MR with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year using cost reports on file December 31 of the previous year.

Further amend subrule 82.5(14), relettered paragraph "g," as follows:

g. Reimbursement for first annual period. The reimbursement for the first annual period will be determined by taking the per diem rate calculated for the base period and then multiplying it by the Consumer Price Index *Urban Consumers U.S. City Average* and adding it to the base rate. The projected reimbursement for each period thereafter (until rebasing) will be calculated by taking the lower of the prior year's actual or the projected reimbursement per diem times the Consumer Price Index and adding it to the lower of the two. If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, it shall receive in the following period the maximum allowable base as calculated as reimbursement. *All calculated per diem rates shall be subject to the prevailing maximum rate.*

ITEM 10. Amend subrule 82.5(16) by rescinding paragraph "e" and inserting the following new paragraph "e" in lieu thereof:

e. Administrative costs shall not exceed 18 percent of total facility costs. Administrative costs are comprised of those costs incurred in the general management and administrative functions of the facility. Administrative costs include, but are not necessarily limited to, the administrative portion of the following:

- (1) Administrator's salary.
- (2) Assistant administrator's salary.
- (3) Bookkeeper's salary.
- (4) Other accounting and bookkeeping costs.
- (5) Other clerical salaries and clerical costs.
- (6) Administrative payroll taxes.
- (7) Administrative unemployment taxes.
- (8) Administrative group insurance.
- (9) Administrative general liability and worker's compensation insurance.
- (10) Directors' and officers' insurance or salaries.
- (11) Management fees.
- (12) Indirect business expenses and other costs related to the management of the facility including home office and other organizational costs.
- (13) Legal and professional fees.
- (14) Dues, conferences and publications.
- (15) Postage and telephone.
- (16) Administrative office supplies and equipment, including depreciation, rent, repairs, and maintenance as documented by a supplemental schedule which identifies the portion of repairs and maintenance, depreciation, and rent which applies to office supplies and equipment.
- (17) Data processing and bank charges.
- (18) Advertising.

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(19) Travel, entertainment and vehicle expenses not directly involving residents.

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ARC 4694A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 9, 1994. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 19, 1994, as **ARC 4558A**.

These amendments apply the same limitation on administrative costs to providers of group care as are applied to all the other providers of rehabilitative treatment and supportive services and change the level of utilization used to determine the rate for group care providers.

Currently, providers of group care are allowed administrative costs up to 18.9 percent of total costs in the calculation of their rates. Family-centered, family preservation and family foster care providers are allowed 15.4 percent of their costs. When cost reports were submitted for the establishment of rates to be effective November 1, 1993, the majority of group care providers showed administrative costs significantly below the 18.9 percent limitation. These amendments apply the 15.4 percent limitation to all providers in order to prevent expansion of administrative costs in which the state would participate, to control future expenditures and to treat all providers equally.

Costs per unit of service are arrived at by dividing adjusted costs by the effective utilization level of the licensed or staffed capacity of the program. Currently, the effective utilization level for all providers is 80 percent or actual, whichever is greater, of the licensed or staffed capacity, whichever is less, of the program. These amendments increase the level of utilization for group care providers as follows: The effective utilization for group care facilities certified to provide community residential treatment and licensed pursuant to 441—Chapter 116 or 481—Chapter 57 or 63 shall be 95 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program. The effective utilization for all other group care facilities certified to provide community residential treatment and group care facilities certified to provide comprehensive residential treatment or enhanced residential treatment shall be 90 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

These amendments more accurately reflect the level of utilization in group care desired by the Department for determination of rates by reducing the number of empty

beds paid for in the rate, and establishing rates more in keeping with budgeted funds.

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

These amendments are intended to implement Iowa Code section 234.6 and 1993 Iowa Acts, chapter 172, section 11, subsection 1.

These amendments shall become effective June 1, 1994.

The following amendments are adopted.

ITEM 1. Amend subrule 185.105(7) as follows:

185.105(7) Administrative costs. After all other limitations, administrative costs shall be limited to the lower of actual costs or the applicable limit under "a," "b," or "c" below:

a. Group care services—18.9 percent of total group care costs.

b. Family-centered, family foster care and family preservation services—15.4 percent of the total costs of rehabilitative treatment and supportive services.

c. *For rates established for all rehabilitative treatment and supportive services on or after June 1, 1994, administrative costs shall be limited to the lower of the actual costs or 15.4 percent of the total costs of rehabilitative treatment and supportive services.*

ITEM 2. Amend subrule **185.106(2)**, paragraph "a," as follows:

a. The effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program *except for group care, which shall be as follows. The following effective utilization applies to all rates established on or after June 1, 1994, and shall be used to adjust rates established prior to June 1, 1994, for payment of services provided on or after June 1, 1994. The effective utilization for group care facilities certified to provide community residential treatment and licensed pursuant to 441—Chapter 116 or 481—Chapter 57 or 63 shall be 95 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program. The effective utilization for all other group care facilities certified to provide community residential treatment and group care facilities certified to provide comprehensive residential treatment or enhanced residential treatment shall be 90 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.* However, subsequent to the report submitted pursuant to 185.103(1)"b," when the provider has failed to achieve a utilization rate of 70 percent during a cost report period, the subsequent rate shall be calculated on the basis of 100 percent of licensed or staffed capacity, whichever is less. This penalty shall be applied to cost reports due on or after December 1, 1994.

ITEM 3. Amend subrule 185.107(4) as follows:

185.107(4) Utilization. Utilization for new *family-centered, family preservation and family foster care* programs shall not be budgeted at less than 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program. *Utilization for new group care programs shall not be budgeted at less than the following: Utilization for group care facilities certified to provide community residential treatment and licensed pursuant to 441—Chapter 116 or 481—Chapter 57 or 63 shall be 95 percent or actual (whichever is great-*

HUMAN SERVICES DEPARTMENT[441](cont'd)

er) of the licensed or staffed capacity (whichever is less) of the program. Utilization for all other group care facilities certified to provide community residential treatment and group care facilities certified to provide comprehensive residential treatment or enhanced residential treatment shall be 90 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program. The new provider or current provider adding a new program shall specify on the financial and statistical report the licensed capacity, when applicable, and the staffed capacity for each new program. Any changes in licensed or staffed capacity shall be reported on any subsequently submitted cost reports.

[Filed 3/10/94, effective 6/1/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4702A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 50, "Health Care Facilities Administration"; Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; and Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments reorganize rules regarding payment of witness fees for persons subpoenaed to attend a formal hearing. These amendments delete an identical rule concerning witness fees which currently appears in several chapters and place the rule under the chapter pertaining to the administration of all types of health facilities.

The amendments are identical to those published under Notice of Intended Action in the Iowa Administrative Bulletin on September 15, 1993, as **ARC 4261A**.

The amendments will become effective May 4, 1994.

These amendments are intended to implement Iowa Code section 135C.11(2).

The following amendments are adopted.

ITEM 1. Amend rule 481—50.6(10A) by adding the following **new** subrule:

50.6(4) The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

ITEM 2. Rescind and reserve rules **481—57.7(135C)**, **481—58.6(135C)**, **481—59.6(135C)**, and **481—63.6(135C)**.

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4700A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The amendments reorganize the chapter by consolidating and grouping rules of similar subject matter. Formerly, the rules were arranged in the order in which they were adopted. This chronological order was not beneficial to users of the rules. A table of corresponding numbers is provided to show how the chapter has been renumbered.

Subrules 51.4(4) and 51.21(3) and rules 481—51.37(135B) and 481—51.38(135B) relating to various forms of abuse were combined under a new rule 481—51.7(135B).

The amendments also update terminology, delete obsolete language, and reflect existing practices and current federal guidelines.

The Iowa Board of Health approved these amendments for adoption on March 2, 1994. The Hospital Licensing Board approved these amendments for adoption on March 10, 1994. The amendments are identical to those published under Notice of Intended Action in the February 2, 1994, Iowa Administrative Bulletin as **ARC 4584A**.

A public hearing was held on February 22, 1994. No one attended the public hearing and no comments were received during the public comment period.

These amendments will become effective May 4, 1994.

These amendments are intended to implement Iowa Code chapter 135B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 51] is being omitted. These rules are identical to those published under Notice as **ARC 4584A**, IAB 2/2/94.

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

[For replacement pages for IAC, see IAC Supplement 3/30/94.]

ARC 4703A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission adopts an amendment to Chapter 33, "Resource Enhancement and Protection Program: County, City and Private Open Spaces Grant Programs," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

These rules provide for the granting of funds to private entities for the protection of open space lands in Iowa. The amendment clarifies the criteria upon which the Director of the Department of Natural Resources may remove applications for funding from consideration.

Notice of Intended Action was approved by the Natural Resource Commission on October 3, 1993, and published in the Iowa Administrative Bulletin on October 27, 1993, as **ARC 4388A**.

A public hearing was held November 19, 1993. Public comments dealt with the need to specify or give examples of use restrictions which might lead to a decision by the director to remove a project from consideration for a grant. In response to those comments, a sentence has been added to subrule 33.50(6).

This amendment is intended to implement Iowa Code chapter 455A.

This amendment shall become effective May 4, 1994.

The following amendment is adopted.

Amend subrule 33.50(6) as follows:

33.50(6) Department rejection of applications. The director may remove from consideration by the project review and selection committee any application for funding the acquisition of property that the department determines is not in the state's best interest for the department to manage. *The department's basis for determining such interest may include, but not be limited to, inaccessibility to the project area, environmental contamination and unacceptable use restrictions, management cost, and the proximity to other governmental entities which may impose use restrictions or special tax assessments on the area. Examples of use restrictions can include prohibitions on hunting, trapping, timber harvest, vegetation management, and easements which affect the range of public use and activities which could otherwise be allowed.*

[Filed 3/11/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4689A**NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, 147.90, 272C.4, 272C.5, and 272C.6, the Iowa Board of Nursing hereby amends Chapter 4, "Disciplinary Proceedings," Iowa Administrative Code.

These amendments establish a time limitation for the request for a continuance of a contested case matter.

These amendments were published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4516A**. These amendments are identical to those published as Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 17A.3, 147.76, 147.90, 272C.4, 272C.5, and 272C.6.

These amendments will become effective May 4, 1994. The following amendments are adopted:

ITEM 1. Amend **655—Chapter 4** by striking "258A" and inserting "272C" wherever it appears to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Add the following new rule and renumber subsequent rules **4.10(17A,147,152,272C)** to **4.19(17A,147,152,272C)** as **4.11(17A,147,152,272C)** to **4.20(17A,147,152,272C)**:

655—4.10(17A,147,152,272C) Request for continuance. A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

[Filed 3/9/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4684A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsections 135.11(13) and 272C.6(6), second unnumbered paragraph, the Iowa Department of Public Health hereby amends Chapter 173, "Administrative Hearings," Iowa Administrative Code.

These amendments describe the procedure to be used by the Department for the allocation of fees and costs relative to administrative hearings by all professional licensing boards created under Iowa Code chapter 147, including the board of dental examiners, the board of medical examiners, the board of nursing, and the board of pharmacy examiners. Subrule 173.19(4) is rescinded to comply with Iowa Code subsection 272C.6(6), third unnumbered paragraph.

Notice of Intended Action was published January 5, 1994, as **ARC 4549A**. A public hearing was not held. No written comments were received. There are no changes as a result of the public comment period and these amendments are identical to those published under Notice of Intended Action. The Iowa State Board of Health adopted these amendments to Chapter 173 on March 2, 1994.

These amendments are intended to implement Iowa Code subsection 272C.6(6), third unnumbered paragraph.

These amendments will become effective on May 4, 1994.

The following amendments are adopted:

ITEM 1. Rescind and reserve subrule **173.19(4)**.

ITEM 2. Add the following **new** rule:

641—173.20(272C) Allocation of disciplinary fees and costs.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

173.20(1) Definitions.

a. For purposes of this rule, the term "department" means the department of public health.

b. For purposes of this rule, the term "board(s)" shall include all professional licensing boards created under Iowa Code chapter 147 or under the administrative authority of the department, including the board of dental examiners, the board of nursing, the board of medical examiners, and the board of pharmacy examiners.

173.20(2) All hearing fees and costs assessed by the boards shall be paid directly to the department and shall be held in a separate fund within the department.

173.20(3) The department shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the department. Distributions from the fund shall be made upon the request of a board and in the discretion of the department. A distribution received by a board under this chapter shall be used only for expenditures related to disciplinary hearings.

173.20(4) The department shall consider the following factors in exercising its discretion as to whether to distribute funds to a requesting board:

a. The remaining funds in the board's appropriation for disciplinary hearings in that fiscal year.

b. The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings.

c. Whether the board has adopted and implemented hearing cost recovery rules.

173.20(5) The department shall, within 45 days from the end of the fiscal year, distribute to the boards the remaining amount of fees and costs paid to the department during the prior fiscal year. The department shall distribute to each board a percentage of the remaining fees and costs that is equal to the percentage of that board's total budget in relation to the departmentwide total budget for all professional licensing boards governed by this chapter.

173.20(6) The fees and costs allocated back to the individual professional licensing boards shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to each board shall be applied to the costs incurred by the board for prosecution of contested cases which could result in disciplinary action.

This rule is intended to implement Iowa Code subsection 272C.6(6), second unnumbered paragraph.

[Filed 3/4/94, effective 5/4/94]

[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4716A**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 100.35 and Iowa Code Supplement section 231B.2, the Iowa De-

partment of Public Safety hereby amends Chapter 5, "State Fire Marshal," Iowa Administrative Code.

This rule provides fire safety standards for elder group homes certified by the Iowa Department of Elder Affairs. Elder group homes are a new class of occupancy authorized by the General Assembly in 1993 [Iowa Code Supplement section 231B.2].

A Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4518A**. The text of this adopted rule is identical to the Notice of Intended Action. A public hearing on this rule was held on February 9, 1994. No comments were received at the public hearing or otherwise during the public comment period.

This rule will become effective June 1, 1994.

This rule is intended to implement Iowa Code Supplement section 231B.2.

The following rule is adopted.

Amend 661—Chapter 5 by adding the following **new** rule:

661—5.625(100,231B) Elder group homes. This rule applies to elder group homes certified by the Iowa department of elder affairs.

5.625(1) Definitions. The following definitions apply to rule 661—5.625(100,231B):

"Elder" means a person 60 years of age or older.

"Elder group home" means a single family residence that is the residence of a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and which is certified as an elder group home by the Iowa department of elder affairs.

5.625(2) Exits. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms. Interior and exterior exit stairways shall have a minimum clear width of not less than 30 inches.

5.625(3) Windows. Each resident sleeping room shall have an outside window or outside door arranged and located to provide ventilation, access to fresh air, and an emergency escape route. New or replacement windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(4) Interior finish. Interior finish in resident occupied areas shall be Class A or B in accordance with Table 5-C, 661 IAC 5.105(100).

5.625(5) Doors. Door to resident sleeping rooms shall be a minimum of one and three-eighths inches solid core wood or equivalent.

5.625(6) Fire detection. An elder group home shall have smoke detectors installed on each floor, including the basement, and in each sleeping room, in accordance with National Fire Protection Association # 74, Standard for Household Fire Warning Equipment, 1989 edition, and 661 IAC 5.807(100). Smoke detectors shall be interconnected so that activation of any detector will activate detectors throughout the home.

5.625(7) Fire extinguishers. Fire extinguishers shall be provided on each floor and shall be located so that a person will not have to travel any more than 75 feet from any point in the home to reach the nearest extinguisher.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

An additional extinguisher shall be provided in, or adjacent to, the kitchen. Type, distribution, inspection, maintenance, and recharging of extinguishers shall conform to National Fire Protection Association # 10, Standard for Portable Fire Extinguishers, 1990 edition.

5.625(8) Smoking. There shall be no smoking in resident sleeping rooms. Smoking may be permitted in designated areas only. If an indoor area within an elder group home is designated as a smoking area, that area shall be equipped with ashtrays constructed of noncombustible material and with self-closing tops.

5.625(9) Exit illumination. Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.625(10) Maintenance. All fire and life safety equipment or devices shall be U.L. or independent testing laboratory approved, installed according to manufacturer specifications, and regularly and properly maintained at all times in accordance with nationally recognized standards. This includes, but is not limited to, fire extinguishing equipment, alarm systems, doors and their appurtenances, and exit facilities. Flammable and combustible materials shall be properly stored in original, properly labeled containers or approved safety containers. Storerooms shall be maintained in a neat and proper manner at all times. Excessive storage of combustible materials is not permitted.

5.625(11) Equipment. Electrical, heating, and ventilating equipment shall be installed and maintained in accordance with manufacturer's instructions and nationally recognized standards. Portable space heaters are not permitted.

5.625(12) Emergency procedures. Every home shall formulate a plan for the protection of occupants in the event of a fire or other emergency. The plan shall take into consideration areas of refuge within the building as well as evacuation from it. The written plan must be provided to each resident and explained to them at the time they move into the facility and at least annually thereafter.

5.625(13) Compressed gases. If oxygen or other compressed gases are required by residents for respiratory purposes, the applicable standards for use, containers, equipment, maintenance and storage of compressed gases, as set forth in National Fire Protection Association # 99, 1993 edition, shall be adhered to.

5.625(14) Basements. Interior basement stairways, if enclosed, must have walls and ceilings constructed of five-eighths inch gypsum board or material providing equivalent fire protection. Basements must be separated from the first floor by a self-closing one and three-eighths inch solid wood core door or equivalent. If a basement is used by residents, it must have a door leading to the outside or an operational window having a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(15) Construction. Unprotected wood frame structures of more than two stories in height, excluding basement, shall not be permitted for use as elder group homes.

EXCEPTION: Unprotected wood frame structures protected throughout by an approved automatic sprinkler system may be used as elder group homes.

This rule is intended to implement Iowa Code Supplement section 231B.2.

[Filed 3/11/94, effective 6/1/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4696A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby adopts an amendment to Chapter 165, "Recreational Trails Program," Iowa Administrative Code.

A Notice of Intended Action for this amendment was published in the February 2, 1994, Iowa Administrative Bulletin as **ARC 4568A**.

This amendment allows the Department to revoke a recreational trails funding commitment when an applicant fails to sign the project agreement within six months after receiving the signature copy.

This amendment is identical to the one published under Notice and was adopted by the Department on March 9, 1994.

This amendment is intended to implement Iowa Code chapter 312 and will become effective May 4, 1994.

The following amendment is adopted.

Amend rule 761—165.33(312) by renumbering subrules **165.33(2)** to **165.33(4)** as **165.33(3)** to **165.33(5)** and adding new subrule 165.33(2) as follows:

165.33(2) An agreement has not been signed within six months after the project sponsor receives the signature copy.

[Filed 3/10/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4697A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation rescinds Chapter 710, "Airport Development Program," and adopts a new Chapter 710, "Airport Improvement Program," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

A Notice of Intended Action for these rules was published in the January 5, 1994, Iowa Administrative Bulletin as **ARC 4522A**.

These rules are being adopted to update the planning and funding processes for airport improvements. The Iowa Aviation System Plan was completed in November 1991 and was subsequently adopted by the Department. In addition, 1993 Iowa Acts, chapter 87, requires that all applications from government subdivisions for airport funding be approved by the Transportation Commission. The rules incorporate these changes and describe the application procedures.

These rules are identical to the ones published under Notice except for the following: Subrule 710.4(2) was amended by striking from the first sentence the words "and be approved by the department." Paragraph 710.5(2)"b" was rearranged to form paragraphs "b," "c" and "d" with minor rewording for clarity.

These rules are intended to implement Iowa Code chapters 328, 329, 330 and 330A and will become effective May 4, 1994.

The following rules are adopted.

Rescind 761—Chapter 710, "Airport Development Program," and adopt new 761—Chapter 710, "Airport Improvement Program," as follows:

**CHAPTER 710
AIRPORT IMPROVEMENT PROGRAM**

761—710.1(328) Purpose. These rules establish the procedures for a governmental subdivision to apply for state or federal funds for the improvement of airports and air navigation facilities. These rules do not apply to an airport that receives federal primary commercial service entitlement funds if the airport files a copy of the preapplication for federal funds with the department.

This rule is intended to implement Iowa Code section 328.12 and Iowa Code Supplement section 330.13.

761—710.2(328) Definitions. The definitions in Iowa Code sections 328.1, 330.1, and 330A.2 apply to this chapter of rules.

This rule is intended to implement Iowa Code sections 328.1, 330.1, and 330A.2.

761—710.3(17A) Location and information. Requests for information, forms or assistance in completing the forms, and all submissions shall be sent to: Office of Aeronautics, Air and Transit Division, Iowa Department of Transportation, Park Fair Mall, 100 East Euclid Avenue, Suite 7, Des Moines, Iowa 50313.

This rule is intended to implement Iowa Code section 17A.3.

761—710.4(330) Federal airport improvement funds.

710.4(1) Applicant eligibility. A governmental subdivision owning a public airport that is listed in the Federal Aviation Administration's (FAA) National Plan of Integrated Airport Systems (NPIAS) is eligible to apply for federal funds. This publication is available upon request from the department.

710.4(2) Project eligibility. The project must be consistent with the priorities and criteria of the Iowa aviation system plan. The Iowa aviation system plan is distributed annually by the department to each publicly owned airport in Iowa.

710.4(3) Preapplication.

a. The department shall distribute preapplication instructions and forms annually to each publicly owned airport in Iowa.

b. The completed preapplication for federal airport improvement funds shall be sent to the department at the address in rule 710.3(17A). The preapplication must be received by the department on or before October 1 to be considered for funding in the subsequent federal fiscal year.

710.4(4) Project programming.

a. The department shall review each completed preapplication for consistency with the Iowa aviation system plan and shall recommend approval or disapproval of the preapplication on that basis. The department shall rank all of the projects according to the Iowa aviation system plan priorities and present the list of projects to the transportation commission.

b. The commission may approve or disapprove the projects, or approve a portion of a project. The department shall notify each applicant of the commission's action on the applicant's preapplication. The department shall return the preapplications that were not approved by the commission to the applicant.

c. The department shall send the approved preapplications to the FAA and the FAA will contact the applicant directly concerning all subsequent action on the preapplication.

This rule is intended to implement Iowa Code Supplement section 330.13.

761—710.5(328) State airport improvement funds.

710.5(1) Applicant eligibility. A governmental subdivision owning or establishing a public airport is eligible to apply to the department for state airport improvement funds if the airport does not receive federal primary commercial service entitlement funds.

710.5(2) Project eligibility and requirements.

a. An airport improvement project is eligible for funding if the proposed improvement will benefit and be accessible to the flying public. Eligible and ineligible projects are identified in the Iowa aviation system plan that the department distributes annually to all publicly owned Iowa airports.

b. The project shall comply with the airport master plan as adopted by the governmental subdivision and approved by the department.

c. The governmental subdivision shall have complied with all prior project agreements with the department.

d. The airport for which improvement funds are requested shall comply with the following:

(1) Have zoning ordinances to protect the airport environment from encroachment by tall structures if within an airport hazard area as defined by Iowa Code chapter 329.

(2) Be owned by the governmental subdivision requesting funds.

(3) Have approaches to the airport runways protected by the governmental subdivision's control of the runway protection zones.

710.5(3) Application for funding. The department shall distribute the application instructions and forms annually to each publicly owned airport in Iowa. The applicant shall send the completed application to the department at the address in rule 710.3(17A). The application

TRANSPORTATION DEPARTMENT[761](cont'd)

must be received on or before October 1 to be considered for funding in the subsequent state fiscal year.

710.5(4) Application review. The department shall review each completed application and evaluate it according to the criteria and priority order established in the Iowa aviation system plan. The department shall present the list of projects to the transportation commission for approval. The commission may approve or disapprove the list of projects, or approve a portion of a project subject to fiscal year funding appropriations. The department shall notify each applicant of the commission's action on the application. When the amount of funds appropriated for this program is established, the department shall notify the applicants whose projects received tentative commission approval of the final funding disposition of their applications. The department shall notify the applicants whose projects received funding to proceed with their projects.

710.5(5) Project agreement and responsibilities. Upon notification from the department to proceed, the department and the governmental subdivision shall execute an agreement. The agreement shall specify the amount of state funds, the contract period, and the responsibilities for project planning, development, construction, inspection, and documentation and the criteria for each.

a. The governmental subdivision shall submit all plans and specifications to the department for approval and authorization to advertise for bids on the improvement.

b. The governmental subdivision shall conduct the bidding in compliance with Iowa Code sections 384.95 to 384.103 and shall submit the tabulation of all bids and recommendations for award of contract to the department for concurrence before awarding the contract.

c. The governmental subdivision shall be responsible for accomplishing the project work in accordance with the approved plans and specifications. Any modification to the plans or specifications must be approved by the department before work is begun. The governmental subdivision shall supervise the actual improvement and verify compliance with the terms of the contract and shall submit periodic field reports to the department, including copies of all laboratory reports on the strength and quality of the materials.

d. Upon completion of the improvement, the governmental subdivision shall send the department the project engineer's certificate of completion, a tabulation of final costs, and an "as built" plan of the completed improvement.

e. The department may inspect the improvement for compliance with the agreement and will audit all project costs incurred before sending the final payment to the governmental subdivision.

710.5(6) Consultants.

a. The governmental subdivision shall select a project engineer before work on the improvement begins. The project engineer may be a city or county engineer or a consulting engineering firm that is prequalified with the department under 761—Chapter 20.

b. Engineering fees shall be considered an eligible project expense and shall be reimbursed in compliance with the agreement.

710.5(7) Contract payments.

a. Costs that are incurred prior to commission approval and the execution of a funding agreement are not eligible for reimbursement.

b. During the project, the governmental subdivision may submit progressive billings to the department for reimbursement of eligible costs paid for completed work. The governmental subdivision should have adequate funds available to ensure that costs have been paid prior to reimbursement.

c. The department may withhold 5 percent of eligible costs until the completed project has been inspected and project costs have been audited for compliance with the agreement. When the final billing is approved, the department shall process the final payment.

This rule is intended to implement Iowa Code chapters 328 and 329 and sections 384.95 to 384.103 and 573.12.

[Filed 3/10/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4683A

TREASURER OF STATE[781]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 17A.3, the Treasurer of State hereby rescinds Chapter 11, "South Africa Investment Restrictions," Iowa Administrative Code.

The purpose of this amendment is to rescind the rules which implemented restrictions against investing in companies doing business in South Africa. The rules are no longer necessary because the investment restrictions were lifted when Iowa Code chapter 12A was repealed on February 1, 1994.

In compliance with Iowa Code section 17A.4(2), the Treasurer finds that notice and public participation are unnecessary because the General Assembly and the Governor have already repealed the law which these rules implemented.

This amendment is intended to rescind the rules that implemented Iowa Code chapter 12A, which was repealed by 1994 Iowa Acts, Senate File 2013, section 5.

This amendment will become effective May 4, 1994.

The following amendment is adopted:

Rescind 781—Chapter 11.

[Filed Without Notice 3/4/94, effective 5/4/94]
[Published 3/30/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

ARC 4685A

**WALLACE TECHNOLOGY
TRANSFER FOUNDATION[851]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 15E.161, the Wallace Technology Transfer Foundation hereby adopts a new Chapter 13, "Manufacturing

WALLACE TECHNOLOGY TRANSFER FOUNDATION[851](cont'd)

Technology Outreach Special Projects Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 1994, as ARC 4523A. A public hearing was held on January 25, 1994. The Wallace Technology Transfer Foundation Board of Directors adopted this chapter on February 23, 1994.

The new chapter provides guidelines for administration and award of Manufacturing Technology Outreach Special Projects Fund under the Regionally Based Manufacturing Technology Program.

No public comments either oral or written concerning the new chapter were received, and there are no changes from the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 15E.165 and 15E.166.

This new chapter will become effective May 4, 1994.

The following new chapter is adopted:

CHAPTER 13

MANUFACTURING TECHNOLOGY OUTREACH
SPECIAL PROJECTS FUND

851—13.1(15E) Purpose. The purpose of the manufacturing special projects fund is to support implementation of the regionally based manufacturing technology program as directed by Iowa Code sections 15E.165 and 15E.166 and is to pay certain costs incurred by community colleges in arranging certain special programs for local industry groups or industrial consortia and for other related purposes described herein.

851—13.2(15E) Definitions. Definitions set forth in 851—12.2(15E) shall also apply to this chapter.

851—13.3(15E) Amount of financial assistance. The maximum amount of financial assistance to support a single special project shall not exceed \$5,000. Financial assistance of up to \$25,000 may be provided for joint or cooperative projects cosponsored by three or more manufacturing technology outreach specialists.

13.3(1) Eligible expense. The foundation will consider requests submitted by manufacturing technology outreach specialists to pay expenses which may include the following:

a. Direct costs of organizing and supporting manufacturing consortia having participation of five or more local area manufacturing firms;

b. Costs to develop or conduct technology demonstrations appropriate to five or more local area manufacturing firms;

c. Costs to develop or conduct industry seminars on technologies, management systems, or quality assurance methods relevant to local area manufacturing firms provided that topics to be addressed are not otherwise available from existing technology resource sites funded by the foundation;

d. Costs to conduct industry inspection trips to appropriate technology resource sites;

e. Costs of specialized training programs offered to manufacturing technology outreach specialists.

13.3(2) Ineligible expenses include:

a. Salary or other direct expense of manufacturing technology outreach specialists if the applicant specialist

receives foundation funding for full-time employment status;

b. Costs incurred for the benefit of a single manufacturing firm;

c. Purchase of equipment or computers;

d. Any indirect cost.

851—13.4(15E) Submission of requests. Requests for financial assistance shall be submitted to the foundation in advance of any proposed special project by one or more manufacturing technology outreach specialist(s).

Requests shall be in writing and shall include:

1. A brief description of the project;

2. A statement of the project goals;

3. A description of activities and the dates or period of time covered by the request;

4. The proposed special project budget;

5. Evidence of approval of the special project by the applying community college.

851—13.5(15E) Evaluation of requests. All requests will be evaluated and acted upon in the following manner:

1. The program manager for the regional manufacturing technology program will review the request in the order in which it was received and shall make a recommendation to the president of the foundation within five working days of receipt;

2. The president will make the decision on approval, approval with modification, or denial of the request;

3. The foundation will inform the manufacturing technology outreach specialist(s) of its funding decision within 20 days of the date of receipt, unless extenuating circumstances exist. In the event the foundation requests additional information, the decision may be extended to 30 days following receipt of the additional information.

851—13.6(15E) Request for reconsideration. A request which has been denied may be submitted for reconsideration of the president's decision if submitted in writing by the manufacturing technology outreach specialist(s) within 15 days of receipt of a modification or denial notice. The request shall include specific reasons to justify reconsideration, including but not limited to new information not available at the time of the original decision. If the president accepts a request for reconsideration, the foundation staff will review the new information, schedule a meeting of the parties if necessary, and formulate a new recommendation according to procedures described above in rule 13.5(15E).

851—13.7(15E) Financial assistance agreements. Upon approval by the president, the foundation shall prepare a financial assistance agreement. Financial assistance agreements shall include, but are not limited to, conditions for reimbursement of eligible expenses, anticipated outcomes, terms of participation, and provisions for default or funds recapture.

These rules are intended to implement Iowa Code sections 15E.165 and 15E.166.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

CITIZENS' AIDE[141] (OMBUDSMAN)

Pursuant to Iowa Code section 2C.9(5), the Citizens' Aide/Ombudsman hereby rescinds Chapter 1, "Organization"; Chapter 2, "Procedures"; Chapter 3, "Declaratory Rulings"; Chapter 4, "Rulemaking"; Chapter 5, "Confidentiality"; Chapter 6, "Privileges and Immunities"; Chapter 7, "Penalties"; and Chapter 8, "Forms," and adopts new Chapter 1, "Organization"; Chapter 2, "Procedures"; Chapter 3, "Information Practices"; Chapter 4, "Rule Making"; Chapter 5, "Petitions for Rule Making"; and Chapter 6, "Declaratory Rulings," Iowa Administrative Code. As a result of the Reorganization Act of 1986, the agency identification number of the Office of Citizens' Aide/Ombudsman was reassigned from 210 to 141 to reflect this reorganization.

Pursuant to Iowa Code section 2C.9(5), these rules are exempt from the rule-making procedures in Iowa Code chapter 17A, but are to be published in the Iowa Administrative Code. The Citizens' Aide/Ombudsman presented the new rules to the Service Committee of the Legislative Council on February 16, 1994, for review and comment. The Citizens' Aide/Ombudsman expressed a desire to request authorization from the Administrative Rules Review Committee (ARRC) for these rules to be published in the Iowa Administrative Bulletin, in the interest of informing the public of their adoption. The Legislative Council adopted the Service Committee's recommendation to refer these rules to the ARRC for publication in the Iowa Administrative Bulletin, as well as the Iowa Administrative Code.

At its meeting held March 7, 1994, the ARRC voted to authorize publication of the rules in the Iowa Administrative Bulletin pursuant to Iowa Code section 17A.6(1)"c."

In addition to amending the agency identification number and the Iowa Code references to reflect reorganizational changes, the new rules accomplish the following objectives:

1. Clarify the procedures for intakes and investigations in former Chapter 2 to reflect current practices in new Chapter 2. The new rules expand on how complaints are received, add a process for preliminary review and inquiry of complaints, clarify the criteria for investigations, expand on investigative methods, and explain more completely the procedures for the issuance and publication of critical reports.

2. Replace previous Chapter 4, "Rulemaking," which was based on the rule-making provisions in Iowa Code chapter 17A, with rules which are exempt from chapter 17A. The new rules provide that the Citizens' Aide/Ombudsman may submit a proposed rule to the Service Committee for review and comment and may request authorization from the ARRC for an adopted rule to be published in the Iowa Administrative Bulletin.

3. Replace previous Chapter 5, "Confidentiality," with new Chapter 3, "Information Practices." The revisions bring the previous rules into compliance with Iowa Code section 22.11, the Iowa Fair Information Practices Act. The new rules are in general conformity with the uniform rules on "Fair Information Practices."

4. Create a separate Chapter 5, "Petitions for Rule Making," for rules similar to those contained in previous

Chapter 4, "Rulemaking," and amend the rules in general conformity with the Uniform Rules.

5. Replace previous Chapter 3, "Declaratory Rulings," with new Chapter 6, "Declaratory Rulings," and amend the rules in general conformity with the Uniform Rules.

6. Incorporate previous Chapter 6, "Privileges and Immunities," and previous Chapter 7, "Penalties," into new Chapter 2, "Procedures."

7. Delete Chapter 8, "Forms," since the number of forms has increased substantially and the forms are subject to periodic revisions.

The rules in new Chapters 1, 2, and 4 are intended to implement Iowa Code section 2C.9(5). The rules in new Chapters 3, 5, and 6 are intended to implement Iowa Code sections 22.11, 17A.7, and 17A.9, respectively.

These rules shall become effective May 1, 1994.

The following rules are adopted.

Rescind **210—Chapters 1 to 8** and adopt in lieu thereof the following **new 141—Chapters 1 to 6**:

CHAPTER 1 ORGANIZATION

141—1.1(2C) Authority and function. The office of the citizens' aide/ombudsman was established by the general assembly in 1972 and is charged with the responsibility to investigate complaints from any persons regarding administrative actions of Iowa state or local governmental agencies and to render objective opinions or recommendations on the complaints, in the interests of resolving complaints and improving administrative processes and procedures. In addition to the powers and duties specified in Iowa Code chapter 2C, the office of citizens' aide/ombudsman shall investigate complaints received pursuant to Iowa Code section 23A.4 and serve on the child support enforcement program advisory committee pursuant to Iowa Code section 252B.18.

141—1.2(2C) Location and access. The office of citizens' aide/ombudsman is located at the Capitol Complex, 215 E. Seventh Street, Des Moines, Iowa 50319. The office can be reached at the following numbers: telephone (515)281-3592, Iowa WATS 1-800-358-5510, TDD/TTY (515)242-5065, and fax (515)242-6007. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

141—1.3(2C) Composition and duties of staff.

1.3(1) The office of citizens' aide/ombudsman is composed of the following staff positions:

a. Citizens' aide/ombudsman. The citizens' aide/ombudsman is appointed by the legislative council pursuant to Iowa Code section 2C.3. The citizens' aide/ombudsman shall meet the qualifications specified in Iowa Code section 2C.4 and serve for the term of office provided in Iowa Code section 2C.5. The citizens' aide/ombudsman employs and supervises all staff in the positions and at the salaries authorized by the legislative council.

b. Deputy citizens' aide/ombudsman. The citizens' aide/ombudsman shall designate one of the members of the staff as the deputy citizens' aide/ombudsman. The deputy citizens' aide/ombudsman shall act as the citizens' aide/ombudsman when the citizens' aide/ombudsman is absent from the state or becomes disabled, or when the

position of citizens' aide/ombudsman is vacant, until the vacancy is filled by the legislative council.

c. Legal counsels. The legal counsels shall provide legal advice, assistance, and representation to the citizens' aide/ombudsman and members of the staff in matters pertaining to their authority and duties and shall perform other assigned duties.

d. Assistant for corrections. The assistant citizens' aide/ombudsman for corrections is primarily responsible for investigating complaints relating to penal and correctional agencies, and performs other assigned duties.

e. Assistants. The assistant citizens' aide/ombudsmen receive intakes, investigate complaints, and perform other assigned duties.

f. Support staff. The support staff performs secretarial, clerical, and other assigned duties.

1.3(2) Delegation of authority or duties. The citizens' aide/ombudsman may delegate to any staff member any authority or duties of the citizens' aide/ombudsman, except the duty of making formal recommendations to agencies or reports to the governor or the general assembly.

These rules are intended to implement Iowa Code section 2C.9(5).

CHAPTER 2 PROCEDURES

141—2.1(2C) Definitions. As used in this chapter:

"Administrative action" means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.

"Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. It does not include:

1. Any court or judge or appurtenant judicial staff;
2. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
3. The governor of Iowa or the governor's personal staff;
4. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state; and
5. Any agency, official or employee of the federal government.

"Employee" means any employee of any agency.

"Officer" means any officer of any agency.

"Person" means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

"Records" or "documents" means any writings, drawings, graphs, charts, photographs, phonorecords, audiotapes, videotapes, and any other data or information stored or preserved in any medium.

141—2.2(2C) Intakes.

2.2(1) Persons who may contact office. Any person may contact the citizens' aide/ombudsman concerning an administrative action by an agency. If a person contacts the citizens' aide/ombudsman on behalf of another person whose specific right or interest is directly affected by an administrative action, the citizens' aide/ombudsman may request that the affected person contact the citizens' aide/ombudsman as the complainant or obtain the consent of the affected person before considering the complaint.

2.2(2) Methods of contact. The citizens' aide/ombudsman may be contacted at the office of citizens' aide/ombudsman or at the site of an agency or other loca-

tion specified by the citizens' aide/ombudsman. No appointment is needed for the initial office visit. Contact may be made by mail, telephone, fax machine, office visit, or any other method deemed acceptable by the citizens' aide/ombudsman, except as provided in subrule 2.2(3). Contact may also be made indirectly by the receipt of a person's correspondence which is referred or forwarded to the office of the citizens' aide/ombudsman.

2.2(3) Written complaints. The citizens' aide/ombudsman may require certain types of complaints to be submitted in writing or on a form prescribed by the citizens' aide/ombudsman.

2.2(4) Assistance by citizens' aide/ombudsman. If a person is incapable of submitting a written complaint or has difficulty communicating with the citizens' aide/ombudsman because of a disability or language barrier, the citizens' aide/ombudsman shall assist that person in completing the complaint or make accommodations to facilitate communication with that person.

2.2(5) Self-initiated complaints. An investigation into an agency's administrative action may be initiated on the citizens' aide/ombudsman's own motion, if the citizens' aide/ombudsman determines it is an appropriate subject for investigation.

2.2(6) Anonymous complaints. The citizens' aide/ombudsman may accept a complaint from an anonymous person. However, if the citizens' aide/ombudsman at any time determines the complainant's identity is needed to pursue an investigation of the complaint, the citizens' aide/ombudsman may request that the complainant's identity be disclosed. If the identity of the complainant is not disclosed as requested, the citizens' aide/ombudsman may decline to pursue investigation of the complaint.

2.2(7) Information requests. If a person who contacts the citizens' aide/ombudsman requests information, the citizens' aide/ombudsman may provide such information, if it relates to state and local government, or refer the person to another agency or to any other appropriate entity or source for the information.

2.2(8) No fee or charge. The citizens' aide/ombudsman shall not assess any monetary or other charge against any person who contacts the office of citizens' aide/ombudsman for assistance.

141—2.3(2C) Institutional contacts.

2.3(1) Correspondence. Any correspondence from a person confined or residing in an institution or facility under the control of an agency shall be forwarded, unopened and without undue delay, to the office of citizens' aide/ombudsman by the institution or facility. Any correspondence from the office of the citizens' aide/ombudsman to such a person shall be delivered, unopened and without undue delay, by the institution or facility to that person.

2.3(2) Telephonic communication. A telephonic communication between a person confined or residing in an institution or facility under an agency's control and any staff member of the office of citizens' aide/ombudsman shall not be monitored by any officer or employee of that agency.

141—2.4(2C) Preliminary review and inquiry.

2.4(1) Review of complaint. The citizens' aide/ombudsman shall review and consider each complaint to determine if it is within the citizens' aide/ombudsman's jurisdiction, if it is an appropriate subject for investigation, and if it warrants an investigation, under the criteria in rule 2.5(2C).

2.4(2) Preliminary inquiry. The citizens' aide/ombudsman may make a preliminary inquiry to obtain information for the purpose of making the determination required in subrule 2.4(1). A preliminary inquiry may utilize any of the methods available for investigations under subrule 2.8(1). However, a preliminary inquiry shall not be considered an investigation.

2.4(3) Resolution without investigation. If, in the course of a preliminary inquiry on the complaint, an agency provides an explanation or response, or takes an action which resolves the complaint, the citizens' aide/ombudsman may decline to investigate the complaint. The citizens' aide/ombudsman shall inform the complainant regarding the resolution of the complaint. However, the resolution of a complaint during a preliminary review and inquiry does not preclude the citizens' aide/ombudsman from conducting an investigation into the complaint.

141—2.5(2C) Criteria for investigation.

2.5(1) Jurisdiction. The citizens' aide/ombudsman has jurisdiction to investigate any administrative action of an agency, except that the citizens' aide/ombudsman shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency.

2.5(2) Subjects for investigation. An appropriate subject for investigation includes any administrative action which the citizens' aide/ombudsman has reason to believe might be:

1. Contrary to law or regulation;
2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though it is in accordance with the law;
3. Based on a mistake of law;
4. Arbitrary in ascertainties of fact;
5. Based on improper motivation or irrelevant consideration; or
6. Unaccompanied by an adequate statement of reasons.

The citizens' aide/ombudsman may also inquire into an agency's policy, practice or procedure if the citizens' aide/ombudsman has reason to believe improvements can be made to the policy, practice or procedure which lessen the risk that objectionable administrative actions will occur.

2.5(3) Reasons to decline investigation. The citizens' aide/ombudsman may decline to investigate a complaint if the citizens' aide/ombudsman finds substantiating facts that:

- a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use;
- b. The grievance pertains to a matter outside the citizens' aide/ombudsman's power;
- c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about;
- d. The complaint is trivial, frivolous, vexatious, or not made in good faith;
- e. Other complaints are more worthy of attention;
- f. The resources of the citizens' aide/ombudsman are insufficient for adequate investigation;
- g. The complaint has been delayed too long to justify present examination of its merit;
- h. The complainant does not provide or refuses to provide, without good reason, information in the complain-

ant's possession or knowledge which is requested by the citizens' aide/ombudsman;

i. A previous determination has been made by the citizens' aide/ombudsman regarding the subject matter of the complaint; or

j. The complaint has been resolved due to a change in the complainant's circumstances or the law, or an action taken by the agency during a preliminary review and inquiry on the complaint.

141—2.6(2C) Decision not to investigate.

2.6(1) Notice of decision. If, after preliminary review and consideration of a complaint, the citizens' aide/ombudsman decides not to investigate the complaint, the complainant shall be informed of the decision and the reasons for the decision. The citizens' aide/ombudsman may also inform the agency involved of the decision, if such notice is deemed appropriate.

2.6(2) Referral of nonjurisdictional complaint. If the citizens' aide/ombudsman does not have jurisdictional authority to investigate a complaint, the complainant may be referred to an agency or other appropriate entity or person for assistance.

2.6(3) Effect of declining investigation. A decision to decline investigation of a complaint under subrule 2.5(3) does not preclude the citizens' aide/ombudsman from inquiring into the complaint or a related subject matter in the future.

141—2.7(2C) Decision to investigate.

2.7(1) Notice of decision. If, after preliminary review and inquiry and consideration, the citizens' aide/ombudsman decides to investigate a complaint, the complainant and the agency involved in the complaint shall be notified of the decision.

2.7(2) Notice to agency. A notice of investigation to an agency shall be directed to the head or director of the agency and any other officer or employee of the agency who is a subject of the complaint, as determined by the citizens' aide/ombudsman. Such notice may be given simultaneously or in conjunction with any investigative action that is initiated under rule 2.8(2C).

141—2.8(2C) Investigations.

2.8(1) Methods. The citizens' aide/ombudsman may use any one or more of the following methods in conducting an investigation:

- a. Review applicable laws, rules, regulations, and policies;
- b. Request a statement from an agency providing reasons for taking an administrative action;
- c. Make informal verbal or written inquiries to an agency and other persons for assistance or information;
- d. Examine and copy records or documents of an agency;
- e. Enter and inspect without notice any premises within an agency's control;
- f. Attend administrative hearings or proceedings;
- g. Issue a subpoena to compel a person to provide sworn testimony or to produce relevant records or documents;
- h. Hold private hearings as provided under rule 2.10(2C);
- i. Convene a public hearing as a forum to obtain public input or comment on a subject of general or broad public concern;
- j. Any other method determined appropriate by the citizens' aide/ombudsman.

2.8(2) Ex parte communications. A communication or receipt of information by the citizens' aide/ombudsman or any person in the course of an investigation shall not be considered an ex parte communication as described in Iowa Code section 17A.17.

2.8(3) Status reports. The citizens' aide/ombudsman shall report the status of an investigation to the complainant upon request of the complainant or whenever it is deemed appropriate.

141—2.9(2C) Subpoenas.

2.9(1) Issuance. Pursuant to Iowa Code section 2C.9(4), the citizens' aide/ombudsman has power to issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.

2.9(2) Notice. The citizens' aide/ombudsman shall give reasonable notice of the date, time, place, and purpose for the taking of testimony or the production of documentary or other evidence. Notice shall be served in accordance with the law applicable to the service of subpoenas in civil actions.

2.9(3) Fees. A person required to give testimony or produce documentary or other evidence is entitled to payment of the same fees and travel allowances as are payable to a witness whose attendance has been required in a district court of this state.

2.9(4) Enforcement. If a person fails or refuses to obey a subpoena, the citizens' aide/ombudsman may file a petition with the district court having jurisdiction for an order directing obedience to the subpoena under Iowa Code section 2C.9(4).

141—2.10(2C) Hearings to examine witnesses.

2.10(1) Purpose. The citizens' aide/ombudsman has authority to conduct private hearings under Iowa Code section 2C.8. A private hearing is the taking of testimony from any person, with or without the issuance of a subpoena. A hearing is not a contested case proceeding under Iowa Code chapter 17A. The purpose of a hearing is not to adjudicate the substantive rights of a complainant or an agency, but to discover and gather factual information relevant to a subject matter of a complaint.

2.10(2) Notice. The citizens' aide/ombudsman shall provide reasonable notice to the person whose testimony is sought of the date, time, and place for taking that person's testimony. If the citizens' aide/ombudsman issues a subpoena compelling a person to give testimony, notice shall be provided in the subpoena.

2.10(3) Location. The citizens' aide/ombudsman has discretion to take testimony from a person at the office of the citizens' aide/ombudsman or at another location as deemed appropriate by the citizens' aide/ombudsman, or by telephone conference call.

2.10(4) Rights of witnesses. A person who gives testimony is accorded the same privileges and immunities as are extended to witnesses in the courts of this state. The witness is entitled to be accompanied and advised by counsel or other representative while being questioned, but only counsel may speak or raise objections to questions on behalf of the witness. Objections to questions shall be noted but the witness shall answer all questions, except when a privilege or immunity accorded to the witness has been asserted.

2.10(5) Conduct of hearings. The citizens' aide/ombudsman, deputy citizens' aide/ombudsman, and assistants may administer oaths to persons giving testimony before

them. The citizens' aide/ombudsman determines the order for the taking of testimony and may sequester witnesses or examine a witness privately. Questions will be posed by the citizens' aide/ombudsman. At the conclusion of the citizens' aide/ombudsman's examination of a witness, counsel for the witness may be permitted to question the witness, after which the citizens' aide/ombudsman may inquire further into any matters raised during the examination. The scope of the questions shall be decided and may be limited by the citizens' aide/ombudsman.

2.10(6) Evidence. Strict rules of evidence shall not apply. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The probative value and weight of any evidentiary matter shall be determined by the citizens' aide/ombudsman.

2.10(7) Record. The citizens' aide/ombudsman may record the testimony on audiotape or videotape or by use of a certified court reporter and may have the testimony transcribed.

a. A witness is permitted to record any testimony that the witness may give, if such recording will not interfere unduly with the taking of the testimony in an orderly manner.

b. A witness is entitled to obtain a copy of the audiotape, videotape, or transcription of the witness's testimony upon request and payment of a reasonable fee for producing the copy.

c. Audiotapes and videotapes of testimony shall be preserved for a period not less than 60 days from the date they were recorded.

141—2.11(2C) Disposition after investigation.

2.11(1) Complaint unsubstantiated. If, after completing an investigation, the citizens' aide/ombudsman determines the complaint is not substantiated, based upon a preponderance of the evidence, the citizens' aide/ombudsman shall inform the complainant and the agency involved of such determination.

2.11(2) Complaint indeterminate. If, after completing an investigation, the citizens' aide/ombudsman is unable to conclusively determine, based upon a preponderance of the evidence, whether the complaint is substantiated or unsubstantiated, the citizens' aide/ombudsman shall inform the complainant and the agency involved of such conclusion.

2.11(3) Complaint substantiated. If, after completing an investigation, the citizens' aide/ombudsman determines the complaint is substantiated, based upon a preponderance of the evidence, the citizens' aide/ombudsman shall inform the complainant and the agency involved of the findings of fact and conclusions. If appropriate, the citizens' aide/ombudsman shall also inform the agency of any recommendation that:

1. The matter be further considered by the agency;
2. The administrative action be modified or canceled;
3. A rule on which an administrative action is based be altered;
4. Reasons be given for an administrative action; or
5. Any other action be taken by the agency.

2.11(4) Agency response to recommendations. If the citizens' aide/ombudsman requests, the agency shall notify the citizens' aide/ombudsman within 20 days in writing of any action taken or to be taken on the recommendations or the reasons for not complying with the recommendations.

2.11(5) Legislative action. If the citizens' aide/ombudsman believes that a law resulted in administrative action which was unfair or otherwise objectionable, the citizens' aide/ombudsman shall notify the general assembly of desirable statutory change. Notification may be given by submitting a legislative proposal or by presenting testimony or statements to the general assembly or one of its committees or members regarding the statutory change.

2.11(6) Referral for disciplinary or criminal action. The citizens' aide/ombudsman shall refer a public official, employee or other person for disciplinary or criminal proceeding, if such referral is warranted under rule 2.14(2C).

141—2.12(2C) Investigative reports.

2.12(1) Issuance of reports. The citizens' aide/ombudsman may prepare a report of the findings of fact, conclusions, and recommendations relevant to an investigation.

a. **Critical reports.** If the citizens' aide/ombudsman determines as a result of an investigation that an administrative action of an agency, officer or employee warrants criticism, the citizens' aide/ombudsman may issue a critical report containing the findings, conclusions and recommendations relevant to that investigation.

b. **Special reports.** A special report may be issued if the findings of fact, conclusions, or recommendations are not critical of an agency, or an officer or employee of an agency, but are of significant interest to the public.

2.12(2) Publication of reports. The citizens' aide/ombudsman may publish and send a critical report or a special report to the governor, the general assembly or any of the committees of the general assembly. Any published report sent to the governor, the general assembly or any of its committees becomes public information and may be disseminated to the news media and to any interested members of the general public upon request.

2.12(3) Prepublication procedure for critical reports. Before publishing a critical report or announcing a conclusion or recommendation which criticizes an agency, officer or employee, the citizens' aide/ombudsman shall consult with that agency, officer or employee.

a. The citizens' aide/ombudsman shall transmit a copy of the critical report to the agency and each officer or employee who is a subject of the criticism and allow the agency, officer or employee a reasonable opportunity to reply to the report in writing.

b. **Reply to report.** The agency, officer or employee shall notify the citizens' aide/ombudsman within 7 days from the date the critical report is received of any decision by that agency, officer or employee to make a reply. The agency, officer or employee shall be allowed 30 days from the date of receipt of the critical report to submit a written reply to the citizens' aide/ombudsman. The citizens' aide/ombudsman may for good cause extend the time allowed to submit the reply, if an extension is requested by the agency, officer or employee.

c. **Comment to reply.** The citizens' aide/ombudsman may comment on any reply from an agency, officer or employee. The comments may include modifications by the citizens' aide/ombudsman to any findings, conclusions, or recommendations in the critical report. The citizens' aide/ombudsman shall transmit in writing any comments to the replying agency, officer or employee.

d. **Reply or comment attached to report.** Any unedited reply made by an agency, officer or employee and any written comments by the citizens' aide/ombudsman shall be attached to every critical report which is published, sent, or disseminated by the citizens' aide/ombudsman, unless inclusion of the reply is waived by the agency, officer or employee.

e. **Confidential information not published.** The citizens' aide/ombudsman may not publish any confidential information which the citizens' aide/ombudsman is not authorized to disclose or is prohibited from disclosing by law. The citizens' aide/ombudsman may prepare, for the purpose of publication, an edited version of the critical report, from which confidential information has been deleted or excluded. The citizens' aide/ombudsman shall transmit the edited version of the critical report to the agency, officer or employee and consult with that agency, officer or employee to ensure the report does not contain confidential information that may not be disclosed. Any reply or comment which is attached to this report and which contains confidential information that may not be disclosed shall likewise be edited to delete or exclude the confidential information.

141—2.13(2C) Annual reports.

2.13(1) When and to whom submitted. Pursuant to Iowa Code section 2C.18, the citizens' aide/ombudsman shall by April 1 of each year submit an economically designed and reproduced annual report to the general assembly and to the governor concerning the activities and work performed during the preceding calendar year.

2.13(2) Inclusion of reply by agency or official. If the annual report summarizes or discusses the findings, conclusions or recommendations in a critical report and identifies the agency, officer or employee involved, the annual report shall also include any unedited reply made by the agency, officer or employee to the critical report, unless inclusion of the reply is waived by the agency or official.

141—2.14(2C) Referral for disciplinary or criminal action. If the citizens' aide/ombudsman believes that a public official, employee, or other person has acted in a manner warranting disciplinary or criminal proceeding, the citizens' aide/ombudsman shall refer the matter to the appropriate authorities. The citizens' aide/ombudsman shall disclose this duty to the public official, employee or other person at any time the citizens' aide/ombudsman has reason to believe that the public official, employee or other person is about to reveal or has revealed information concerning such an act.

141—2.15(2C) Privileges and immunities.

2.15(1) Immunity of citizens' aide/ombudsman. Except for removal from office as provided in Iowa Code chapter 66 or for employment-related claims, no civil action or other proceeding shall be commenced against the citizens' aide/ombudsman or any member of the staff for any official act or omission performed pursuant to the provisions in Iowa Code chapter 2C, unless the act or omission is actuated by malice or is grossly negligent.

2.15(2) Testimonial privilege. The citizens' aide/ombudsman or any member of the staff shall not be compelled to testify in any judicial or administrative proceeding with respect to any matter involving the exercise of the citizens' aide/ombudsman's official duties, except as may be necessary to enforce the provisions of Iowa Code chapter 2C.

141—2.16(2C) Penalties for obstruction.

2.16(1) Penalties. As provided in Iowa Code section 2C.22, any person who willfully obstructs or hinders the lawful actions of the citizens' aide/ombudsman or any member of the staff, or who willfully misleads or attempts to mislead the citizens' aide/ombudsman or a member of the staff in the course of an inquiry or investigation, shall be guilty of a simple misdemeanor.

2.16(2) Prosecution. The citizens' aide/ombudsman shall refer for prosecution a violation of Iowa Code section 2C.22 to the county attorney in the county where the violation occurred.

These rules are intended to implement Iowa Code section 2C.9(5).

CHAPTER 3 INFORMATION PRACTICES

141—3.1(2C,22) Definitions. As used in this chapter:

"Agency" means the office of the citizens' aide/ombudsman.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records of information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

"Custodian" means the agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a public record, as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

141—3.2(2C,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records and access to records. The purpose of this chapter is to facilitate public access to open records and to guide agency determinations with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act.

141—3.3(2C,22) Requests for access to records.

3.3(1) Location. A request for access to a record should be directed to the citizens' aide/ombudsman at the Office of the Citizens' Aide/Ombudsman, Capitol Complex, 215 E. Seventh Street, Des Moines, Iowa 50319. The agency may also be reached at the following numbers: telephone (515)281-3592, Iowa WATS 1-800-358-5510, TDD/TTY (515)242-5065, and fax (515)242-6007.

3.3(2) Office hours. Access to records shall be available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

3.3(3) Request for access. Requests for access to records may be made in writing, in person, by telephone, or by fax machine. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Requests by mail, telephone or fax machines shall also include the name, address, and telephone or fax number of the person requesting the information. A person shall not be required to give a reason for the request.

3.3(4) Response to requests. Access to an open record of the agency shall be provided promptly upon request. If the size or nature of the request makes prompt access impracticable, the custodian shall comply with the request as soon as practicable. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall notify the requester of the reason for a delay in access to an open record and an estimate of the length of that delay and, upon request, shall provide such notice in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 3.4(2C,22) and other applicable provisions of law.

3.3(5) Security of record. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. A person may not search or remove any record from agency files, without permission from the custodian. A person may not cause damage or disorganization to any agency records.

3.3(6) Copying. A reasonable number of copies of a record may be made in the agency's office. If photocopying equipment is not available in the agency office, the custodian shall permit examination of the record in the office and shall arrange to have copies made as soon as practicable elsewhere.

3.3(7) Fees. To the extent permitted by law, the agency may charge fees in connection with the examination or copying and may waive payment of such fees when the imposition of fees is inequitable or when a waiver is in the public interest.

a. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at costs as determined by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged.

b. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the time required is in excess of one-half hour. The hourly fee charged shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. Search fees. If the request requires research or if the records cannot readily be retrieved by the agency, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in

electronic storage systems may be charged to the requester.

d. Advance deposit. When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require the requester to make an advance payment to cover all or a part of the estimated fee. When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

141—3.4(2C,22) Access to confidential records. Under Iowa Code sections 22.7, 2C.8, or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public, or may be authorized or required to release specified confidential records in certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 3.3(2C,22):

3.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

3.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

3.4(3) Notice to subject of record. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

3.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification which is signed by the custodian and which includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

3.4(5) Request granted. When the custodian grants a request for access to a confidential record, the custodian shall notify the requester and indicate any lawful restrictions imposed on the requester's examination and copying of the record.

141—3.5(2C,22) Requests to treat record as confidential. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code sections

22.7, 2C.8, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

3.5(1) Persons who may make request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code sections 22.7, 2C.8, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection or disclosure.

3.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be filed with the custodian in writing and shall set forth the factual and legal basis for the request. If possible, the request shall be accompanied by the original or copy of the record, which identifies the parts of the record requested to be treated as confidential. A person filing such a request may be required to provide proof necessary to establish relevant facts.

3.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record.

3.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection or disclosure is filed, or when the custodian receives a request for access to the record by a member of the public.

3.5(5) Request granted or deferred. If the custodian grants the request or defers action on the request, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request shall be made available for public inspection or disclosure in lieu of the original record.

3.5(6) Request denied. If the custodian denies the request, the custodian shall notify the requester in writing of that decision and the reasons for that decision. Upon application by the requester, the custodian may, in good faith, reasonably delay allowing examination or disclosure of the record so that the requester may seek injunctive relief under Iowa Code section 22.8 or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed for the requester to seek injunctive relief.

141—3.6(2C,22) Additions, dissents or objections to records. Except as otherwise provided by law, a person may file a request with the custodian to review and, in addition, to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send such request or written statement to the custodian. The request or written statement must be dated and signed by the requester and have the current address and telephone number of the requester or requester's representative.

141—3.7(2C,22) Notice to suppliers of information. The agency shall notify persons completing agency forms of the use that will be made of personal information,

which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be by rule, on the form used to collect the information, on a separate fact sheet or letter, in a brochure, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice is not required with discovery requests in litigation or administrative proceedings, subpoenas, or similar demands for information.

141—3.8(2C,22) Release to subject. The subject of a confidential record may file a written request to review confidential records about that person, as provided in rule 3.6(2C,22). When a record concerns multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject. The agency need not release the following records to the subject:

a. All information in intake and case files, including the identity of a person providing the information to the agency, may be withheld from the subject pursuant to Iowa Code section 2C.8.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Other information may be withheld from the subject as authorized by law.

141—3.9(2C,22) Consensual disclosure of confidential records. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

3.9(1) Disclosure to legal counsel. Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

3.9(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

141—3.10(2C,22) Disclosure without consent of subject.

3.10(1) Open records. Open records are routinely disclosed without the consent of the subject.

3.10(2) Confidential records. To the extent allowed by law, the agency may disclose confidential records without the consent of the subject. Following are instances where the agency may disclose confidential information without consent of the subject:

a. Disclosure to those officers, employees, or agents of the agency who need the information in the performance of their duties. The custodian of the record shall

determine what constitutes legitimate need to use the confidential information.

b. Disclosure of information related to intakes and cases to complainants or other state or local governmental agencies, as appropriate to carry out the agency's statutory functions. The agency may disclose the identities of complainants or witnesses who appear before the agency, if disclosure will facilitate an inquiry or investigation by the agency or enable the agency to sufficiently present its investigative findings and conclusions.

c. Disclosure of any records, upon request, to the general assembly, any standing committee of the general assembly, or the governor, under Iowa Code section 2C.8, except that confidential information provided by other agencies shall not be disclosed.

d. Release of critical reports, special reports, or annual reports to the general assembly or any of its committees, the governor, the news media, or interested members of the public.

e. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.

g. Disclosure of information to the appropriate authorities concerning the conduct of any public official or employee which warrants disciplinary proceedings.

h. Disclosure of information to a recipient who has given to the agency written assurance that the record will be used solely as a statistical research or reporting record, if the information is transferred in a form that does not identify the subject.

i. Disclosure of information to an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided that notice of the disclosure is first transmitted to the last known address of the subject.

j. Disclosure of information to the legislative fiscal bureau as provided under Iowa Code section 2.52.

k. Disclosure of information in the course of an employee disciplinary proceeding.

l. Disclosure of information in response to a court order.

m. Any disclosure of information specifically authorized by the statute under which the record was collected or maintained.

141—3.11(2C,22) Availability of records.

3.11(1) Open records. Agency records are open for public inspection and copying, unless otherwise provided by rule or law. This agency also has possession of records which may be open records but which are copies of records from other agencies, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This agency may refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This ensures that the requester receives a clean official copy of the record and protects the agency against unintended disclosure of confidential information.

3.11(2) Confidential records. Confidential records may be withheld from public inspection by the agency. The following confidential records are listed by category,

according to the legal basis for withholding them from public inspection:

a. All records, including intake and case files, related to the statutory functions of the agency, which are confidential under Iowa Code section 2C.8.

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Those portions of agency staff manuals, instructions or other statements issued, which set forth criteria or guidelines used by agency staff in making investigations or in the selection or handling of cases which will be or are being litigated, when their disclosure would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the agency. These records or statements are confidential under Iowa Code sections 17A.2 and 17A.3.

d. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.11, Iowa R.C.P. 122(c), Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

e. Any other records made confidential by law.

141—3.12(2C,22) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in the record systems and the means by which that information is stored. Unless otherwise stated, the authority to collect the information is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record. The record systems maintained by the agency are:

3.12(1) Intake files. The intake files contain information related to complaints and information requests which are received or initiated by the agency. Some of these files also include information collected from preliminary inquiries on complaints. These files contain notes and memoranda of agency staff members and may include research materials, correspondence, and documents provided by complainants or agencies involved in the complaints. These files are stored both in paper form and electronically. These files are confidential pursuant to Iowa Code section 2C.8.

3.12(2) Case files. The case files are created from intake files of complaints which are not readily resolved during the preliminary review and inquiry process or which are investigated. Case files are also generated from intake files which contain confidential records provided by other agencies. These files contain agency staff notes and memoranda and may include research materials, correspondence, documents, legal counsel opinions, investigative information, critical or special reports, and case management records. These files are stored in paper form. Critical reports and special reports which are published are open to public inspection. All other information in case files is confidential pursuant to Iowa Code section 2C.8.

3.12(3) Intake and case data base files. Some administrative data from intake files and case files is contained on a computer data base. The administrative data includes names and locations of persons who contacted the agency, methods of contact, agency staff members who handled the intake or case files, the dates the files were

opened and closed, the subjects of the contacts, and the agencies involved. This data base system serves as a means of organizing the administrative data by different categories into a readily accessible format. These files are subject to the same confidentiality provisions as intake files and case files.

3.12(4) Case card files. The case card files contain administrative data from open and closed case files. These files are indexed by the names of the persons who contacted the agency. These files are stored in paper form on index cards. These files are subject to the same confidentiality provisions as case files.

3.12(5) Litigation files. The litigation files contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These files include pleadings, briefs, depositions, discovery materials, docket sheets, general correspondence, attorney-client correspondence, documents, memoranda, investigative information, research materials, witness information, attorney's notes, information compiled under the direction of the attorney, and case management records. These files are stored in paper form. These files contain materials which are confidential as attorney work product and attorney-client communications or which are confidential under Iowa Code section 2C.8 or other applicable law, or because of a court order.

3.12(6) Petition for rule making files. The petitions for rule making files contain the petitions, documents, agency notes and memoranda, legal counsel opinions, and the agency's decisions on the petitions. These files are stored in paper form.

3.12(7) Petition for declaratory ruling files. The petition for declaratory ruling files contain the petitions, documents, agency notes and memoranda, legal counsel opinions, and the agency's decisions or rulings on the petitions. The files are stored in paper form.

3.12(8) Personnel files. The personnel files contain information about the employees in the agency. These files include payroll records, information required for tax withholding, biographical information, medical information relating to disability, information concerning employee benefits, performance evaluations and reviews, disciplinary information, and other information concerning employer-employee relationships. These records are stored in paper form. Some information in these records is confidential under Iowa Code section 22.7.

3.12(9) Applicant files. The applicant files contain information about applicants for positions with the agency. These files include biographical information, correspondence, equal employment opportunity and affirmative action data, and other preemployment materials. These files are stored in paper form. Some information in these files is confidential under Iowa Code section 22.7 or other applicable law.

141—3.13(2C,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 3.12(2C,22). These records are not stored or retrieved by personal identifiers. These records are routinely available to the public; however, the agency's files of these records may contain some confidential information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record.

3.13(1) Administrative records. The administrative records include documents concerning budget, admin-

istrative or personnel reports, purchasing, printing and supply requisitions, property inventory, time sheets, and office policies for employees.

3.13(2) Publications. Publications include a variety of books, periodicals, newsletters, government documents, and similar publications, which agency staff use as reference, research or resource materials. These materials are generally available for public examination, but may be protected by copyright law.

3.13(3) Office publications. Office publications include a variety of documents issued by the agency, including pamphlets, news releases, critical reports, special reports, and annual reports. Critical reports and special reports are also maintained in some files within the case files record system. Critical reports, special reports, and annual reports may contain information about individuals.

3.13(4) Rule-making records. Rule-making records consist of official documents produced during promulgation of agency rules.

3.13(5) Office manuals. Agency staff may maintain office manuals which contain memoranda or statements of various policies and procedures related to performance of the agency's functions. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code section 17A.2(10)"f" or other applicable law.

3.13(6) Legal counsel research files. The agency's legal counsel maintains research files on a variety of legal issues related to the functions of the agency or specific case files. These files include copies of cases or other published materials, briefs, notes, and legal memoranda or opinions to agency staff. Some files regarding issues in particular cases may contain information about individuals. Some records in these files are confidential as attorney work product or attorney-client communications, or are confidential under Iowa Code section 2C.8 or other applicable law.

3.13(7) Form files. Form files contain various blank forms used by agency staff in the performance of agency functions.

141—3.14(2C,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

141—3.15(2C,22) Applicability. This chapter does not:

3.15(1) Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

3.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3.15(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

3.15(4) Make available records which have been compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

CHAPTER 4 RULE MAKING

141—4.1(2C) Applicability.

4.1(1) Procedure exempt from Iowa Code chapter 17A. Pursuant to Iowa Code section 2C.9(5), the promulgation of rules relating to the organization, operation, and procedures of the office of citizens' aide/ombudsman is exempt from the provisions of Iowa Code chapter 17A, the Administrative Procedure Act.

4.1(2) Definition. As used in this chapter, "agency" means the office of the citizens' aide/ombudsman.

141—4.2(2C) Adoption of rule.

4.2(1) Time of adoption. The agency may adopt a rule at any time.

4.2(2) Manner of adoption. The agency is exempt from the procedural requirements for rule making in Iowa Code section 17A.4. The agency shall file each rule the agency adopted with the administrative code editor, who shall publish the rule in the Iowa Administrative Code. The agency shall file the rule for publication as soon as practicable after adoption of the rule.

4.2(3) Review by service committee. The agency may submit a proposed rule to the service committee of the legislative council for the committee's review and comment before the rule is adopted and published.

4.2(4) Publication in Iowa Administrative Bulletin. The agency may submit an adopted rule to the administrative rules review committee and request that the adopted rule be published in the Iowa Administrative Bulletin.

4.2(5) Exempt from governor's review. An adopted rule of the agency is not subject to review by the governor and may not be rescinded by executive order of the governor.

141—4.3(2C) Contents, style, and form of rule.

4.3(1) Contents. Each rule adopted by the agency shall contain the text of the rule and, in addition:

1. The date the agency adopted the rule;
2. A statement of the purpose of the rule;
3. A reference to all rules repealed, amended, or suspended by the rule;
4. A reference to the specific statutory or other authority authorizing adoption of the rule; and
5. The effective date of the rule.

4.3(2) Incorporation by reference. The agency may incorporate, by reference in an adopted rule, and without causing publication of the incorporated matter in full, all or any of a code, standard, rule, or other matter if the agency determines that the incorporation of its text in the agency adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient.

a. The reference in the agency adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the adopted rule does not include any later amendments or editions of the incorporated matter.

b. The agency may incorporate such matter by reference in an adopted rule only if the source from which the matter originated makes copies of it readily available to the public. The agency shall retain permanently a copy of any material incorporated by reference in a rule of the

agency. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the agency or the originating source.

4.3(3) References to materials not published in full. When the administrative code editor decides to omit the full text of an adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall submit to the administrative code editor for inclusion in the Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material.

a. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the adopted rule and of significant issues involved in the rule. The statement shall also describe how a copy of the full text of the adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

b. At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.3(4) Style and form. In preparing its rules for publication in the Iowa Administrative Code, the agency shall follow the uniform numbering system, form and style prescribed by the administrative rules coordinator.

These rules are intended to implement Iowa Code section 2C.9(5).

**CHAPTER 5
PETITIONS FOR RULE MAKING**

141—5.1(17A) Petition for rule making.

5.1(1) Definition. As used in this chapter, "agency" means the office of the citizens' aide/ombudsman.

5.1(2) Filing. Any interested person may file a petition for rule making with the agency. A petition is deemed filed when it is received by the agency. The petition may be delivered in person or mailed to the Office of Citizens' Aide/Ombudsman, Capitol Complex, 215 E. Seventh Street, Des Moines, Iowa 50319.

5.1(3) Form. The petition must be typewritten or legibly handwritten, and substantially conform to the following form:

Office of the Citizens' Aide/Ombudsman

Petition by (Name of)	
Petitioner) for the (adoption,)	
amendment, or repeal) of)	PETITION FOR
rules relating to (state)	RULE MAKING
subject matter).)	

1. The text or summary of the contents of the proposed rule or amendment, or the rule sought to be repealed.

2. The reasons for seeking the requested action.

3. A brief summary of petitioner's arguments and any relevant data or evidence in support of the action urged in

the petition. (Attach copies of any supporting documents to the petition.)

4. Any request by petitioner for a meeting provided for by rule 5.2(17A).

5. The signature, mailing address, and telephone number of the petitioner or the petitioner's representative.

5.1(4) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition.

141—5.2(17A) Agency consideration.

5.2(1) Informal meeting. If requested in the petition, the agency shall schedule a brief and informal meeting between the petitioner and the citizens' aide/ombudsman or a member of the staff to discuss the petition.

5.2(2) Additional information. The agency may request the petitioner, within 14 days of the filing of the petition, to submit additional information concerning the petition. The agency may also solicit or receive comments from any person regarding the subject of the petition.

5.2(3) Action on petition. Within 60 days after filing of the petition, or within any longer period agreed to by the petitioner, the agency shall either deny the petition and notify the petitioner of the denial and the grounds for the denial, or grant the petition, notify the petitioner that the petition has been granted, and adopt a rule on the subject of the petition. Petitioner is deemed notified on the date the agency mails or delivers the required notification to the petitioner.

a. The petition shall be denied if it is determined the petition does not substantially comply with the required form, the petition does not disclose sufficient reasons to justify the commencement of rule-making proceedings, or other good reason exists for the denial.

b. A denial of the petition because it does not substantially comply with the required form does not preclude the petitioner from filing a new petition on the same subject which seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7.

**CHAPTER 6
DECLARATORY RULINGS**

141—6.1(17A) Petition for declaratory rulings.

6.1(1) Definition. As used in this chapter, "agency" means the office of the citizens' aide/ombudsman.

6.1(2) Filing. Any person who has a real and direct interest in a specific factual situation that may affect their legal rights, duties or responsibilities under any statute, rule, other written statement of law, policy, or decision administered by the agency may file a petition with the agency for a declaratory ruling concerning the application or interpretation of any such statute, rule, other written statement of law, policy, or decision. The petition is deemed filed when it is received by the agency. The petition may be delivered in person or mailed to the Office of Citizens' Aide/Ombudsman, Capitol Complex, 215 E. Seventh Street, Des Moines, Iowa 50319.

6.1(3) Form. The petition must be typewritten or legibly handwritten and substantially conform to the following form:

Office of the Citizens' Aide/Ombudsman

Petition by (Name of Petitioner)) PETITION FOR
 for a Declaratory Ruling on) DECLARATORY
 (Cite provisions of law) RULING
 involved.))

a. A clear, concise, and complete statement of all relevant facts on which the ruling is requested.

b. A citation and the relevant text of the specific statute, rule, other written statement of law, policy, or decision whose applicability is questioned, and any other relevant law.

c. The question or questions petitioner wants answered, stated clearly and concisely.

d. The answers desired by the petitioner and a summary of the reason urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory ruling and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the questions at issue are being considered or have been considered in an investigative, rule-making, or another proceeding by the agency or any other governmental entity.

g. Any request by petitioner for a meeting provided for by rule 6.2(17A).

h. The signature, mailing address, and telephone number of the petitioner or the petitioner's representative.

6.1(4) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition.

141—6.2(17A) Agency consideration.

6.2(1) Informal meeting. If requested in the petition, the agency shall schedule a brief and informal meeting between the petitioner and the citizens' aide/ombudsman or a member of the staff to discuss the petition.

6.2(2) Additional information. The agency may request the petitioner, within 14 days of the filing of the petition, to submit additional information concerning the petition. The agency may also solicit or receive comments from any person regarding the subject of the petition.

6.2(3) Action on petition. Within 30 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency shall, in writing, issue a ruling on the petition or refuse to do so. The agency is deemed to have issued a ruling or to have refused to do so on the date the ruling or refusal is sent, by certified mail, to the petitioner.

141—6.3(17A) Refusal to issue ruling.

6.3(1) Refusal for good cause. The agency may refuse to issue a declaratory ruling for good cause, which may include, but is not limited to, the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or ad-

versely affected by the failure of the agency to issue a ruling.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current investigative, rule-making, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling.

g. There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances, fact, or law.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but instead describes prior conduct in an effort to establish the effect of that conduct or to challenge a decision already made by the agency.

i. The petition requests a declaratory ruling that would necessarily determine the legal rights of other persons who have not joined in the petition or filed a similar petition and whose position on the questions may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

6.3(2) Decision. A decision by the agency to refuse to issue a declaratory ruling shall state the specific grounds for the refusal and constitutes final agency action on the petition.

6.3(3) Refiling. A refusal to issue a declaratory ruling does not preclude the filing of a new petition which seeks to eliminate the grounds for the agency's refusal to issue a ruling.

141—6.4(17A) Declaratory rulings.

6.4(1) Contents. In addition to the ruling itself, a declaratory ruling shall include the date of issuance, the name of the petitioner, the statutes, rules, other written statements of law, policies, or decisions involved, the particular facts upon which it is based, and the reasons for its conclusion.

6.4(2) Effective date. A declaratory ruling is effective on the date of issuance.

6.4(3) Effect of ruling. A declaratory ruling is binding on the agency and the petitioner in situations in which the facts and applicable law are indistinguishable from those contained in the petition. As to all other parties, a declaratory ruling serves only as precedent and is not binding on the agency.

These rules are intended to implement Iowa Code section 17A.9.

[Adopted and published 3/30/94 pursuant to Iowa Code §2C.9(5), effective 5/1/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/30/94.

HUMAN SERVICES DEPARTMENT

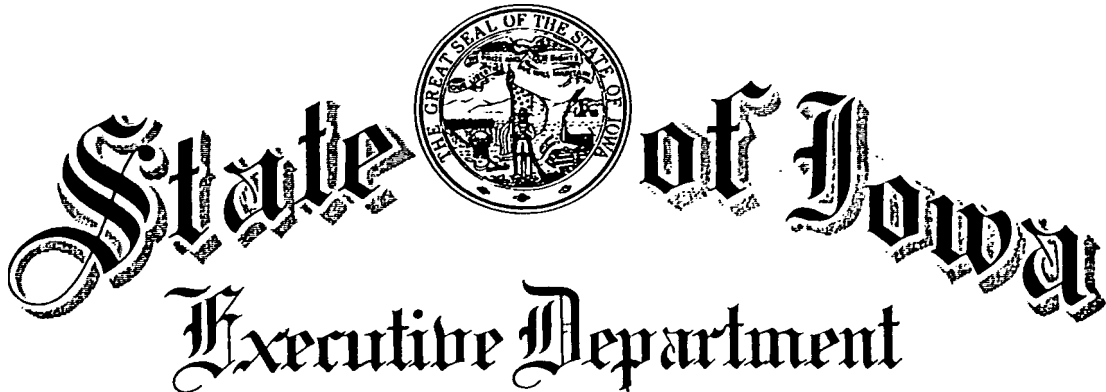
At its meeting held March 7, 1994, the Administrative Rules Review Committee voted to lift its objection to subrule **441—7.5(8)** relating to appeals for limited benefit plans. The subrule was revised in **ARC 4625A**, published in the 3/2/94 Iowa Administrative Bulletin.

PROFESSIONAL LICENSURE DIVISION

At its meeting held February 15, 1994, the Administrative Rules Review Committee voted to lift its objection to rules of the Board of Behavioral Science Examiners, **645—Chapters 31, 32, and 36 through 39**. The Board had adopted these rules following the Notice of Intended Action and rescinded the emergency version, published in the 3/2/94 Iowa Administrative Bulletin as **ARC 4652A**.

REVENUE AND FINANCE DEPARTMENT

At its meeting held February 15, 1994, the Administrative Rules Review Committee voted to lift its objection to rule **701—20.10(422,423)** relating to sales and rentals covered by Medicaid and Medicare. It was Committee consensus that the objection had been overcome by statutory changes.

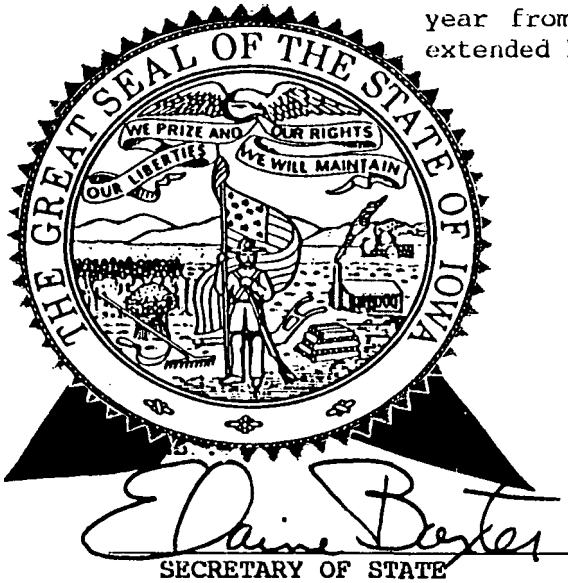


IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 49

- WHEREAS providing Iowans access to a high quality and affordable health care delivery system is important to our quality of life; and
- WHEREAS, the application of advanced telecommunications technology to health care shows much promise towards helping achieve this goal; and
- WHEREAS, developing telemedicine in Iowa will require the cooperative efforts of numerous individuals and organizations to establish appropriate policies, plans and administrative mechanisms.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the Laws of the State of Iowa do hereby order that:
- I. A Telemedicine Advisory Council shall be created to develop a coordinated, cost effective and comprehensive plan for the implementation of a statewide telemedicine program.
 - II. The Telemedicine Advisory Council shall consist of no more than 18 members and no fewer than 15 members representing Iowa hospitals, health care providers, postsecondary education institutions, and the general public.
 - III. Experts in such fields as medical education, information management, telecommunications, insurance, finance and patient treatment and care shall be called upon by the Council for advice as is necessary.
 - IV. State agencies involved with health care, the Iowa Communications Network, and telecommunications shall cooperate with the Council in promoting the objectives of this Council.
 - V. The members of the Council shall be appointed by and serve at the will of the Governor. The Chairperson will be appointed by the Governor and serve at his pleasure. All appointments will be for one-year terms.

VI. The authorization for the Advisory Council will expire in one year from the enactment of this order, unless otherwise extended by the Governor.



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 4th day of March in the year of our Lord, one thousand nine hundred and ninety-four.

Tom E. Branstad
GOVERNOR

*** SUMMARY OF THE OPINIONS OF THE ATTORNEY GENERAL****BONNIE J. CAMPBELL**

January and February, 1994

APPROPRIATIONS

Cash reserve fund and limitation on general fund expenditures. Iowa Code §§ 8.54, 8.56, 8.57, 8.58 (1993). The appropriation to the cash reserve fund, made pursuant to Code section 8.57, is a general fund expenditure which is to be included with all other general fund expenditures when determining compliance with the Code section 8.54(3) limitation on general fund expenditures. (Scase to Senators Boswell and Murphy and Representatives Van Maanen and Corbett, 1-26-94) #94-1-7

CONSTITUTIONAL LAW; CONFLICT OF INTEREST; GIFTS

Solicitation of charitable contributions by uniformed firefighters. Iowa Const. art. III, § 31; Iowa Code §§ 68B.2A, 68B.22, 721.2 (1993). Uniformed public employees may not solicit funds for charitable organizations unless their employer has determined that the activity serves a public rather than a private purpose. Before authorizing employees to use city time, uniforms, and equipment to raise funds for charity, the city council must make findings that the fundraising activity serves a public purpose, and that the donations are used to further a public purpose. Public employees are prohibited from soliciting funds for charity if either they or their families receive a personal gain or advantage. (Olson to Hahn, State Representative, 1-27-94) #94-1-6(L)

CONSTITUTIONAL LAW; CORPORATIONS; PUBLIC FUNDS

Ownership of corporate stock by a state agency. Iowa Const. art. VIII, § 3; Iowa Code ch. 15E (1993). The Iowa Product Development Corporation is an agency of state government that is subject to the provisions of article VIII, section 3 of the Constitution, and therefore is generally prohibited from directly owning stock in private corporations. (Krogmeier to Johnson, State Auditor, 1-11-94) #94-1-2

COUNTIES

Group insurance for officers and employees. Iowa Code §§ 509A.1, 509A.3, 509A.8 (1993). The county board of supervisors is authorized to provide group insurance plans to county officers and employees under Iowa Code chapter 509A. The supervisors have discretion to formulate rules for the operation of group insurance plans provided to county officers and employees and may limit the contribution which will be made with county funds. (Scase to Dickinson, State Representative, 1-13-94) #94-1-4(L)

COUNTIES; MENTAL HEALTH

Patient payments. Iowa Code §§ 230.1, 230.15, 230.20(6), and 230.25 (1993). 42 U.S.C. §§ 1395cc(1)(O), (2)(A). A county of legal settlement may seek reimbursement from a Medicare recipient for payments made by the county pursuant to chapter 230 which represent the deductible or coinsurance payments to the Medicare Program. (Ramsay to Olesen, Adair County Attorney, 1-6-94) #94-1-1(L)

COUNTIES; REAL PROPERTY

Subdivision platting. Iowa Const. art. III, § 39A; Iowa Code §§ 354.1, 354.2, 354.3, 354.4, 354.6, 354.8, 354.9 (1993). Iowa Code section 354.6(1) allows filing of a plat of survey in lieu of a subdivision plat unless a local ordinance requires filing of a subdivision plat. (Smith to Beekman, Plymouth County Attorney, 1-14-94) #94-1-5

COUNTY AND COUNTY OFFICERS

Board of supervisors; Appointment of general assistance director. Iowa Code §§ 68B.2A, 252.26, 252.33 (1993). The language of Iowa Code section 252.26 requires the county board of supervisors to appoint a natural person to the position of general assistance director rather than an agency. (Robinson to Haskovec, Howard County Attorney, 2-11-94) #94-2-1(L)

CRIMINAL LAW; CHILD STEALING

Prosecution of biological father. Iowa Code § 710.5 (1993). A biological father to a child born out of wedlock is a "relative" under section 710.5 regardless of whether paternity has been acknowledged or adjudged. For purposes of criminal prosecution under section 710.5, a biological father may purposely "assume" custody of the child without any pre-existing custodial rights to the child. (Allen to Angrick, Citizen Aide/Ombudsman, 2-11-94) #94-2-2

INSURANCE; SCHOOLS; TAXATION

Use of management levy for employee benefits and early retirement. Iowa Code §§ 279.46, 296.7, 298.4 (1993); Iowa Code § 296.7 (1987); 1990 Acts, ch. 1234, § 74. All indebtedness contracted for, general obligation bonds issued, and insurance agreements entered into or renewed on or after May 2, 1990, are subject to the current version of section 296.7, and therefore may not be used for employee benefit plans. The management levy may be used to fund early retirement benefits. (Condo to Stilwill, Acting Director, Department of Education, 1-13-94) #94-1-3(L)

1993 IOWA CODE

8.54

8.56

8.57

8.58

ch. 15E

68B.2A

68B.22

230.1

230.15

230.20(6)

230.25

252.26

252.33

279.46

296.7

298.4

354.1

354.2

354.3

354.4

354.6

354.8

354.9

509A.1

509A.3

509A.8

710.5

721.2

OPINION

94-1-7

94-1-7

94-1-7

94-1-7

94-1-2

94-1-6(L)

94-2-1(L)

94-1-6(L)

94-1-1(L)

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94-1-5

94-1-5

94-1-4(L)

94-1-4(L)

94-1-4(L)

94-2-2

94-1-6(L)

1987 IOWA CODE

296.7

OPINION

94-1-3(I)

1990 IOWA ACTS

ch. 1234, § 74

OPINION

94-1-3(L)

IOWA CONSTITUTION**OPINION**

Art. III, § 31

94-1-6(L)

Art. III, § 39A

94-1-5

Art. VIII, § 3

94-1-2

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