

# House Amendment 1682

## Amendment Text

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1 1 Amend [House File 667](#) as follows:  
1 2 #1. By striking everything after the enacting  
1 3 clause and inserting the following:  
1 4 "ARTICLE 1  
1 5 GENERAL PROVISIONS  
1 6 Section 1. NEW SECTION. 17A.1101 CITATION,  
1 7 STATEMENT OF PURPOSE, AND CONSTRUCTION.  
1 8 1. This chapter may be cited as the "Iowa  
1 9 Administrative Procedure Act". Whenever the terms  
1 10 "administrative procedure Act" or "chapter 17A" appear  
1 11 in the Code, they mean this chapter and this Act.  
1 12 2. The purposes of this chapter are the following:  
1 13 a. To provide legislative and gubernatorial  
1 14 oversight of powers and duties delegated to  
1 15 administrative agencies.  
1 16 b. To increase the public accountability of  
1 17 administrative agencies.  
1 18 c. To simplify government by assuring a uniform  
1 19 minimum procedure to which all agencies will be held  
1 20 in the conduct of their most important functions.  
1 21 d. To increase public access to information about  
1 22 agency law and policy.  
1 23 e. To increase public participation in the  
1 24 formulation of administrative rules and the efficacy  
1 25 and acceptability of those rules.  
1 26 f. To increase the fairness and efficiency of  
1 27 agencies in their conduct of adjudicative proceedings.  
1 28 g. To simplify the process of judicial review of  
1 29 agency action as well as to increase its availability  
1 30 and effectiveness.  
1 31 3. In accomplishing its objectives, the intention  
1 32 of this chapter is to strike a fair balance between  
1 33 the need for adequate protection of private rights and  
1 34 political control of agency processes and the need for  
1 35 efficient, economical, and effective government  
1 36 administration.  
1 37 4. The coverage and requirements of this chapter  
1 38 shall be construed broadly to effectuate the purposes  
1 39 of this chapter and any exemptions from its  
1 40 requirements contained in this chapter or elsewhere  
1 41 shall be narrowly construed.  
1 42 Sec. 2. NEW SECTION. 17A.1102 DEFINITIONS.  
1 43 As used in this chapter, unless the context  
1 44 otherwise requires:  
1 45 1. "Adjudicative proceeding" means the process for  
1 46 formulating and issuing an order.  
1 47 2. "Agency" means a board, commission, department,  
1 48 officer, or other administrative unit of this state,  
1 49 including the agency head, and one or more members of  
1 50 the agency head or agency employees directly or  
2 1 indirectly purporting to act on behalf or under the  
2 2 authority of the agency head. "Agency" does not mean  
2 3 the general assembly or any of its components, the  
2 4 judicial department or any of its components, the  
2 5 governor, or a political subdivision of the state or  
2 6 any of the administrative units of a political  
2 7 subdivision, but it does include a board, commission,

2 8 department, officer, or other administrative unit  
2 9 created or appointed by joint or concerted action of  
2 10 an agency and one or more political subdivisions of  
2 11 the state or any of their administrative units. To  
2 12 the extent it purports to exercise authority subject  
2 13 to any provision of this chapter, an administrative  
2 14 unit otherwise qualifying as an "agency" must be  
2 15 treated as a separate agency even if the  
2 16 administrative unit is located within or subordinate  
2 17 to another agency.

2 18 Unless provided otherwise by statute, no less than  
2 19 two-thirds of the members eligible to vote of a  
2 20 multimember agency head constitute a quorum authorized  
2 21 to act in the name of the agency.

2 22 3. "Agency action" means any one of the following:

2 23 a. The whole or a part of a rule or an order.

2 24 b. The failure to adopt a rule or issue an order.

2 25 c. An agency's performance of, or failure to  
2 26 perform, any other duty, function, or activity,  
2 27 discretionary or otherwise.

2 28 4. "Agency head" means an individual or body of  
2 29 individuals in whom the ultimate legal authority of  
2 30 the agency, with respect to the matter at issue, is  
2 31 vested by any provision of law.

2 32 5. "License" means a franchise, permit,  
2 33 certification, approval, registration, charter, or  
2 34 similar form of authorization required by law.

2 35 6. "Order" means an agency action of particular  
2 36 applicability that determines the legal rights,  
2 37 duties, privileges, immunities, or other legal  
2 38 interests of one or more specific persons. The term  
2 39 does not include an "executive order" issued by the  
2 40 governor pursuant to section 17A.1104 or 17A.3202. A  
2 41 "final order" means the whole or part of an agency  
2 42 order other than a nonfinal order. A "nonfinal order"  
2 43 includes an initial order and means the whole or part  
2 44 of an agency order that the agency intends to be  
2 45 preliminary, preparatory, procedural, or intermediate  
2 46 with regard to subsequent agency action.

2 47 7. "Party to agency proceedings" or "party" in  
2 48 context so indicating, means any of the following:

2 49 a. A person to whom the agency action is  
2 50 specifically directed.

3 1 b. A person named as a party to an agency  
3 2 proceeding or allowed to intervene or participate as a  
3 3 party in the proceeding.

3 4 8. "Party to judicial review or civil enforcement  
3 5 proceeding" or "party" in context so indicating, means  
3 6 any of the following:

3 7 a. A person who files a petition for judicial  
3 8 review or civil enforcement.

3 9 b. A person named as a party in a proceeding for  
3 10 judicial review or civil enforcement or allowed to  
3 11 participate as a party in the proceeding.

3 12 9. "Person" means an individual, partnership,  
3 13 corporation, association, governmental subdivision or  
3 14 unit thereof, or public or private organization or  
3 15 entity of any character, and includes another agency.

3 16 10. "Presiding officer" means an individual who  
3 17 presides at any stage in an adjudicative proceeding.

3 18 11. "Provision of law" means the whole or a part  
3 19 of the federal or state constitution, or of any  
3 20 federal or state statute, court rule, executive order,  
3 21 or rule of an agency.

3 22 12. "Rule" means the whole or a part of an agency  
3 23 statement of general applicability that implements,  
3 24 interprets, or prescribes law or policy, or the

3 25 organization, procedures, or practice requirements of  
3 26 an agency. The term includes the amendment, repeal,  
3 27 or suspension of an existing rule. Notwithstanding  
3 28 any other provision of law, "rule" includes an  
3 29 executive order or directive of the governor which  
3 30 creates an agency or establishes a program or which  
3 31 transfers a program between agencies established by  
3 32 statute or rule.

3 33 13. "Rulemaking" means the process for formulating  
3 34 and adopting a rule.

3 35 Sec. 3. NEW SECTION. 17A.1103 APPLICABILITY AND  
3 36 RELATION TO OTHER LAW.

3 37 1. This chapter applies to all agencies and all  
3 38 proceedings not expressly exempted, mentioning this  
3 39 chapter by name or number.

3 40 2. This chapter creates only procedural rights and  
3 41 imposes only procedural duties. The procedural rights  
3 42 and duties are in addition to those created and  
3 43 imposed by other statutes. To the extent that any  
3 44 other statute would diminish a right created or duty  
3 45 imposed by this chapter, the other statute is

3 46 superseded by this chapter, unless the other statute  
3 47 expressly provides otherwise, mentioning this chapter  
3 48 by name or number. However, where this chapter  
3 49 expressly refers to another statute and incorporates  
3 50 its contents, that other statute controls whether or  
4 1 not it mentions this chapter by name or number.

4 2 3. An agency may grant procedural rights to  
4 3 persons in addition to those conferred by this chapter  
4 4 as long as rights conferred upon other persons by any  
4 5 provision of law are not substantially prejudiced.

4 6 4. An agency may exercise only that authority  
4 7 delegated to it by some provision of law and not  
4 8 otherwise prohibited by law.

4 9 Sec. 4. NEW SECTION. 17A.1104 SUSPENSION OF  
4 10 CHAPTER'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF  
4 11 FEDERAL FUNDS OR SERVICES.

4 12 1. To the extent necessary to avoid a denial of  
4 13 funds or services from the United States which would  
4 14 otherwise be available to the state, the governor by  
4 15 executive order may suspend, in whole or in part, one  
4 16 or more provisions of this chapter. The governor by  
4 17 executive order shall declare the termination of a  
4 18 suspension as soon as it is no longer necessary to  
4 19 prevent the loss of funds or services from the United  
4 20 States.

4 21 2. An executive order issued under subsection 1 is  
4 22 subject to the requirements applicable to the adoption  
4 23 and effectiveness of a rule.

4 24 3. If any provision of this chapter is suspended  
4 25 pursuant to this section, the governor shall promptly  
4 26 report the suspension to the general assembly. The  
4 27 report must include recommendations concerning any  
4 28 desirable legislation that may be necessary to conform  
4 29 this chapter to federal law.

4 30 Sec. 5. NEW SECTION. 17A.1105 WAIVER.

4 31 Except to the extent precluded by another provision  
4 32 of law, a person may waive any right conferred upon  
4 33 that person by this chapter.

4 34 Sec. 6. NEW SECTION. 17A.1106 INFORMAL  
4 35 SETTLEMENTS.

4 36 Except to the extent precluded by another provision  
4 37 of law, informal settlement of matters that may make  
4 38 unnecessary more elaborate proceedings under this  
4 39 chapter is encouraged. Agencies shall establish by  
4 40 rule specific procedures to facilitate informal  
4 41 settlement of matters. This section does not require

4 42 any party or other person to settle a matter pursuant  
4 43 to informal procedures.

4 44 Sec. 7. NEW SECTION. 17A.1107 CONVERSION OF  
4 45 PROCEEDINGS.

4 46 1. At any point in an agency proceeding the  
4 47 presiding officer or other agency official responsible  
4 48 for the proceeding may convert the proceeding to  
4 49 another type of agency proceeding provided for by this  
4 50 chapter if the conversion is appropriate under the  
5 1 particular circumstances, is in the public interest,  
5 2 and does not prejudice the substantial rights of any  
5 3 party. If required by any provision of law, the  
5 4 presiding officer or other agency official responsible  
5 5 for the proceeding shall convert the proceeding to  
5 6 another type of agency proceeding provided by this  
5 7 chapter.

5 8 2. A conversion of a proceeding of one type to a  
5 9 proceeding of another type may be effected only upon  
5 10 notice to all parties to the original proceeding and  
5 11 an opportunity to present argument on that issue. An  
5 12 order converting one type of proceeding to another  
5 13 type of proceeding is a final order.

5 14 3. If the presiding officer or other agency  
5 15 official responsible for the original proceeding would  
5 16 not have authority over the new proceeding to which it  
5 17 is to be converted, that officer or official, in  
5 18 accordance with agency rules, shall secure the  
5 19 appointment of a successor to preside over or be  
5 20 responsible for the new proceeding.

5 21 4. To the extent feasible and consistent with the  
5 22 rights of parties and the requirements of this chapter  
5 23 pertaining to the new proceeding, the record of the  
5 24 original agency proceeding must be used in the new  
5 25 agency proceeding.

5 26 5. After a proceeding is converted from one type  
5 27 to another, the presiding officer or other agency  
5 28 official responsible for the new proceeding shall do  
5 29 all of the following:

5 30 a. Give such additional notice to parties or other  
5 31 persons as is necessary to satisfy the requirements of  
5 32 this chapter pertaining to the new proceeding.

5 33 b. Dispose of the matters involved without further  
5 34 proceedings if sufficient proceedings have already  
5 35 been held to satisfy the requirements of this chapter  
5 36 pertaining to the new proceeding.

5 37 c. Conduct or cause to be conducted any additional  
5 38 proceedings necessary to satisfy the requirements of  
5 39 this chapter pertaining to the new proceeding.

5 40 6. Each agency shall adopt rules to govern the  
5 41 conversion of one type of proceeding to another. The  
5 42 rules must include an enumeration of the factors to be  
5 43 considered in determining whether and under what  
5 44 circumstances one type of proceeding will be converted  
5 45 to another.

5 46 Sec. 8. NEW SECTION. 17A.1108 EFFECTIVE DATE.

5 47 This chapter takes effect on July 1, 1998, and does  
5 48 not govern proceedings pending on that date. However,  
5 49 section 17A.3103, subsection 3, takes effect on July  
5 50 1, 1997. This chapter governs all agency proceedings,  
6 1 and all proceedings for judicial review or civil  
6 2 enforcement of agency action, commenced after that  
6 3 date. This chapter also governs agency proceedings  
6 4 conducted on a remand from a court or another agency  
6 5 after the effective date of this chapter.

6 6 ARTICLE 2

6 7 PUBLIC ACCESS TO AGENCY LAW AND POLICY

6 8 Sec. 9. NEW SECTION. 17A.2101 PUBLICATION,

6 9 COMPILATION, INDEXING, AND PUBLIC INSPECTION OF RULES.

6 10 1. The administrative rules editor shall cause the  
6 11 "Iowa Administrative Bulletin" to be published in  
6 12 pamphlet or electronic form at least every other week  
6 13 containing all of the following:

6 14 a. Notices of proposed rule adoption prepared in  
6 15 such a manner so that the text of a proposed rule  
6 16 shows the text of any existing rule being changed and  
6 17 the change being made.

6 18 b. Newly filed adopted rules prepared so that the  
6 19 text of the newly filed adopted rule shows the text of  
6 20 any existing rule being changed and the change being  
6 21 made.

6 22 c. All proclamations and executive orders of the  
6 23 governor which are general and permanent in nature.

6 24 d. Resolutions nullifying administrative rules  
6 25 passed by the general assembly pursuant to article  
6 26 III, section 40 of the Constitution of the State of  
6 27 Iowa.

6 28 e. Other materials deemed appropriate for such  
6 29 publication by the administrative rules review  
6 30 committee or the administrative rules coordinator.

6 31 2. Subject to the direction of the administrative  
6 32 rules coordinator, the administrative rules editor  
6 33 shall cause the "Iowa Administrative Code" to be  
6 34 compiled, indexed, and published in loose-leaf or  
6 35 electronic form containing all effective rules of each  
6 36 agency. The administrative rules editor shall also  
6 37 cause loose-leaf or electronic supplements to the Iowa  
6 38 administrative code to be published on a schedule  
6 39 determined by the administrative rules coordinator and  
6 40 the administrative rules review committee. Any such  
6 41 loose-leaf supplements shall be in a form suitable for  
6 42 insertion in the appropriate places in the permanent  
6 43 compilation, and any such electronic supplements shall  
6 44 be wholly integrated into the text of the permanent  
6 45 compilation. The administrative rules coordinator  
6 46 shall devise a uniform numbering system for rules and  
6 47 may renumber rules before publication to conform with  
6 48 the system.

6 49 3. a. The administrative rules editor may omit  
6 50 from the Iowa administrative bulletin or code any  
7 1 proposed or filed adopted rule the publication of  
7 2 which would be unduly cumbersome, expensive, or  
7 3 otherwise inexpedient, if all of the following apply:

7 4 (1) The administrative rules editor and the  
7 5 administrative rules coordinator determine that  
7 6 knowledge of the rule is likely to be important to  
7 7 only a small class of persons.

7 8 (2) On application to the adopting agency, the  
7 9 proposed or adopted rule in printed or electronic form  
7 10 is made available at no more than its cost of  
7 11 reproduction.

7 12 (3) The administrative bulletin or code contains a  
7 13 notice stating in detail the specific subject matter  
7 14 of the omitted proposed or adopted rule and how a copy  
7 15 of the omitted material may be obtained.

7 16 b. The administrative rules editor shall omit from  
7 17 the Iowa administrative code any rule or portion of a  
7 18 rule nullified by the general assembly pursuant to  
7 19 article III, section 40 of the Constitution of the  
7 20 State of Iowa, any rule or portion of a rule rescinded  
7 21 by the governor pursuant to section 17A.3202, and any  
7 22 other rule that is no longer effective.

7 23 4. The Iowa administrative bulletin and the Iowa  
7 24 administrative code and its supplements shall be made  
7 25 available upon request to all persons who subscribe to

7 26 any of them through the state printing division of the  
7 27 department of general services. Copies of this code  
7 28 so made available shall be kept current by the  
7 29 division.

7 30 Each agency shall also make available for public  
7 31 inspection and copying in its principal office those  
7 32 portions of the Iowa administrative bulletin and code  
7 33 containing all rules adopted or used by the agency in  
7 34 the discharge of its functions, and the index to those  
7 35 rules. An agency may satisfy the requirements of this  
7 36 paragraph by making available for public inspection  
7 37 and copying in its principal office a complete and up-  
7 38 to-date set of the administrative bulletin and code.

7 39 5. All expenses incurred by the administrative  
7 40 rules editor under this section shall be defrayed  
7 41 under section 2B.22.

7 42 6. a. The Iowa administrative code shall be cited  
7 43 as (agency identification number) IAC, (chapter, rule,  
7 44 subrule, lettered paragraph, or numbered  
7 45 subparagraph).

7 46 b. The Iowa administrative bulletin shall be cited  
7 47 as IAB (volume), (number), (publication date), (page  
7 48 number), (ARC number). "ARC number" means the  
7 49 identification number assigned by the administrative  
7 50 rules coordinator to each rulemaking document.

8 1 7. Except as otherwise required by law,  
8 2 subsections 1 and 2 do not apply to rules governed by  
8 3 section 17A.3116, and the following provisions apply  
8 4 instead:

8 5 a. Each agency shall index by subject all of its  
8 6 written rules within the scope of section 17A.3116.  
8 7 All of those rules must also be made available for  
8 8 public inspection and copying at no more than the cost  
8 9 of reproduction; however, an agency need not make  
8 10 available for public inspection and copying those  
8 11 portions containing rules governed by section  
8 12 17A.3116, subsection 2, except to the extent that such  
8 13 inspection and copying is required by constitution or  
8 14 statute or in discovery under the Iowa rules of civil  
8 15 or criminal procedure.

8 16 b. A rule subject to the requirements of this  
8 17 subsection shall not be relied on by an agency to the  
8 18 detriment of any person who does not have actual,  
8 19 timely knowledge of the contents of the rule until the  
8 20 requirements of paragraph "a" are satisfied. The  
8 21 burden of proving that knowledge is on the agency.

8 22 Sec. 10. NEW SECTION. 17A.2102 PUBLIC INSPECTION  
8 23 AND INDEXING OF AGENCY ORDERS.

8 24 1. In addition to other requirements imposed by  
8 25 any provision of law, each agency shall make all  
8 26 written final orders, including settlement orders,  
8 27 available for public inspection and copying at no more  
8 28 than the cost of reproduction and index them by name  
8 29 and subject. When the agency makes them available for  
8 30 public inspection and copying, the agency shall delete  
8 31 from those orders identifying details to the extent  
8 32 required by any provision of law or necessary to  
8 33 prevent a clearly unwarranted invasion of privacy or  
8 34 release of trade secrets. In each case the  
8 35 justification for the deletion must be explained in  
8 36 writing and attached to the order.

8 37 2. A written final order shall not be relied on as  
8 38 precedent by an agency and shall not be invoked by an  
8 39 agency for any purpose, to the detriment of any  
8 40 person, until it has been made available for public  
8 41 inspection and indexed in the manner described in  
8 42 subsection 1. This provision is inapplicable to any

8 43 person who has actual timely knowledge of the order.  
8 44 The burden of proving that knowledge is on the agency.  
8 45 Sec. 11. NEW SECTION. 17A.2103 DECLARATORY  
8 46 ORDERS.

8 47 1. Any person may petition an agency for a  
8 48 declaratory order as to the applicability to specified  
8 49 circumstances of a statute, rule, or order within the  
8 50 primary jurisdiction of the agency. An agency shall  
9 1 issue a declaratory order in response to a petition  
9 2 for that order unless the agency determines that  
9 3 issuance of the order under the circumstances would be  
9 4 contrary to a rule adopted in accordance with  
9 5 subsection 2. However, an agency shall not issue a  
9 6 declaratory order that would substantially prejudice  
9 7 the rights of a person who would be a necessary party  
9 8 and who does not consent in writing to the  
9 9 determination of the matter by a declaratory order  
9 10 proceeding.

9 11 2. Each agency shall adopt rules that provide for  
9 12 the form, contents, and filing of petitions for  
9 13 declaratory orders, the procedural rights of persons  
9 14 in relation to the petitions, and the disposition of  
9 15 the petitions. The rules must describe the classes of  
9 16 circumstances in which the agency will not issue a  
9 17 declaratory order and must be consistent with the  
9 18 public interest and with the general policy of this  
9 19 chapter to facilitate and encourage agency issuance of  
9 20 reliable advice.

9 21 3. Within fifteen days after receipt of a petition  
9 22 for a declaratory order, an agency shall give notice  
9 23 of the petition to all persons to whom notice is  
9 24 required by any provision of law and may give notice  
9 25 to any other persons.

9 26 4. Persons who qualify under section 17A.4209,  
9 27 subsection 1, paragraphs "b" and "c" as an intervenor  
9 28 and who file timely petitions for intervention  
9 29 according to agency rules may intervene in proceedings  
9 30 for declaratory orders. Other provisions of article 4  
9 31 of this chapter apply to agency proceedings for  
9 32 declaratory orders only to the extent an agency so  
9 33 provides by rule or order.

9 34 5. Within thirty days after receipt of a petition  
9 35 for a declaratory order an agency, in writing, shall  
9 36 do one of the following:

9 37 a. Issue an order declaring the applicability of  
9 38 the statute, rule, or order in question to the  
9 39 specified circumstances.

9 40 b. Set the matter for specified proceedings.

9 41 c. Agree to issue a declaratory order by a  
9 42 specified time.

9 43 d. Decline to issue a declaratory order, stating  
9 44 the reasons for its action.

9 45 6. A copy of all orders issued in response to a  
9 46 petition for a declaratory order must be mailed  
9 47 promptly to the petitioner and any other parties.

9 48 7. A declaratory order has the same status and  
9 49 binding effect as any other order issued in an agency  
9 50 adjudicative proceeding. A declaratory order must  
10 1 contain the names of all parties to the proceeding on  
10 2 which it is based, the particular facts on which it is  
10 3 based, and the reasons for its conclusion.

10 4 8. If an agency has not issued a declaratory order  
10 5 within sixty days after receipt of a petition  
10 6 therefor, the petition is deemed to have been denied.

10 7 Sec. 12. NEW SECTION. 17A.2104 REQUIRED  
10 8 RULEMAKING.

10 9 In addition to other rulemaking requirements

10 10 imposed by law, each agency shall do all of the  
10 11 following:  
10 12 1. Adopt as a rule a description of the  
10 13 organization of the agency which states the course and  
10 14 method of its operations, the administrative  
10 15 subdivisions of the agency and the programs  
10 16 implemented by each of them, a statement of the  
10 17 mission of the agency and the methods by which and  
10 18 location where the public may obtain information or  
10 19 make submissions or requests.  
10 20 2. Adopt rules of practice setting forth the  
10 21 nature and requirements of all formal and informal  
10 22 procedures available to the public, including a  
10 23 description of all forms and instructions that are to  
10 24 be used by the public in dealing with the agency.  
10 25 3. As soon as feasible and to the extent  
10 26 practicable, adopt rules, in addition to those  
10 27 otherwise required by this chapter, embodying  
10 28 appropriate standards, principles, and procedural  
10 29 safeguards that the agency will apply to the law it  
10 30 administers.

10 31 ARTICLE 3  
10 32 RULEMAKING  
10 33 PART 1

10 34 ADOPTION AND EFFECTIVENESS OF RULES

10 35 Sec. 13. NEW SECTION. 17A.3101 ADVICE ON  
10 36 POSSIBLE RULES BEFORE NOTICE OF PROPOSED RULE  
10 37 ADOPTION.

10 38 1. In addition to seeking information by other  
10 39 methods, an agency, before publication of a notice of  
10 40 proposed rule adoption under section 17A.3103, may  
10 41 solicit comments from the public on a subject matter  
10 42 of possible rulemaking under active consideration  
10 43 within the agency by causing notice to be published in  
10 44 the administrative bulletin of the subject matter and  
10 45 indicating where, when, and how persons may comment.

10 46 2. Each agency head may also appoint formal  
10 47 committees, as determined by the agency head, to  
10 48 comment, before publication of a notice of proposed  
10 49 rule adoption under section 17A.3103, on the subject  
10 50 matter of a possible rulemaking under active  
11 1 consideration within the agency. The membership of  
11 2 those committees must be published at least annually  
11 3 in the administrative bulletin.

11 4 Sec. 14. NEW SECTION. 17A.3102 PUBLIC RULEMAKING  
11 5 DOCKET.

11 6 1. Each agency shall maintain a current, public  
11 7 rulemaking docket.

11 8 2. The rulemaking docket must list each pending  
11 9 rulemaking proceeding. A rulemaking proceeding is  
11 10 pending from the time it is commenced, by publication  
11 11 of a notice of proposed rule adoption, to the time it  
11 12 is terminated, by publication of a notice of  
11 13 termination or the rule becoming effective. For each  
11 14 rulemaking proceeding, the docket must indicate all of  
11 15 the following:

- 11 16 a. The subject matter of the proposed rule.
- 11 17 b. A citation to all published notices relating to  
11 18 the proceeding.
- 11 19 c. Where written submissions on the proposed rule  
11 20 may be inspected.
- 11 21 d. The time during which written submissions may  
11 22 be made.
- 11 23 e. The names of persons who have made written  
11 24 requests for an opportunity to make oral presentations  
11 25 on the proposed rule, where those requests may be  
11 26 inspected, and where and when oral presentations may



11 27 be made.

11 28 f. Whether a written request for the issuance of a  
11 29 regulatory analysis of the proposed rule has been  
11 30 filed, whether that analysis has been issued, and  
11 31 where the written request and analysis may be  
11 32 inspected.

11 33 g. The current status of the proposed rule and any  
11 34 agency determinations with respect thereto.

11 35 h. Any known timetable for agency decisions or  
11 36 other action in the proceeding.

11 37 i. The date of the rule's adoption.

11 38 j. The date or dates the rule is to be or was  
11 39 considered by the Administrative Rules Review  
11 40 Committee and an indication of any action taken by  
11 41 that committee on the rule.

11 42 k. The date of the rule's filing, indexing, and  
11 43 publication.

11 44 l. When the rule will become effective.

11 45 Sec. 15. NEW SECTION. 17A.3103 NOTICE OF  
11 46 PROPOSED RULE ADOPTION.

11 47 1. At least thirty-five days before the adoption  
11 48 of a rule, an agency shall cause notice of its  
11 49 contemplated action to be published in the  
11 50 administrative bulletin by submitting five copies of  
12 1 the proposed rule to the administrative rules  
12 2 coordinator, who shall assign an ARC number to each  
12 3 rulemaking document and forward three copies to the  
12 4 administrative rules editor for publication in the  
12 5 administrative bulletin. The notice of proposed rule  
12 6 adoption must include all of the following:

12 7 a. A short explanation of the purpose of the  
12 8 proposed rule.

12 9 b. The specific legal authority authorizing the  
12 10 proposed rule.

12 11 c. Subject to section 17A.2101, subsection 3, the  
12 12 text of the proposed rule.

12 13 d. Where, when, and how persons may present their  
12 14 views on the proposed rule.

12 15 e. Where, when, and how persons may demand an oral  
12 16 proceeding on the proposed rule if the notice does not  
12 17 already provide for one.

12 18 2. Within three days after its publication in the  
12 19 administrative bulletin, the agency shall cause a copy  
12 20 of the notice of proposed rule adoption to be mailed  
12 21 to each person who has made a timely request to the  
12 22 agency for a mailed copy of the notice. An agency may  
12 23 charge persons for the actual cost of providing them  
12 24 with mailed copies. Failure to provide copies as  
12 25 provided in this subsection shall not be grounds for  
12 26 invalidation of a rule, unless that failure was  
12 27 deliberate on the part of the agency or a result of  
12 28 gross negligence.

12 29 3. An agency may publish a notice of proposed rule  
12 30 adoption and hold a rulemaking proceeding on the  
12 31 notice after the enactment and before the effective  
12 32 date of a statute authorizing it to adopt the proposed  
12 33 rule as long as any rule adopted on the basis of that  
12 34 proceeding states that it will not become effective  
12 35 until a specified date on or after the effective date  
12 36 of the authorizing statute.

12 37 Sec. 16. NEW SECTION. 17A.3104 PUBLIC  
12 38 PARTICIPATION.

12 39 1. For at least twenty days after publication of  
12 40 the notice of proposed rule adoption, an agency shall  
12 41 afford persons the opportunity to submit in writing,  
12 42 argument, data, and views on the proposed rule.

12 43 2. a. An agency shall schedule an oral proceeding

12 44 on a proposed rule if, within twenty days after the  
12 45 published notice of proposed rule adoption, a written  
12 46 request for an oral proceeding is submitted by the  
12 47 administrative rules review committee, the  
12 48 administrative rules coordinator, a political  
12 49 subdivision, an agency, twenty-five persons, or by an  
12 50 association having not less than twenty-five members.

13 1 At that proceeding, persons may present oral argument,  
13 2 data, and views on the proposed rule.

13 3 b. An oral proceeding on a proposed rule, if  
13 4 required, may not be held earlier than twenty days  
13 5 after notice of its location and time is published in  
13 6 the administrative bulletin.

13 7 c. The agency head, a member of the agency head,  
13 8 or another person designated by the agency, shall  
13 9 preside at a required oral proceeding on a proposed  
13 10 rule. The person presiding must have knowledge of the  
13 11 purpose and subject matter of the proposed rule. If  
13 12 the agency does not preside, the presiding officer  
13 13 shall prepare a memorandum for consideration by the  
13 14 agency summarizing the contents of the presentations  
13 15 made at the oral proceeding. Oral proceedings must be  
13 16 open to the public and be recorded by stenographic or  
13 17 other means.

13 18 d. Each agency shall adopt rules for the conduct  
13 19 of oral rulemaking proceedings. Those rules may  
13 20 include provisions calculated to prevent undue  
13 21 repetition in the oral proceedings.

13 22 Sec. 17. NEW SECTION. 17A.3105 REGULATORY  
13 23 ANALYSIS.

13 24 1. An agency shall issue a regulatory analysis of  
13 25 a proposed rule that complies with requirements of  
13 26 subsection 2, paragraph "a", if, within thirty-five  
13 27 days after the published notice of proposed rule  
13 28 adoption, a written request for the analysis is  
13 29 submitted to the agency by the administrative rules  
13 30 review committee or the administrative rules  
13 31 coordinator. An agency shall issue a regulatory  
13 32 analysis of a proposed rule that complies with  
13 33 subsection 2, paragraph "b", if that rule would have a  
13 34 substantial impact on small business and if such a  
13 35 request is submitted to the agency within the  
13 36 specified time period by the administrative rules  
13 37 review committee, the administrative rules  
13 38 coordinator, at least twenty-five persons signing that  
13 39 request who each qualify as a small business, or by an  
13 40 organization representing at least twenty-five such  
13 41 persons. If a rule has been adopted without prior  
13 42 notice and an opportunity for public participation in  
13 43 reliance upon section 17A.3108, the written request  
13 44 for the analysis may be made within seventy days of  
13 45 publication of that rule.

13 46 2. a. Except to the extent that the written  
13 47 request expressly waives one or more of the following,  
13 48 the regulatory analysis must contain all of the  
13 49 following:

13 50 (1) A description of the classes of persons who  
14 1 probably will be affected by the proposed rule,  
14 2 including classes that will bear the costs of the  
14 3 proposed rule and classes that will benefit from the  
14 4 proposed rule.

14 5 (2) A description of the probable quantitative and  
14 6 qualitative impact of the proposed rule, economic or  
14 7 otherwise, upon affected classes of persons, including  
14 8 a description of the nature and amount of all of the  
14 9 different kinds of costs that would be incurred in  
14 10 complying with the proposed rule.

14 11 (3) The probable costs to the agency and to any  
14 12 other agency of the implementation and enforcement of  
14 13 the proposed rule and any anticipated effect on state  
14 14 revenues.

14 15 (4) A comparison of the probable costs and  
14 16 benefits of the proposed rule to the probable costs  
14 17 and benefits of inaction.

14 18 (5) A determination of whether there are less  
14 19 costly methods or less intrusive methods for achieving  
14 20 the purpose of the proposed rule.

14 21 (6) A description of any alternative methods for  
14 22 achieving the purpose of the proposed rule that were  
14 23 seriously considered by the agency and the reasons why  
14 24 they were rejected in favor of the proposed rule.

14 25 b. In the case of a rule that would have a  
14 26 substantial impact on small business, the regulatory  
14 27 analysis must contain a discussion of whether it would  
14 28 be feasible and practicable to do any of the following  
14 29 to reduce the impact of the rule on small business:

14 30 (1) Establish less stringent compliance or  
14 31 reporting requirements in the rule for small business.

14 32 (2) Establish less stringent schedules or  
14 33 deadlines in the rule for compliance or reporting  
14 34 requirements for small business.

14 35 (3) Consolidate or simplify the rule's compliance  
14 36 or reporting requirements for small business.

14 37 (4) Establish performance standards to replace  
14 38 design or operational standards in the rule for small  
14 39 business.

14 40 (5) Exempt small business from any or all  
14 41 requirements of the rule.

14 42 c. The agency shall reduce the impact of the  
14 43 proposed rule on small business by using a method  
14 44 discussed in paragraph "b" if it finds that the method  
14 45 is legal and feasible in meeting the statutory  
14 46 objectives which are the basis of the proposed rule.

14 47 3. Each regulatory analysis must include  
14 48 quantifications of the data to the extent practicable  
14 49 and must take account of both short-term and long-term  
14 50 consequences.

15 1 4. Notwithstanding any other time period specified  
15 2 in this chapter, a concise summary of the regulatory  
15 3 analysis must be published in the administrative  
15 4 bulletin at least ten days before the earliest of the  
15 5 following:

15 6 a. The end of the period during which persons may  
15 7 make written submissions on the proposed rule.

15 8 b. The end of the period during which an oral  
15 9 proceeding may be requested.

15 10 c. The date of any required oral proceeding on the  
15 11 proposed rule.

15 12 In the case of a rule adopted without prior notice  
15 13 and an opportunity for public participation in  
15 14 reliance upon section 17A.3108, the summary must be  
15 15 published within seventy days of the request.

15 16 5. The published summary of the regulatory  
15 17 analysis must also indicate where persons may obtain  
15 18 copies of the full text of the regulatory analysis and  
15 19 where, when, and how persons may present their views  
15 20 on the proposed rule and demand an oral proceeding  
15 21 thereon if one is not already provided.

15 22 6. If the agency has made a good faith effort to  
15 23 comply with the requirements of subsections 1 through  
15 24 3, the rule may not be invalidated on the ground that  
15 25 the contents of the regulatory analysis are  
15 26 insufficient or inaccurate.

15 27 7. For the purpose of this section, "small

15 28 business" means any entity including but not limited  
15 29 to an individual, partnership, corporation, joint  
15 30 venture, association, or cooperative, to which all of  
15 31 the following apply:

15 32 a. It is not an affiliate or subsidiary of an  
15 33 entity dominant in its field of operation.

15 34 b. It has either twenty or fewer full-time  
15 35 equivalent positions or less than one million dollars  
15 36 in annual gross revenues in the preceding fiscal year.

15 37 For purposes of this definition, "dominant in its  
15 38 field of operation" means having more than twenty  
15 39 full-time equivalent positions and more than one  
15 40 million dollars in annual gross revenues, and  
15 41 "affiliate or subsidiary of an entity dominant in its  
15 42 field of operation" means an entity which is at least  
15 43 twenty percent owned by an entity dominant in its  
15 44 field of operation, or by partners, officers,  
15 45 directors, majority stockholders, or their equivalent,  
15 46 of an entity dominant in that field of operation.

15 47 Sec. 18. NEW SECTION. 17A.3106 TIME AND MANNER  
15 48 OF RULE ADOPTION.

15 49 1. An agency shall not adopt a rule until the  
15 50 period for making written submissions and oral  
16 1 presentations has expired and the period for  
16 2 requesting a regulatory analysis has expired.

16 3 2. Within one hundred eighty days after the later  
16 4 of the publication of the notice of proposed rule  
16 5 adoption, or the end of oral proceedings thereon, an  
16 6 agency shall adopt a rule pursuant to the rulemaking  
16 7 proceeding or terminate the proceeding by publication  
16 8 of a notice to that effect in the administrative  
16 9 bulletin.

16 10 3. Before the adoption of a rule, an agency shall  
16 11 consider the written submissions, oral submissions or  
16 12 any memorandum summarizing oral submissions, and any  
16 13 regulatory analysis, provided for by this part.

16 14 4. Within the scope of its delegated authority, an  
16 15 agency may use its own experience, technical  
16 16 competence, specialized knowledge, and judgment, in  
16 17 the adoption of a rule.

16 18 Sec. 19. NEW SECTION. 17A.3107 VARIANCE BETWEEN  
16 19 ADOPTED RULE AND NOTICE OF PROPOSED RULE ADOPTION.

16 20 1. The agency shall not adopt a rule that differs  
16 21 from the rule proposed in the notice of proposed rule  
16 22 adoption on which the rule is based unless all of the  
16 23 following apply:

16 24 a. The differences are within the scope of the  
16 25 matter announced in the notice of proposed rule  
16 26 adoption and are in character with the issues raised  
16 27 in that notice.

16 28 b. The differences are a logical outgrowth of the  
16 29 contents of that notice of proposed rule adoption and  
16 30 the comments submitted in response thereto.

16 31 c. The notice of proposed rule adoption provided  
16 32 fair warning that the outcome of that rulemaking  
16 33 proceeding could be the rule in question.

16 34 2. In determining whether the notice of proposed  
16 35 rule adoption provided fair warning that the outcome  
16 36 of that rulemaking proceeding could be the rule in  
16 37 question the agency shall consider all of the  
16 38 following factors:

16 39 a. The extent to which persons who will be  
16 40 affected by the rule should have understood that the  
16 41 rulemaking proceeding on which it is based could  
16 42 affect their interests.

16 43 b. The extent to which the subject matter of the  
16 44 rule or issues determined by the rule are different

16 45 from the subject matter or issues contained in the  
16 46 notice of proposed rule adoption.

16 47 c. The extent to which the effects of the rule  
16 48 differ from the effects of the proposed rule contained  
16 49 in the notice of proposed rule adoption.

16 50 Sec. 20. NEW SECTION. 17A.3108 GENERAL EXEMPTION  
17 1 FROM PUBLIC RULEMAKING PROCEDURES.

17 2 1. To the extent an agency for good cause finds  
17 3 that any requirements of sections 17A.3103 through  
17 4 17A.3107 are unnecessary, impracticable, or contrary  
17 5 to the public interest in the process of adopting a  
17 6 particular rule, those requirements do not apply. The  
17 7 agency shall incorporate the required finding and a  
17 8 brief statement of its supporting reasons in each rule  
17 9 adopted in reliance upon this subsection. An agency  
17 10 shall not rely upon this subsection on the ground that  
17 11 it has insufficient time to follow usual procedures to  
17 12 adopt a rule, because adoption of the rule is required  
17 13 by a statute that became effective only very recently,  
17 14 unless that statute also requires the agency to adopt  
17 15 the rule by a specified date and it would be  
17 16 impracticable to follow usual procedures for adoption  
17 17 of the rule during the period between the date of the  
17 18 enactment of the statute and the specified date by  
17 19 which the agency must adopt the rule.

17 20 2. In an action contesting a rule adopted under  
17 21 subsection 1, the burden is upon the agency to  
17 22 demonstrate that any omitted requirements of sections  
17 23 17A.3103 through 17A.3107 were impracticable,  
17 24 unnecessary, or contrary to the public interest in the  
17 25 particular circumstances involved.

17 26 3. Within two years after the effective date of a  
17 27 rule adopted under subsection 1, the administrative  
17 28 rules review committee, the governor, or the attorney  
17 29 general may request the agency to hold a rulemaking  
17 30 proceeding thereon according to the requirements of  
17 31 sections 17A.3103 through 17A.3107. The request must  
17 32 be in writing, filed in the office of the  
17 33 administrative rules coordinator, and sent to the  
17 34 agency. The administrative rules coordinator shall  
17 35 immediately forward to the administrative rules editor  
17 36 a certified copy of the request. Notice of the filing  
17 37 of the request must be published in the next issue of  
17 38 the administrative bulletin. The rule in question  
17 39 ceases to be effective one hundred eighty days after  
17 40 the request is filed. However, an agency, after the  
17 41 filing of the request, may subsequently adopt an  
17 42 identical rule in a rulemaking proceeding conducted  
17 43 pursuant to the requirements of sections 17A.3103  
17 44 through 17A.3107.

17 45 Sec. 21. NEW SECTION. 17A.3109 EXEMPTION FOR  
17 46 CERTAIN RULES.

17 47 1. An agency need not follow the provisions of  
17 48 sections 17A.3103 through 17A.3108 in the adoption of  
17 49 a rule that only defines the meaning of a statute or  
17 50 other provision of law or precedent if the agency does  
18 1 not possess delegated authority to bind the courts to  
18 2 any extent with its definition. A rule adopted under  
18 3 this subsection must include a statement that it was  
18 4 adopted under this subsection when it is published in  
18 5 the administrative bulletin, and there must be an  
18 6 indication to that effect in a footnote to the rule  
18 7 when it is published in the administrative code.

18 8 2. A reviewing court shall determine wholly de  
18 9 novo the validity of a rule within the scope of  
18 10 subsection 1 that is adopted without complying with  
18 11 the provisions of sections 17A.3103 through 17A.3108.

18 12 Sec. 22. NEW SECTION. 17A.3110 CONCISE

18 13 EXPLANATORY STATEMENT.

18 14 1. At the time it adopts a rule, an agency shall  
18 15 issue a concise explanatory statement containing all  
18 16 of the following:

18 17 a. A summary of the principal reasons urged for  
18 18 and against the rule.

18 19 b. The agency's reasons for adopting the rule,  
18 20 including the agency's reasons for overruling the  
18 21 considerations urged against its adoption.

18 22 c. An indication of any change between the text of  
18 23 the proposed rule contained in the published notice of  
18 24 proposed rule adoption and the text of the rule as  
18 25 finally adopted, with the reasons for any change.

18 26 However, an agency may, without any additional  
18 27 rulemaking proceedings, amend a concise explanatory  
18 28 statement subsequent to its issuance in order to add,  
18 29 based on later developments, new reasons for adopting  
18 30 the rule or for overruling considerations urged  
18 31 against adoption of the rule; but any such amendment  
18 32 is effective only prospectively from the latter of the  
18 33 date when the amendment is filed with the rule and its  
18 34 original explanatory statement in the office of the  
18 35 administrative rules coordinator as required by  
18 36 section 17A.3114, subsection 1, and notice of the  
18 37 amendment and a brief summary of its contents is  
18 38 published in the administrative bulletin.

18 39 2. Only the reasons contained in the concise  
18 40 explanatory statement may be used by any party as  
18 41 justifications for the adoption of the rule in any  
18 42 proceeding in which its validity is at issue.

18 43 Sec. 23. NEW SECTION. 17A.3111 CONTENTS, STYLE,  
18 44 AND FORM OF RULE.

18 45 1. Each rule adopted by an agency must contain the  
18 46 text of the rule and all of the following:

18 47 a. The date the agency adopted the rule.

18 48 b. A concise statement of the purpose of the rule.

18 49 c. A reference to all rules repealed, amended, or  
18 50 suspended by the rule.

19 1 d. A reference to the specific statutory or other  
19 2 authority authorizing adoption of the rule.

19 3 e. Any findings required by any provisions of law  
19 4 as a prerequisite to adoption or effectiveness of the  
19 5 rule.

19 6 f. The effective date of the rule if other than  
19 7 that specified in section 17A.3115, subsection 1.

19 8 2. To the extent feasible, each rule should be  
19 9 written in clear and concise language understandable  
19 10 to persons who may be affected by it.

19 11 3. An agency may incorporate, by reference in its  
19 12 rules and without publishing the incorporated matter  
19 13 in full, all or any part of a code, standard, rule, or  
19 14 regulation that has been adopted by an agency of the  
19 15 United States or of this state, another state, or by a  
19 16 nationally or internationally recognized organization  
19 17 or association, if incorporation of its text in agency  
19 18 rules would be unduly cumbersome, expensive, or  
19 19 otherwise inexpedient. The reference in the agency  
19 20 rules must fully identify the incorporated matter by  
19 21 location, date, and otherwise, and must state that the  
19 22 rule does not include any later amendments or editions  
19 23 of the incorporated matter. An agency may incorporate  
19 24 by reference such matter in its rules only if the  
19 25 agency, organization, or association originally  
19 26 issuing that matter makes copies of it readily  
19 27 available to the public. The rules must state where  
19 28 copies of the incorporated matter may be inspected,

19 29 and copied or purchased at cost, at the agency issuing  
19 30 the rule, and where copies are available from the  
19 31 entity originally issuing that matter. An agency  
19 32 which adopts standards by reference to another  
19 33 publication shall purchase and provide a copy of the  
19 34 publication containing the standards to the  
19 35 administrative rules coordinator who shall deposit the  
19 36 copy in the state law library where it shall be made  
19 37 available for inspection and reference. In those  
19 38 cases where the purchase of an additional copy would  
19 39 be an unreasonable expense, the administrative rules  
19 40 coordinator may waive this requirement if the  
19 41 publication can be temporarily and promptly obtained  
19 42 for review by the state law library upon request.

19 43 Sec. 24. NEW SECTION. 17A.3112 AGENCY RULEMAKING  
19 44 RECORD.

19 45 1. An agency shall maintain for a period of at  
19 46 least five years an official rulemaking record for  
19 47 each rule it adopts. The record and materials  
19 48 incorporated by reference must be available for public  
19 49 inspection.

19 50 2. The agency rulemaking record must contain all  
20 1 of the following:

20 2 a. Copies of all publications in the  
20 3 administrative bulletin with respect to the rule or  
20 4 the proceeding upon which the rule is based.

20 5 b. Copies of any portions of the agency's public  
20 6 rulemaking docket containing entries relating to the  
20 7 rule or the proceeding upon which the rule is based.

20 8 c. All written petitions, requests, submissions,  
20 9 and comments received by the agency and all other  
20 10 written materials that are unprivileged and that are  
20 11 not required by statute to be kept confidential that  
20 12 were considered by the agency in connection with the  
20 13 formulation, proposal, or adoption of the rule or the  
20 14 proceeding upon which the rule is based.

20 15 d. Any official transcript of oral presentations  
20 16 made in the proceeding upon which the rule is based  
20 17 or, if not transcribed, any tape recording or  
20 18 stenographic record of those presentations, and any  
20 19 memorandum prepared by a presiding officer summarizing  
20 20 the contents of those presentations.

20 21 e. A copy of any regulatory analysis prepared for  
20 22 the proceeding upon which the rule is based.

20 23 f. A copy of the rule and explanatory statement  
20 24 filed in the office of the administrative rules  
20 25 coordinator.

20 26 g. All petitions for exceptions to, amendments of,  
20 27 or repeal or suspension of, the rule.

20 28 h. A copy of any request filed pursuant to section  
20 29 17A.3108, subsection 3.

20 30 i. A copy of any objection to the rule filed by  
20 31 the administrative rules review committee pursuant to  
20 32 section 17A.3204, subsection 4, and the agency's  
20 33 response.

20 34 j. A copy of any filed executive order with  
20 35 respect to the rule.

20 36 3. Upon judicial review, the record required by  
20 37 this section constitutes the official agency  
20 38 rulemaking record with respect to a rule. Except as  
20 39 provided in section 17A.3110, subsection 2, or  
20 40 otherwise required by a provision of law, the agency  
20 41 rulemaking record need not constitute the exclusive  
20 42 basis for agency action on that rule or for judicial  
20 43 review thereof.

20 44 Sec. 25. NEW SECTION. 17A.3113 INVALIDITY OF  
20 45 RULES NOT ADOPTED ACCORDING TO CHAPTER TIME

20 46 LIMITATIONS.

20 47 1. A rule adopted after the effective date of this  
20 48 Act is invalid unless adopted in substantial  
20 49 compliance with the provisions of sections 17A.3102  
20 50 through 17A.3108 and sections 17A.3110 through  
21 1 17A.3112.

21 2 2. An action to contest the validity of a rule on  
21 3 the grounds of its noncompliance with any provision of  
21 4 sections 17A.3102 through 17A.3108 or sections  
21 5 17A.3110 through 17A.3112 must be commenced within two  
21 6 years after the effective date of the rule.

21 7 Sec. 26. NEW SECTION. 17A.3114 FILING OF RULES.

21 8 1. An agency shall file in the office of the  
21 9 administrative rules coordinator three certified  
21 10 copies of each rule it adopts and all existing rules  
21 11 that have not previously been filed. The filing must  
21 12 be done as soon after adoption of the rule as is  
21 13 practicable. At the time of filing, each adopted rule  
21 14 must have attached to it the explanatory statement  
21 15 required by section 17A.3110. The administrative  
21 16 rules coordinator shall assign an ARC number to each  
21 17 rule and shall affix to each rule and statement a  
21 18 certification of the time and date of filing and keep  
21 19 a permanent register open to public inspection of all  
21 20 filed rules and attached explanatory statements. In  
21 21 filing a rule, each agency shall use a standard form  
21 22 prescribed by the administrative rules coordinator.

21 23 2. The administrative rules coordinator shall  
21 24 transmit to the administrative rules editor, two  
21 25 certified copies of each filed rule as soon after its  
21 26 filing as is practicable.

21 27 Sec. 27. NEW SECTION. 17A.3115 EFFECTIVE DATE OF  
21 28 RULES.

21 29 1. Except to the extent subsection 2 provides  
21 30 otherwise, each adopted rule becomes effective thirty-  
21 31 five days after the later of its filing in the office  
21 32 of the administrative rules coordinator or its  
21 33 publication and indexing in the administrative  
21 34 bulletin.

21 35 2. a. A rule becomes effective on a date later  
21 36 than that established by subsection 1 if a later date  
21 37 is required by another statute or specified in the  
21 38 rule.

21 39 b. A rule may become effective immediately upon  
21 40 its filing or on any subsequent date earlier than that  
21 41 established by subsection 1 if the agency establishes  
21 42 such an effective date and finds that one or more of  
21 43 the following applies:

21 44 (1) The earlier effective date is required by  
21 45 constitution, statute, or court order.

21 46 (2) The rule only confers a benefit or removes a  
21 47 restriction on the public or some segment thereof.

21 48 (3) The rule only delays the effective date of  
21 49 another rule that is not yet effective.

21 50 (4) The earlier effective date is necessary to  
22 1 avoid immediate danger to the public health, safety,  
22 2 or welfare.

22 3 (5) The rule is wholly ministerial and does not  
22 4 alter the existing legal rights of any person.

22 5 c. The finding and a brief statement of the  
22 6 reasons therefor required by paragraph "b" must be  
22 7 made a part of the rule. In any action contesting the  
22 8 effective date of a rule made effective under  
22 9 paragraph "b", the burden is on the agency to justify  
22 10 its finding.

22 11 d. Each agency shall make a reasonable effort to  
22 12 make known to persons who may be affected by it a rule



22 13 made effective before publication and indexing under  
22 14 this subsection.

22 15 3. This section does not relieve an agency from  
22 16 compliance with any provision of law requiring that  
22 17 some or all of its rules be approved by other  
22 18 designated officials or bodies before they become  
22 19 effective.

22 20 Sec. 28. NEW SECTION. 17A.3116 SPECIAL PROVISION  
22 21 FOR CERTAIN CLASSES OF RULES.

22 22 Except to the extent otherwise provided by any  
22 23 provision of law, sections 17A.3102 through 17A.3115  
22 24 are inapplicable to all of the following:

22 25 1. A rule concerning only the internal management  
22 26 of an agency which does not directly and substantially  
22 27 affect the procedural or substantive rights or duties  
22 28 of any segment of the public.

22 29 2. A rule that establishes criteria or guidelines  
22 30 to be used by the staff of an agency in performing  
22 31 audits, investigations, or inspections, settling  
22 32 commercial disputes, negotiating commercial  
22 33 arrangements, or in the defense, prosecution, or  
22 34 settlement of cases, if disclosure of the criteria or  
22 35 guidelines would do any of the following:

22 36 a. Enable law violators to avoid detection.  
22 37 b. Facilitate disregard of requirements imposed by  
22 38 law.

22 39 c. Give a clearly improper advantage to persons  
22 40 who are in an adverse position to the state.

22 41 3. A rule that only establishes specific prices to  
22 42 be charged for particular goods or services sold by an  
22 43 agency.

22 44 4. A rule concerning only the physical servicing,  
22 45 maintenance, or care of agency owned or operated  
22 46 facilities or property.

22 47 5. A rule relating only to the use of a particular  
22 48 facility or property owned, operated, or maintained by  
22 49 the state or any of its political subdivisions, if the  
22 50 substance of the rule is adequately indicated by means  
23 1 of signs or signals to persons who use the facility or  
23 2 property.

23 3 6. A rule concerning only inmates of a  
23 4 correctional or detention facility, students enrolled  
23 5 in an educational institution, or patients admitted to  
23 6 a hospital, if adopted by that facility, institution,  
23 7 or hospital.

23 8 7. A form whose contents or substantive  
23 9 requirements are prescribed by rule or statute, and  
23 10 instructions for the execution or use of the form.

23 11 8. An agency budget.

23 12 9. An opinion of the attorney general.

23 13 10. The terms of a collective bargaining  
23 14 agreement.

23 15 Sec. 29. NEW SECTION. 17A.3117 PETITION FOR  
23 16 ADOPTION OF RULE.

23 17 1. Any person may petition an agency requesting  
23 18 the adoption of a rule. Each agency shall prescribe  
23 19 by rule the form of the petition and the procedure for  
23 20 its submission, consideration, and disposition.  
23 21 Within sixty days after submission of a petition, the  
23 22 agency shall either deny the petition in writing,  
23 23 stating its reasons therefor, initiate rulemaking  
23 24 proceedings in accordance with this chapter or if  
23 25 otherwise lawful, adopt a rule.

23 26 2. If a person petitions an agency requesting the  
23 27 adoption of a rule superseding specified principles of  
23 28 law or policy lawfully declared by the agency as the  
23 29 basis for its decisions in particular cases, the

23 30 agency shall initiate rulemaking proceedings in  
23 31 accordance with this chapter and adopt such a rule  
23 32 unless the agency finds, and incorporates in that  
23 33 finding the reasons therefor, that the adoption of  
23 34 such a rule at this time is infeasible or that such a  
23 35 rule is impracticable, and provides a copy of that  
23 36 finding to the petitioner.

23 37 PART 2

23 38 REVIEW OF AGENCY RULES

23 39 Sec. 30. NEW SECTION. 17A.3201 REVIEW BY AGENCY.

23 40 The administrative rules review committee, the  
23 41 administrative rules coordinator, a political  
23 42 subdivision, an agency, twenty-five persons signing  
23 43 one request, or an association having not less than  
23 44 twenty-five members, may request an agency to conduct  
23 45 a formal review of a specified rule of that agency to  
23 46 determine whether the rule should be repealed or  
23 47 amended or a new rule adopted instead. If the agency  
23 48 has not conducted such a review of the specified rule  
23 49 within a period of five years prior to the filing with  
23 50 the agency of that written request, the agency shall  
24 1 prepare within a reasonable time a written report with  
24 2 respect to the rule summarizing its findings, its  
24 3 supporting reasons, and any proposed course of action.  
24 4 The report must include, for the specified rule, a  
24 5 concise statement of all of the following:

24 6 1. The rule's effectiveness in achieving its  
24 7 objectives, including a summary of any available data  
24 8 supporting the conclusions reached.

24 9 2. Criticisms of the rule received during the  
24 10 previous five years, including a summary of any  
24 11 petitions for waiver of the rule tendered to the  
24 12 agency or granted by the agency.

24 13 3. Alternative solutions to the criticisms and the  
24 14 reasons they were rejected or the changes made in the  
24 15 rule in response to those criticisms and the reasons  
24 16 for the changes.

24 17 A copy of the report must be sent to the  
24 18 administrative rules review committee and the  
24 19 administrative rules coordinator and be available for  
24 20 public inspection.

24 21 Sec. 31. NEW SECTION. 17A.3202 REVIEW BY

24 22 GOVERNOR ADMINISTRATIVE RULES COORDINATOR.

24 23 1. To the extent the agency itself would have such  
24 24 authority, the governor may rescind or suspend all or  
24 25 a severable portion of a rule of an agency. In  
24 26 exercising this authority, the governor shall act by  
24 27 an executive order. If the rule in question has been  
24 28 effective for more than one hundred eighty days, that  
24 29 executive order shall be subject to the provisions of  
24 30 sections 17A.3103, 17A.3104, and 17A.3106 through  
24 31 17A.3116 applicable to the adoption and effectiveness  
24 32 of a rule.

24 33 2. The governor may summarily terminate any  
24 34 pending rulemaking proceeding by an executive order to  
24 35 that effect, stating in the order the reasons for the  
24 36 action. The executive order must be filed in the  
24 37 office of the administrative rules coordinator, which  
24 38 shall promptly forward a certified copy to the agency  
24 39 and the administrative rules editor. An executive  
24 40 order terminating a rulemaking proceeding becomes  
24 41 effective on the date it is filed and must be  
24 42 published in the next issue of the administrative  
24 43 bulletin.

24 44 3. There is created, within the office of the  
24 45 governor, an administrative rules coordinator to  
24 46 advise the governor in the execution of the authority

24 47 vested under this article. The governor shall appoint  
24 48 the administrative rules coordinator who shall serve  
24 49 at the pleasure of the governor.

24 50 Sec. 32. NEW SECTION. 17A.3203 ADMINISTRATIVE  
25 1 RULES REVIEW COMMITTEE.

25 2 1. There is created an administrative rules review  
25 3 committee. The committee shall be bipartisan and  
25 4 shall be composed of the following members:

25 5 a. Five senators appointed by the majority leader  
25 6 of the senate.

25 7 b. Five representatives appointed by the speaker  
25 8 of the house.

25 9 2. Committee members shall be appointed prior to  
25 10 the adjournment of a regular session convened in an  
25 11 odd-numbered year. Member's terms of office shall be  
25 12 for four years beginning May 1 of the year of  
25 13 appointment. However, a member shall serve until a  
25 14 successor is appointed. A vacancy on the committee  
25 15 shall be filled by the original appointing authority  
25 16 for the remainder of the term. A vacancy shall exist  
25 17 whenever a committee member ceases to be a member of  
25 18 the house from which the member was appointed.

25 19 3. A committee member shall be paid the per diem  
25 20 specified in section 2.10, subsection 6, for each day  
25 21 in attendance and shall be reimbursed for actual and  
25 22 necessary expenses. There is appropriated from money  
25 23 in the general fund not otherwise appropriated an  
25 24 amount sufficient to pay costs incurred under this  
25 25 section.

25 26 4. The committee shall choose a chairperson from  
25 27 its membership and prescribe its rules of procedure.  
25 28 The committee may employ a secretary or may appoint  
25 29 the administrative rules editor or a designee to act  
25 30 as secretary.

25 31 5. A regular committee meeting shall be held at  
25 32 the seat of government on the second Tuesday of each  
25 33 month. Unless impracticable in advance of each such  
25 34 meeting the subject matter to be considered shall be  
25 35 published in the Iowa administrative bulletin. A  
25 36 special committee meeting may be called by the  
25 37 chairperson at any place in the state and at any time.  
25 38 Unless impracticable, in advance of each special  
25 39 meeting notice of the time and place of such meeting  
25 40 and the subject matter to be considered shall be  
25 41 published in the Iowa administrative bulletin.

25 42 6. Notwithstanding section 13.7, the committee may  
25 43 employ necessary legal and technical staff.

25 44 Sec. 33. NEW SECTION. 17A.3204 REVIEW BY  
25 45 ADMINISTRATIVE RULES REVIEW COMMITTEE.

25 46 1. The administrative rules review committee shall  
25 47 selectively review possible, proposed, or adopted  
25 48 rules and prescribe appropriate committee procedures  
25 49 for that purpose. The committee may receive and  
25 50 investigate complaints from members of the public with  
26 1 respect to possible, proposed, or adopted rules and  
26 2 hold public proceedings on those complaints.

26 3 2. Committee meetings must be open to the public.  
26 4 Subject to procedures established by the committee,  
26 5 persons may present oral argument, data, or views at  
26 6 those meetings. The committee may require a  
26 7 representative of an agency whose possible, proposed,  
26 8 or adopted rule is under examination to attend a  
26 9 committee meeting and answer relevant questions. The  
26 10 committee may also communicate to the agency its  
26 11 comments on any possible, proposed, or adopted rule  
26 12 and require the agency to respond to them in writing.  
26 13 Unless impracticable, in advance of each committee

26 14 meeting notice of the time and place of the meeting  
26 15 and the specific subject matter to be considered must  
26 16 be published in the administrative bulletin.

26 17 3. The committee may recommend enactment of a  
26 18 statute to improve the operation of an agency. The  
26 19 committee may also recommend that a particular rule be  
26 20 superseded in whole or in part by statute. The  
26 21 speaker of the house and the president of the senate  
26 22 shall refer those recommendations to the appropriate  
26 23 standing committees. This subsection does not  
26 24 preclude any committee of the general assembly from  
26 25 reviewing a rule on its own motion or recommending  
26 26 that it be superseded in whole or in part by statute.

26 27 4. a. If the committee objects to all or some  
26 28 portion of a rule because the committee considers it  
26 29 to be beyond the procedural or substantive authority  
26 30 delegated to the adopting agency, or prohibited by  
26 31 law, the committee may file that objection in the  
26 32 office of the administrative rules coordinator. The  
26 33 filed objection must contain a concise statement of  
26 34 the committee's reasons for its action.

26 35 b. The administrative rules coordinator shall  
26 36 affix to each objection a certification of the date  
26 37 and time of its filing and as soon thereafter as  
26 38 practicable shall transmit a certified copy thereof to  
26 39 the agency issuing the rule in question and the  
26 40 administrative rules editor. The administrative rules  
26 41 coordinator shall also maintain a permanent register  
26 42 open to public inspection of all objections by the  
26 43 committee.

26 44 c. The administrative rules editor shall publish  
26 45 and index an objection filed pursuant to this  
26 46 subsection in the next issue of the administrative  
26 47 bulletin and indicate its existence in a footnote to  
26 48 the rule in question when that rule is published in  
26 49 the administrative code. In case of a filed objection  
26 50 by the committee to a rule that is subject to the  
27 1 requirements of section 17A.2101, subsection 7, the  
27 2 agency shall indicate the existence of that objection  
27 3 adjacent to the rule in the official compilation  
27 4 referred to in that subsection.

27 5 d. Within thirty days after the filing of an  
27 6 objection by the committee to a rule, the adopting  
27 7 agency shall respond in writing to the committee.  
27 8 After receipt of the response, the committee may  
27 9 withdraw or modify its objection.

27 10 e. After the filing of an objection by the  
27 11 committee that is not subsequently withdrawn, the  
27 12 burden is upon the agency in any proceeding for  
27 13 judicial review or for enforcement of the rule to  
27 14 establish that the whole or portion of the rule  
27 15 objected to is within the procedural and substantive  
27 16 authority delegated to the agency and not prohibited  
27 17 by law. A court holding a rule in such a proceeding  
27 18 to be invalid because it is outside the authority  
27 19 delegated to the agency or prohibited by law shall  
27 20 render judgment against the agency for court costs.  
27 21 Court costs include a reasonable attorney's fee and  
27 22 are payable by the treasurer of state from the support  
27 23 appropriations of the agency that adopted the rule.

27 24 f. The failure of the administrative rules review  
27 25 committee to object to a rule is not an implied  
27 26 legislative authorization of its procedural or  
27 27 substantive validity.

27 28 5. The committee may recommend to an agency that  
27 29 it adopt a rule. The committee may also require an  
27 30 agency to publish notice of the committee's

27 31 recommendation as a proposed rule of the agency and to  
27 32 allow public participation thereon, according to the  
27 33 provisions of sections 17A.3103 and 17A.3104. An  
27 34 agency is not required to adopt the proposed rule.  
27 35 6. The committee may, by a two-thirds vote of the  
27 36 committee members, delay the effective date of an  
27 37 adopted rule that is not yet effective for any period  
27 38 designated by the committee that would end no later  
27 39 than the next adjournment of a regular session of the  
27 40 general assembly. When the committee takes such  
27 41 action the committee shall state the reasons therefor.  
27 42 If the general assembly has not disapproved the rule  
27 43 by a joint resolution prior to the end of the period  
27 44 during which its effectiveness has been delayed by the  
27 45 action of the committee, the rule shall become  
27 46 effective. If the rule is disapproved by the general  
27 47 assembly during that period, the rule shall not become  
27 48 effective and the agency shall summarily withdraw the  
27 49 rule.

27 50 7. The committee shall file an annual report with  
28 1 the presiding officer of each house and the governor.

#### 28 2 ARTICLE 4

#### 28 3 ADJUDICATIVE PROCEEDINGS

#### 28 4 PART 1

#### 28 5 AVAILABILITY OF ADJUDICATIVE PROCEEDINGS

#### 28 6 APPLICATIONS LICENSES WAIVER OF RULE

28 7 Sec. 34. NEW SECTION. 17A.4101 ADJUDICATIVE  
28 8 PROCEEDINGS WHEN REQUIRED EXCEPTIONS.

28 9 1. An agency shall conduct an adjudicative  
28 10 proceeding as the process for formulating and issuing  
28 11 an order. However, an agency need not conduct an  
28 12 adjudicative proceeding if the order is a decision to  
28 13 do any of the following:

28 14 a. To issue or not to issue, or to authorize or  
28 15 not to authorize the issuance of, a complaint,  
28 16 summons, or similar accusation.

28 17 b. To initiate or not to initiate, or to authorize  
28 18 or not to authorize the initiation of, an  
28 19 investigation, prosecution, or other proceeding before  
28 20 the agency, another agency, or a court.

28 21 c. Under section 17A.4103, not to conduct an  
28 22 adjudicative proceeding.

28 23 This subsection does not preclude an agency from  
28 24 establishing, subject to sections 17A.5107 and  
28 25 17A.5112, procedures that must be followed prior to  
28 26 the commencement of an adjudicative proceeding, or  
28 27 from issuing an order prior to conducting an  
28 28 adjudicative proceeding if any of the following apply:

28 29 (1) The person subject to that order may, within a  
28 30 time period specified by rule or in the order, file an  
28 31 application for an adjudicative proceeding, that  
28 32 application will automatically dissolve the order from  
28 33 the time of its issuance, and the substantial rights  
28 34 of the person subject to that order are not prejudiced  
28 35 by the order in the interim period prior to its  
28 36 automatic dissolution resulting from the filing of an  
28 37 application for an adjudicative proceeding.

28 38 (2) The order was properly issued in accordance  
28 39 with section 17A.4501.

28 40 (3) The agency was expressly authorized by statute  
28 41 to issue that order prior to conducting an  
28 42 adjudicative proceeding, in which case, the agency  
28 43 must proceed as quickly as feasible after its issuance  
28 44 to complete any proceeding that would be required if  
28 45 the statute had not authorized such action in advance  
28 46 of any adjudicative proceeding.

28 47 2. This article applies to rulemaking proceedings

28 48 only to the extent that another statute expressly so  
28 49 requires.

28 50 Sec. 35. NEW SECTION. 17A.4102 ADJUDICATIVE  
29 1 PROCEEDINGS COMMENCEMENT.

29 2 1. Subject to the requirements of other provisions  
29 3 of law, an agency may commence an adjudicative  
29 4 proceeding at any time with respect to a matter within  
29 5 the agency's jurisdiction.

29 6 2. An agency shall commence an adjudicative  
29 7 proceeding upon the application of any person, unless  
29 8 any of the following apply:

29 9 a. The agency lacks jurisdiction of the subject  
29 10 matter.

29 11 b. Resolution of the matter requires the agency to  
29 12 exercise discretion within the scope of section  
29 13 17A.4101, subsection 1.

29 14 c. A statute vests the agency with discretion to  
29 15 conduct or not to conduct an adjudicative proceeding  
29 16 before issuing an order to resolve the matter and, in  
29 17 the exercise of that discretion, the agency has  
29 18 determined not to conduct an adjudicative proceeding.

29 19 d. Resolution of the matter does not require the  
29 20 agency to issue an order that determines the  
29 21 applicant's legal rights, duties, privileges,  
29 22 immunities, or other legal interests.

29 23 e. The matter was not timely submitted to the  
29 24 agency according to any applicable provision of law  
29 25 and there is no dispute of fact as to the time of its  
29 26 submission.

29 27 f. The matter was not submitted in a form  
29 28 substantially complying with any applicable provision  
29 29 of law.

29 30 3. Subject to other provisions of law, each agency  
29 31 may, by rule, establish specified time limits for  
29 32 commencing various classes of adjudicative proceedings  
29 33 that are within the agency's jurisdiction.

29 34 4. An application for an agency to issue an order  
29 35 includes an application for the agency to conduct  
29 36 appropriate adjudicative proceedings, whether or not  
29 37 the applicant expressly requests those proceedings.

29 38 5. An adjudicative proceeding commences when the  
29 39 agency or a presiding officer does any of the  
29 40 following:

29 41 a. Notifies a party that a prehearing conference,  
29 42 hearing, or other stage of an adjudicative proceeding  
29 43 will be conducted.

29 44 b. Begins to take action on a matter that  
29 45 appropriately may be determined by an adjudicative  
29 46 proceeding, unless this action is one of the  
29 47 following:

29 48 (1) An investigation for the purpose of  
29 49 determining whether an adjudicative proceeding should  
29 50 be conducted.

30 1 (2) A decision which, under section 17A.4101,  
30 2 subsection 1, the agency may make without conducting  
30 3 an adjudicative proceeding.

30 4 Sec. 36. NEW SECTION. 17A.4103 DECISION NOT TO  
30 5 CONDUCT ADJUDICATIVE PROCEEDING.

30 6 An agency that decides, pursuant to section  
30 7 17A.4102, subsection 2, not to conduct an adjudicative  
30 8 proceeding in response to an application, shall  
30 9 furnish the applicant a copy of its decision in  
30 10 writing, with a brief statement of the agency's  
30 11 reasons and of any administrative review available to  
30 12 the applicant.

30 13 Sec. 37. NEW SECTION. 17A.4104 AGENCY ACTION ON  
30 14 APPLICATIONS.

30 15 1. Except to the extent that the time limits in  
30 16 this subsection are inconsistent with limits  
30 17 established by another statute for any stage of the  
30 18 proceedings, an agency shall process an application  
30 19 for an order, other than a declaratory order, as  
30 20 follows:

30 21 a. Within thirty days after receipt of the  
30 22 application, the agency shall examine the application,  
30 23 notify the applicant of any apparent errors or  
30 24 omissions, request any additional information the  
30 25 agency wishes to obtain and is permitted by law to  
30 26 require, and notify the applicant of the name,  
30 27 official title, mailing address, and telephone number  
30 28 of any agency member or employee who may be contacted  
30 29 regarding the application.

30 30 b. Except in situations governed by paragraph "c",  
30 31 within ninety days after receipt of the application or  
30 32 of the response to a timely request made by the agency  
30 33 pursuant to paragraph "a", the agency shall do one of  
30 34 the following:

30 35 (1) Approve or deny the application, in whole or  
30 36 in part, on the basis of emergency or summary  
30 37 adjudicative proceedings, if those proceedings are  
30 38 available under this chapter for disposition of the  
30 39 matter.

30 40 (2) Commence a formal adjudicative hearing or a  
30 41 conference adjudicative hearing in accordance with  
30 42 this chapter.

30 43 (3) Dispose of the application in accordance with  
30 44 section 17A.4103.

30 45 c. If the application pertains to subject matter  
30 46 that is not available when the application is filed  
30 47 but may be available in the future, including an  
30 48 application for housing or employment at a time no  
30 49 vacancy exists, the agency may proceed to make a  
30 50 determination of eligibility within the time provided  
31 1 in paragraph "b". If the agency determines that the  
31 2 applicant is eligible, the agency shall maintain the  
31 3 application on the agency's list of eligible  
31 4 applicants as provided by law and, upon request, shall  
31 5 notify the applicant of the status of the application.

31 6 2. If a timely application has been made for  
31 7 renewal of a license with reference to any activity of  
31 8 a continuing nature, the existing license does not  
31 9 expire until the agency has taken final action upon  
31 10 the application for renewal or, if the agency's action  
31 11 is unfavorable, until the last day for seeking  
31 12 judicial review of the agency's action or a later date  
31 13 fixed by the reviewing court or agency.

31 14 Sec. 38. NEW SECTION. 17A.4105 AGENCY ACTION  
31 15 AGAINST LICENSEES.

31 16 An agency shall not revoke, suspend, modify, annul,  
31 17 withdraw, or amend a license unless the agency first  
31 18 gives notice and an opportunity for an appropriate  
31 19 adjudicative proceeding in accordance with this  
31 20 chapter or other statute. This section does not  
31 21 preclude an agency from taking immediate action to  
31 22 protect the public interest in accordance with section  
31 23 17A.4501 or adopting rules, otherwise within the scope  
31 24 of its authority, pertaining to a class of licensees,  
31 25 including rules affecting the existing licenses of a  
31 26 class of licensees.

31 27 Sec. 39. NEW SECTION. 17A.4106 PETITION FOR  
31 28 WAIVER OF RULE.

31 29 1. A person may file a petition with an agency  
31 30 requesting a waiver, in whole or in part, of a rule of  
31 31 that agency on the ground that the application of the

31 32 rule to the particular circumstances of that person  
31 33 would qualify for a waiver under subsection 5. A  
31 34 petition filed under this provision must specify the  
31 35 rule in question, the precise scope of the waiver  
31 36 requested, the specific facts that would justify a  
31 37 waiver for petitioner, and the reasons why the  
31 38 particular application of the rule to petitioner for  
31 39 which the waiver is requested would qualify for a  
31 40 waiver under subsection 5.

31 41 2. Each agency shall issue rules consistent with  
31 42 this section concerning all of the following:

31 43 a. Governing the form, contents, and filing of  
31 44 petitions for the waivers of rules.

31 45 b. Specifying the procedural rights of persons in  
31 46 relation to such petitions.

31 47 c. Providing for the disposition of those  
31 48 petitions.

31 49 3. Within fifteen days after receipt of a petition  
31 50 for waiver of a rule, the agency shall cause to be  
32 1 published in the administrative bulletin, notice of  
32 2 the pendency of the petition, including a concise  
32 3 summary of its contents, and shall give notice of the  
32 4 petition to all persons to whom notice is required by  
32 5 any provision of law. In addition, the agency may  
32 6 give notice to any other persons. Persons who qualify  
32 7 under section 17A.4209, subsection 1, paragraphs "b"  
32 8 and "c", as an intervenor and file timely petitions  
32 9 for intervention according to agency rules may  
32 10 intervene in proceedings for waivers of a rule. Other  
32 11 provisions of this article apply to agency proceedings  
32 12 for waivers of a rule only to the extent an agency so  
32 13 provides by rule or order.

32 14 4. An order granting or denying such a petition  
32 15 shall be in writing and shall contain a statement of  
32 16 the relevant facts and reasons supporting that action.  
32 17 An agency shall grant or deny such a petition within  
32 18 ninety days of its receipt. Failure of an agency to  
32 19 grant or deny such a petition within ninety days of  
32 20 its receipt shall be deemed a denial of that petition  
32 21 by the agency.

32 22 5. Unless otherwise prohibited by statute, an  
32 23 agency shall issue an order granting a petition for a  
32 24 waiver of a rule, in whole or in part, if application  
32 25 of the rule to the petitioner on the basis of the  
32 26 particular facts specified in the petition would not  
32 27 serve any of the purposes of the rule. Unless  
32 28 otherwise prohibited by statute, an agency may issue  
32 29 an order granting a petition for waiver of a rule, in  
32 30 whole or in part, if application of the rule to the  
32 31 petitioner would result in undue hardship, waiver of  
32 32 the rule on the basis of the facts specified in the  
32 33 petition would be consistent with the public interest,  
32 34 and waiver of the rule as to petitioner would not  
32 35 prejudice the substantial rights of any other person.  
32 36 An order granting such a petition shall constitute a  
32 37 defense in any subsequent proceeding where the  
32 38 applicability of that rule to petitioner is at issue  
32 39 if petitioner proves in that subsequent proceeding all  
32 40 of the relevant facts pertaining to petitioner upon  
32 41 which that waiver order was based and that the  
32 42 particular application of the rule at issue was within  
32 43 the scope of the waiver order in question.

32 44 6. In an agency proceeding to enforce a rule of  
32 45 that agency, a person resisting the enforcement of the  
32 46 rule may defend successfully upon a demonstration that  
32 47 application of the rule to the person would not serve  
32 48 any of the purposes of the rule.



32 49 7. An agency may, on its own motion, waive the  
32 50 application of one or more of its rules, in whole or  
33 1 in part, to a specified person on the ground that the  
33 2 relevant facts pertaining to that person would qualify  
33 3 that person for a waiver under the provisions of  
33 4 subsection 5, by issuing an order containing the facts  
33 5 and reasons justifying that waiver. An order granting  
33 6 such a waiver on an agency's own motion shall  
33 7 constitute a defense in any subsequent proceeding  
33 8 where the applicability of that rule is at issue if  
33 9 the petitioner proves in that subsequent proceeding  
33 10 all of the relevant facts pertaining to the petitioner  
33 11 upon which that waiver order was based and that the  
33 12 particular application of the rule at issue was within  
33 13 the scope of the waiver order in question.

33 14 8. Any order issued under this section shall be  
33 15 transmitted to petitioner or to the person as to whom  
33 16 the waiver order pertains, to the administrative rules  
33 17 review committee, and to the administrative rules  
33 18 coordinator, within seven days of its issuance.

33 19 9. An agency shall maintain a file for each of its  
33 20 rules for which a waiver order has been issued  
33 21 containing all orders waiving the application to any  
33 22 person of that rule.

33 23 10. This section does not apply to a rule that  
33 24 only defines the meaning of a statute or other  
33 25 provision of law or precedent if the agency does not  
33 26 possess delegated authority to bind the courts to any  
33 27 extent with its definition and does not authorize an  
33 28 agency to waive any requirement created or duty  
33 29 imposed by statute.

## 33 30 PART 2

### 33 31 FORMAL ADJUDICATIVE HEARING

33 32 Sec. 40. NEW SECTION. 17A.4201 APPLICABILITY.

33 33 An adjudicative proceeding is governed by this part  
33 34 when, prior to the issuance of an order, constitution  
33 35 or statute requires an opportunity for an evidentiary  
33 36 hearing that must be determined on the record of that  
33 37 proceeding, except as otherwise provided by any of the  
33 38 following:

33 39 1. A statute other than this chapter.

33 40 2. A rule that adopts the procedures for the  
33 41 conference adjudicative hearing or summary  
33 42 adjudicative proceeding in accordance with the  
33 43 standards provided in this chapter for those  
33 44 proceedings.

33 45 3. Section 17A.4501 pertaining to emergency  
33 46 adjudicative proceedings.

33 47 4. Section 17A.2103 pertaining to declaratory  
33 48 proceedings.

33 49 5. Section 17A.4106 pertaining to petitions for  
33 50 waiver of rules.

34 1 Sec. 41. NEW SECTION. 17A.4202 PRESIDING  
34 2 OFFICER, DISQUALIFICATION, SUBSTITUTION.

34 3 1. a. If the agency or an officer of the agency  
34 4 under whose authority the adjudicative proceeding is  
34 5 to take place is a named party to that proceeding or a  
34 6 real party in interest to that proceeding, in the  
34 7 discretion of the agency head, the presiding officer  
34 8 may be either the agency head, one or more members of  
34 9 the agency head, or one or more administrative law  
34 10 judges assigned by the office of administrative  
34 11 hearings in accordance with the provisions of section  
34 12 17A.4301. However, the agency head shall designate as  
34 13 the presiding officer an administrative law judge  
34 14 assigned by the office of administrative hearings in  
34 15 accordance with the provisions of section 17A.4301 if

34 16 any person to whom the agency action is specifically  
34 17 directed timely requests an administrative law judge  
34 18 to preside at the proceeding.

34 19 b. If the agency or an officer of the agency under  
34 20 whose authority the adjudicative proceeding is to take  
34 21 place is not a named party to that proceeding or a  
34 22 real party in interest to that proceeding, in the  
34 23 discretion of the agency head, the presiding officer  
34 24 may be either the agency head, one or more members of  
34 25 the agency head, an administrative law judge assigned  
34 26 by the office of administrative hearings in accordance  
34 27 with the provisions of section 17A.4301, or any other  
34 28 qualified person designated as a presiding officer by  
34 29 the agency head. Any other person designated as a  
34 30 presiding officer by the agency head may be employed  
34 31 by and officed in the agency for which that person  
34 32 acts as a presiding officer, but such a person shall  
34 33 not perform duties inconsistent with that person's  
34 34 duties and responsibilities as a presiding officer and  
34 35 shall be governed by the merit system provisions of  
34 36 chapter 19A.

34 37 2. Any person serving or designated to serve alone  
34 38 or with others as a presiding officer is subject to  
34 39 disqualification for bias, prejudice, interest, or any  
34 40 other cause provided in this chapter or for which a  
34 41 judge is or may be disqualified.

34 42 3. Any party may timely request the  
34 43 disqualification of a person after receipt of notice  
34 44 indicating that the person will preside or upon  
34 45 discovering facts establishing grounds for  
34 46 disqualification, whichever is later.

34 47 4. A person whose disqualification is requested  
34 48 shall determine whether to grant the request, stating  
34 49 facts and reasons for the determination.

34 50 5. If a substitute is required for a person who is  
35 1 disqualified or becomes unavailable for any other  
35 2 reason, the substitute must be appointed by either of  
35 3 the following:

35 4 a. The governor, if the disqualified or  
35 5 unavailable person is an elected official.

35 6 b. The appointing authority, if the disqualified  
35 7 or unavailable person is an appointed official.

35 8 6. Any action taken by a duly-appointed substitute  
35 9 for a disqualified or unavailable person is as  
35 10 effective as if taken by the latter.

35 11 Sec. 42. NEW SECTION. 17A.4203 REPRESENTATION.

35 12 1. Any party may participate in the hearing in  
35 13 person or, if the party is a corporation or other  
35 14 artificial person, by a duly authorized  
35 15 representative.

35 16 2. Whether or not participating in person, any  
35 17 party may be advised and represented at the party's  
35 18 own expense by counsel or, if permitted by any  
35 19 provision of law, other representative.

35 20 3. Any party may designate in writing with an  
35 21 agency an authorized representative to act on behalf  
35 22 of that party in a particular proceeding. An attorney  
35 23 licensed to practice in this state who files an  
35 24 appearance or a pleading with an agency on behalf of a  
35 25 party shall be deemed to be the designated authorized  
35 26 representative of the party in that proceeding. If an  
35 27 authorized representative has been designated, notice  
35 28 to a party required under this article must be  
35 29 satisfied by providing the notice to that  
35 30 representative.

35 31 Sec. 43. NEW SECTION. 17A.4204 PREHEARING  
35 32 CONFERENCE AVAILABILITY NOTICE.

35 33 The presiding officer designated to conduct the  
35 34 hearing may determine, subject to the agency's rules,  
35 35 whether a pre-hearing conference will be conducted.  
35 36 If the conference is conducted the following apply:  
35 37 1. The presiding officer shall promptly notify the  
35 38 agency of the determination that a prehearing  
35 39 conference will be conducted. If the presiding  
35 40 officer decides that another presiding officer should  
35 41 conduct that conference, the agency shall assign or  
35 42 request the office of administrative hearings to  
35 43 assign a presiding officer for the prehearing  
35 44 conference, exercising the same discretion as is  
35 45 provided by section 17A.4202 concerning the selection  
35 46 of a presiding officer for a hearing.  
35 47 2. The presiding officer for the prehearing  
35 48 conference shall set the time and place of the  
35 49 conference and give reasonable and timely written  
35 50 notice to all parties and to all persons who have  
36 1 filed written petitions to intervene in the matter.  
36 2 The agency shall also give such notice to other  
36 3 persons entitled to notice under any provision of law.  
36 4 3. The notice must include all of the following:  
36 5 a. The names of all parties, and the mailing  
36 6 addresses of all parties or the names and mailing  
36 7 addresses of their designated representatives, and the  
36 8 names and mailing addresses of all other persons to  
36 9 whom notice is being given by the presiding officer.  
36 10 b. The name, official title, mailing address, and  
36 11 telephone number of any counsel or employee who has  
36 12 been designated to appear for the agency.  
36 13 c. The official file or other reference number,  
36 14 the name of the proceeding, and a general description  
36 15 of the subject matter.  
36 16 d. A statement of the time, place, and nature of  
36 17 the prehearing conference.  
36 18 e. A statement of the legal authority and  
36 19 jurisdiction under which the prehearing conference and  
36 20 the hearing are to be held.  
36 21 f. The name, official title, mailing address and  
36 22 telephone number of the presiding officer for the  
36 23 prehearing conference.  
36 24 g. A statement that at the prehearing conference  
36 25 the proceeding, without further notice, may be  
36 26 converted into a conference adjudicative hearing or a  
36 27 summary adjudicative proceeding for disposition of the  
36 28 matter as provided by this chapter.  
36 29 h. A statement that a party who fails to attend or  
36 30 participate in a prehearing conference, hearing, or  
36 31 other stage of an adjudicative proceeding may be held  
36 32 in default under this chapter.  
36 33 4. The notice may include a statement that each  
36 34 party must bring to the prehearing conference  
36 35 specified listed materials or information, as  
36 36 determined by the presiding officer, and that a  
36 37 failure to do so, without good cause, will preclude  
36 38 that party from subsequently introducing those  
36 39 materials or that information in the proceeding. The  
36 40 notice may also include any other matters that the  
36 41 presiding officer considers desirable to expedite the  
36 42 proceedings.

36 43 Sec. 44. NEW SECTION. 17A.4205 PREHEARING  
36 44 CONFERENCE PROCEDURE AND PREHEARING ORDER.

36 45 1. The presiding officer may conduct all or part  
36 46 of the prehearing conference by telephone,  
36 47 videoconference, or other electronic means if each  
36 48 participant in the conference has an opportunity to  
36 49 participate in, to hear, and, if technically feasible,

36 50 to see the entire proceeding while it is taking place.  
37 1 2. The presiding officer shall conduct the  
37 2 prehearing conference, as may be appropriate, to deal  
37 3 with such matters as conversion of the proceeding to  
37 4 another type of proceeding, exploration of settlement  
37 5 possibilities, waivers of any rights conferred upon a  
37 6 party by this chapter that are relevant to the  
37 7 proceeding, preparation of stipulations on any  
37 8 relevant matter, clarification of issues, rulings on  
37 9 identity and limitation of the number of witnesses,  
37 10 objections to proffers of evidence, determination of  
37 11 the extent to which evidence will be presented in  
37 12 written form, and the extent to which telephone,  
37 13 videoconference, or other electronic means will be  
37 14 used as a substitute for proceedings in person, order  
37 15 of presentation of evidence and cross-examination,  
37 16 rulings regarding issuance of subpoenas, discovery  
37 17 orders and protective orders, and such other matters  
37 18 as will promote the orderly and prompt conduct of the  
37 19 hearing. The presiding officer shall issue a  
37 20 prehearing order incorporating the matters determined  
37 21 at the prehearing conference and may deviate from that  
37 22 order at the hearing only with the consent of all  
37 23 parties or for good cause.

37 24 3. If a prehearing conference is not held, the  
37 25 presiding officer for the hearing may issue a  
37 26 prehearing order, based on the pleadings, to regulate  
37 27 the conduct of the proceedings.

37 28 Sec. 45. NEW SECTION. 17A.4206 NOTICE OF  
37 29 HEARING.

37 30 1. The presiding officer for the hearing, or  
37 31 another person authorized to do so by rule of the  
37 32 agency, shall set the time and place of the hearing  
37 33 and give reasonable and timely written notice to all  
37 34 parties and to all persons who have filed written  
37 35 petitions to intervene in the matter.

37 36 2. The notice must include a copy of any  
37 37 prehearing order issued in the matter unless the  
37 38 parties and persons who have filed written petitions  
37 39 to intervene have already been furnished with a copy  
37 40 of such an order.

37 41 3. To the extent not included in a prehearing  
37 42 order accompanying it, the notice must include all of  
37 43 the following:

37 44 a. The names of all parties, and the mailing  
37 45 addresses of all parties or the names and mailing  
37 46 addresses of their designated representatives, and the  
37 47 names and mailing addresses of all other persons to  
37 48 whom notice is being given.

37 49 b. The name, official title, mailing address and  
37 50 telephone number of any counsel or employee who has  
38 1 been designated to appear for the agency.

38 2 c. The official file or other reference number,  
38 3 the name of the proceeding, and a general description  
38 4 of the subject matter.

38 5 d. A statement of the time, place, and nature of  
38 6 the hearing.

38 7 e. A statement of the legal authority and  
38 8 jurisdiction under which the hearing is to be held.

38 9 f. The name, official title, mailing address, and  
38 10 telephone number of the presiding officer.

38 11 g. To the extent known to the person giving  
38 12 notice, a short and plain statement of the issues  
38 13 involved and of the matters asserted by the parties.

38 14 h. A statement that a party who fails to attend or  
38 15 participate in a prehearing conference, hearing, or  
38 16 other stage of an adjudicative proceeding may be held

38 17 in default under this chapter.

38 18 4. The notice may include any other matters the  
38 19 presiding officer considers desirable to expedite the  
38 20 proceedings.

38 21 5. The agency shall give notice to persons  
38 22 entitled to notice under any provision of law who have  
38 23 not been given notice by the presiding officer.  
38 24 Notice under this subsection may include all types of  
38 25 information provided in subsections 1 through 4 or may  
38 26 consist of a brief statement indicating the subject  
38 27 matter, parties, time, place, and nature of the  
38 28 hearing, manner in which copies of the notice to the  
38 29 parties may be inspected and copied, and name and  
38 30 telephone number of the presiding officer.

38 31 Sec. 46. NEW SECTION. 17A.4207 PLEADINGS,  
38 32 BRIEFS, MOTIONS, SERVICE.

38 33 1. The presiding officer, at appropriate stages of  
38 34 the proceedings, shall give all parties full  
38 35 opportunity to file pleadings, motions, and  
38 36 objections.

38 37 2. The presiding officer, at appropriate stages of  
38 38 the proceedings, may give all parties full opportunity  
38 39 to file briefs, proposed findings of fact and  
38 40 conclusions of law, and proposed initial or final  
38 41 orders.

38 42 3. A party shall serve copies of any filed item on  
38 43 all parties, by mail or any other means prescribed by  
38 44 agency rule.

38 45 Sec. 47. NEW SECTION. 17A.4208 DEFAULT.

38 46 1. If a party fails to attend or participate in a  
38 47 prehearing conference, hearing, or other stage of an  
38 48 adjudicative proceeding, the presiding officer shall  
38 49 serve all parties by certified mail written notice of  
38 50 a proposed default order, including a statement of the  
39 1 grounds.

39 2 2. Within fifteen days or such longer period  
39 3 specified by rule after the mailing by certified mail  
39 4 of a proposed default order, the party against whom it  
39 5 was issued may file a written motion requesting that  
39 6 the proposed default order be vacated and stating the  
39 7 grounds relied upon. A proposed default order may be  
39 8 vacated for any reason specified in the rules of civil  
39 9 procedure or for any other reason specified by agency  
39 10 rule. During the time within which a party may file a  
39 11 written motion under this subsection, the presiding  
39 12 officer may adjourn the proceedings or conduct them  
39 13 without the participation of the party against whom a  
39 14 proposed default order was issued, having due regard  
39 15 for the interests of justice and the orderly and  
39 16 prompt conduct of the proceedings.

39 17 3. The presiding officer shall either issue or  
39 18 vacate the default order promptly after expiration of  
39 19 the time within which the party may file a written  
39 20 motion under subsection 2.

39 21 4. After issuing a default order, the presiding  
39 22 officer shall conduct any further proceedings  
39 23 necessary to complete the adjudication without the  
39 24 participation of the party in default and shall  
39 25 determine all issues in the adjudication, including  
39 26 those affecting the defaulting party.

39 27 Sec. 48. NEW SECTION. 17A.4209 INTERVENTION.

39 28 1. The presiding officer shall grant a petition  
39 29 for intervention if all of the following apply:

39 30 a. The petition is submitted in writing to the  
39 31 presiding officer, with copies mailed to all parties  
39 32 named in the presiding officer's notice of the  
39 33 hearing, at least twenty days before the hearing.

39 34 b. The petition states facts demonstrating that  
39 35 the petitioner's legal rights, duties, privileges,  
39 36 immunities, or other legal interests may be  
39 37 substantially affected by the proceeding or that the  
39 38 petitioner qualifies as an intervenor under any  
39 39 provision of law.

39 40 c. The presiding officer determines that the  
39 41 interests of justice and the orderly and prompt  
39 42 conduct of the proceedings will not be impaired by  
39 43 allowing the intervention.

39 44 2. The presiding officer may grant a petition for  
39 45 intervention at any time, upon determining that the  
39 46 intervention sought is in the interests of justice and  
39 47 will not impair the orderly and prompt conduct of the  
39 48 proceedings.

39 49 3. If a petitioner qualifies for intervention, the  
39 50 presiding officer may impose conditions upon the  
40 1 intervenor's participation in the proceedings, either  
40 2 at the time that intervention is granted or at any  
40 3 subsequent time. Conditions may include any or all of  
40 4 the following:

40 5 a. Limiting the intervenor's participation to  
40 6 designated issues in which the intervenor has a  
40 7 particular interest demonstrated by the petition.

40 8 b. Limiting the intervenor's use of discovery,  
40 9 cross-examination, and other procedures so as to  
40 10 promote the orderly and prompt conduct of the  
40 11 proceedings.

40 12 c. Requiring two or more intervenors to combine  
40 13 their presentations of evidence and argument, cross-  
40 14 examination, discovery, and other participation in the  
40 15 proceedings.

40 16 4. The presiding officer shall issue an order  
40 17 granting or denying each pending petition for  
40 18 intervention, specifying any conditions, and briefly  
40 19 stating the reasons for the order. The presiding  
40 20 officer may modify the order at any time, stating the  
40 21 reasons for the modification. The presiding officer  
40 22 shall promptly give notice of an order granting,  
40 23 denying, or modifying intervention to the petitioner  
40 24 for intervention and to all parties.

40 25 Sec. 49. NEW SECTION. 17A.4210 SUBPOENAS,  
40 26 DISCOVERY, AND PROTECTIVE ORDERS.

40 27 1. Discovery procedures applicable to civil  
40 28 actions are available to all parties in accordance  
40 29 with the rules of civil procedure. Upon notice to all  
40 30 parties, the presiding officer at the request of any  
40 31 party shall, and upon the presiding officer's own  
40 32 motion may, administer oaths and issue subpoenas,  
40 33 discovery orders, and protective orders, in accordance  
40 34 with the rules of civil procedure.

40 35 2. Any party or person to whom the subpoena or  
40 36 similar process is directed may object to the issuance  
40 37 of the subpoena or process. The presiding officer and  
40 38 any reviewing district court shall sustain the  
40 39 subpoena or similar process only to the extent that it  
40 40 is found to be in accordance with the law applicable  
40 41 to the issuance of subpoenas or discovery in civil  
40 42 actions.

40 43 3. Subpoenas and orders issued under this section  
40 44 may be enforced pursuant to article 5, part 2, of this  
40 45 chapter on civil enforcement of agency action.

40 46 4. An agency party that relies on a witness in an  
40 47 adjudicative proceeding, whether or not an agency  
40 48 employee, who has made prior statements or reports to  
40 49 the agency with respect to the subject matter of the  
40 50 witness' testimony, shall, on request, make such

41 1 statements or reports available prior to hearing to  
41 2 parties for use on cross-examination, unless those  
41 3 statements or reports are otherwise expressly exempt  
41 4 from disclosure by constitution or statute.  
41 5 Identifiable agency records that are relevant to  
41 6 disputed material facts involved in an adjudicative  
41 7 proceeding, shall, upon request, promptly be made  
41 8 available to a party unless the requested records are  
41 9 expressly exempt from disclosure by constitution or  
41 10 statute.

41 11 5. Unless provided otherwise by any applicable  
41 12 provision of law, an agency authorized to issue an  
41 13 investigatory subpoena for the purpose of determining  
41 14 whether to commence an adjudicative proceeding may do  
41 15 so only after giving notice of the proposed issuance  
41 16 of the subpoena and an opportunity to contest its  
41 17 issuance to the persons who are the subject of the  
41 18 agency investigation. However, an agency may omit  
41 19 such notice and opportunity if it obtains an order  
41 20 from a district court approving that omission because  
41 21 of any of the following:

41 22 a. The whereabouts of the persons who are the  
41 23 subject of the agency investigation are unknown and  
41 24 could not be ascertained with reasonable efforts.

41 25 b. Such notice to the persons who are the subject  
41 26 of the agency investigation would seriously interfere  
41 27 with the agency's ability to obtain the evidence  
41 28 necessary to perform its law enforcement  
41 29 responsibilities.

41 30 c. Such notice would result in imminent peril to  
41 31 the health, safety, or welfare of any person or  
41 32 persons.

41 33 Sec. 50. NEW SECTION. 17A.4211 PROCEDURE AT  
41 34 HEARING.

41 35 At a hearing, all of the following apply:

41 36 1. The presiding officer shall regulate the course  
41 37 of the proceedings in conformity with any prehearing  
41 38 order.

41 39 2. To the extent necessary for full disclosure of  
41 40 all relevant facts and issues, the presiding officer  
41 41 shall afford to all parties the opportunity to  
41 42 respond, present evidence and argument, conduct cross-  
41 43 examination, and submit rebuttal evidence, except as  
41 44 restricted by a limited grant of intervention or by  
41 45 the prehearing order.

41 46 3. The presiding officer may conduct all or part  
41 47 of the hearing by telephone, videoconference, or other  
41 48 electronic means, if each participant in the hearing  
41 49 has an opportunity to participate in, to hear, and, if  
41 50 technically feasible, to see the entire proceeding  
42 1 while it is taking place.

42 2 4. The presiding officer shall cause the hearing  
42 3 to be recorded at the agency's expense. The agency is  
42 4 not required, at its expense, to prepare a transcript,  
42 5 unless required to do so by a provision of law. Any  
42 6 party, at the party's expense, may cause a reporter  
42 7 approved by the agency to prepare a transcript from  
42 8 the agency's record, or cause additional recordings to  
42 9 be made during the hearing if the making of the  
42 10 additional recordings does not cause distraction or  
42 11 disruption. The recording or stenographic notes of  
42 12 oral proceedings or the transcription thereof shall be  
42 13 filed with and maintained by the agency for at least  
42 14 three years from the later of the date of the final  
42 15 agency order in that case, or the date any proceedings  
42 16 for judicial review of that case become final.

42 17 5. The hearing is open to public observation,

42 18 except for the parts that the presiding officer states  
42 19 to be closed pursuant to a provision of law expressly  
42 20 authorizing closure. To the extent that a hearing is  
42 21 conducted by telephone, videoconference, or other  
42 22 electronic means, and is not closed, the availability  
42 23 of public observation is satisfied by giving members  
42 24 of the public an opportunity to observe and hear that  
42 25 communication at the location of any one of the  
42 26 participants, as designated by the presiding officer,  
42 27 or if that is not feasible, at reasonable times, to  
42 28 hear or inspect the agency's record, and to inspect  
42 29 any transcript obtained by the agency.

42 30 Sec. 51. NEW SECTION. 17A.4212 EVIDENCE  
42 31 OFFICIAL NOTICE.

42 32 1. Upon proper objection, the presiding officer  
42 33 shall exclude evidence that is irrelevant, immaterial,  
42 34 unduly repetitious, or excludable on constitutional or  
42 35 statutory grounds or on the basis of evidentiary  
42 36 privilege recognized in the courts of this state. In  
42 37 the absence of proper objection, the presiding officer  
42 38 may exclude objectionable evidence after notifying the  
42 39 parties of an intention to do so and providing the  
42 40 parties with an opportunity to object to that  
42 41 exclusion. Evidence shall not be excluded solely  
42 42 because it is hearsay.

42 43 2. All testimony of parties and witnesses must be  
42 44 made under oath or affirmation.

42 45 3. Any part of the evidence may be received in  
42 46 written form if doing so will expedite the hearing  
42 47 without substantial prejudice to the interests of any  
42 48 party.

42 49 4. Documentary evidence may be received in the  
42 50 form of a copy or excerpt. Upon request, parties must  
43 1 be given an opportunity to compare the copy with the  
43 2 original if available.

43 3 5. Official notice may be taken of any fact that  
43 4 could be judicially noticed in the courts of this  
43 5 state, the record of other proceedings before the  
43 6 agency, technical or scientific matters within the  
43 7 agency's specialized knowledge, and codes or standards  
43 8 that have been adopted by an agency of the United  
43 9 States, of this state, or of another state, or by a  
43 10 nationally recognized organization or association.  
43 11 Parties must be notified before or during the hearing,  
43 12 or before the issuance of any initial or final order  
43 13 that is based in whole or in part on facts or material  
43 14 noticed, of the specific facts or material noticed and  
43 15 the source thereof, including any staff memoranda and  
43 16 data, and be afforded an opportunity to contest and  
43 17 rebut the facts or material so noticed. However, if  
43 18 the required notification of the parties is infeasible  
43 19 or impracticable prior to the issuance of such an  
43 20 initial or final order, the notification may first  
43 21 occur in that order itself, as long as the parties are  
43 22 afforded, through the granting of a motion for  
43 23 reconsideration timely filed with the presiding  
43 24 officer, an opportunity, after the order is issued, to  
43 25 contest and rebut the facts or material so noticed  
43 26 before that order becomes final.

43 27 Sec. 52. NEW SECTION. 17A.4213 EX PARTE  
43 28 COMMUNICATIONS.

43 29 1. Except as provided in subsection 2, or unless  
43 30 required for the disposition of ex parte matters  
43 31 specifically authorized by statute, a presiding  
43 32 officer serving in an adjudicative proceeding shall  
43 33 not communicate, directly or indirectly, regarding any  
43 34 issue in the proceeding other than inquiries about



43 35 scheduling, while the proceeding is pending, with any  
43 36 party, with any person who has a direct or indirect  
43 37 interest in the outcome of the proceeding, or with any  
43 38 person who presided at a previous stage of the  
43 39 proceeding, without notice and opportunity for all  
43 40 parties to participate in the communication.

43 41 2. A member of a multi-member panel of presiding  
43 42 officers may communicate with other members of the  
43 43 panel regarding a matter pending before the panel, and  
43 44 any presiding officer may receive aid from staff  
43 45 assistants if the assistants do not receive ex parte  
43 46 communications of a type that the presiding officer  
43 47 would be prohibited from receiving or that furnish,  
43 48 augment, diminish, or modify the evidence in the  
43 49 record.

43 50 3. Unless required for the disposition of ex parte  
44 1 matters specifically authorized by statute, a party to  
44 2 an adjudicative proceeding, and a person who has a  
44 3 direct or indirect interest in the outcome of the  
44 4 proceeding or who presided at a previous stage of the  
44 5 proceeding, shall not communicate, directly or  
44 6 indirectly, in connection with any issue in that  
44 7 proceeding other than inquiries about scheduling,  
44 8 while the proceeding is pending, with any person  
44 9 serving as presiding officer, without notice and  
44 10 opportunity for all parties to participate in the  
44 11 communication.

44 12 4. If, before serving as presiding officer in an  
44 13 adjudicative proceeding, a person receives an ex parte  
44 14 communication of a type that could not properly be  
44 15 received while serving, the person, promptly after  
44 16 starting to serve, shall disclose the communication in  
44 17 the manner prescribed in subsection 5.

44 18 5. A presiding officer who receives an ex parte  
44 19 communication in violation of this section shall place  
44 20 on the record of the pending matter all written  
44 21 communications received, all written responses to the  
44 22 communications, and a memorandum stating the substance  
44 23 of all oral and other communications received, all  
44 24 responses made, and the identity of each person from  
44 25 whom the presiding officer received an ex parte  
44 26 communication, and shall advise all parties that these  
44 27 matters have been placed on the record. Any party  
44 28 desiring to rebut the ex parte communication must be  
44 29 allowed to do so, upon requesting the opportunity for  
44 30 rebuttal within ten days after notice of the  
44 31 communication.

44 32 6. When necessary to eliminate the effect of an ex  
44 33 parte communication received in violation of this  
44 34 section, a presiding officer who receives the  
44 35 communication shall be disqualified and the portions  
44 36 of the record pertaining to the communication shall be  
44 37 sealed by protective order.

44 38 7. The agency and any party may report any  
44 39 violation of this section to appropriate authorities  
44 40 for any disciplinary proceedings provided by law. In  
44 41 addition, each agency by rule may provide for  
44 42 appropriate sanctions, including default, suspending  
44 43 or revoking a privilege to practice before the agency,  
44 44 and for censuring, suspending, or dismissing agency  
44 45 personnel, for any violations of this section.

44 46 8. In a proceeding for judicial review, the burden  
44 47 shall be on the party seeking to uphold the validity  
44 48 of an order to demonstrate that any violation of  
44 49 subsections 1 through 5 relating to the issuance of  
44 50 that order did not prejudice the substantial rights of  
45 1 the party seeking its invalidation.

45 2 Sec. 53. NEW SECTION. 17A.4214 SEPARATION OF  
45 3 FUNCTIONS.

45 4 1. A person who has served personally as an  
45 5 investigator, prosecutor, or advocate in an  
45 6 adjudicative proceeding or in its pre-adjudicative  
45 7 stage shall not serve as presiding officer or assist  
45 8 or advise a presiding officer in the same proceeding.

45 9 2. A person who is subject to the authority,  
45 10 direction, or discretion of one who has served  
45 11 personally as an investigator, prosecutor, or advocate  
45 12 in an adjudicative proceeding or in its pre-  
45 13 adjudicative stage shall not serve as presiding  
45 14 officer or assist or advise a presiding officer in the  
45 15 same proceeding.

45 16 3. A person who has participated in a  
45 17 determination of probable cause or other equivalent  
45 18 preliminary determination as to the sufficiency of the  
45 19 evidence to support the facts alleged by any party in  
45 20 an adjudicative proceeding shall not serve as  
45 21 presiding officer or assist or advise a presiding  
45 22 officer in the same proceeding.

45 23 4. A person may serve as presiding officer at  
45 24 successive stages of the same adjudicative proceeding,  
45 25 unless a party demonstrates grounds for  
45 26 disqualification in accordance with this section or  
45 27 section 17A.4202.

45 28 5. In a proceeding for judicial review, the burden  
45 29 shall be on the party seeking to uphold the validity  
45 30 of an order to demonstrate that any violation of this  
45 31 section relating to the issuance of that order did not  
45 32 prejudice the substantial rights of the party seeking  
45 33 its invalidation.

45 34 Sec. 54. NEW SECTION. 17A.4215 FINAL ORDER  
45 35 INITIAL ORDER.

45 36 1. If the presiding officer is the agency head,  
45 37 the presiding officer shall issue a final order.

45 38 2. If the presiding officer is not the agency  
45 39 head, the presiding officer shall issue an initial  
45 40 order, which becomes a final order unless reviewed in  
45 41 accordance with section 17A.4216.

45 42 3. A final order and an initial order must include  
45 43 the date of its issuance and, separately stated,  
45 44 findings of fact, conclusions of law, and policy  
45 45 reasons for the decision if it is an exercise of the  
45 46 agency's discretion, for all aspects of the order,  
45 47 including the remedy prescribed and, if applicable,  
45 48 the action taken on a petition for stay of  
45 49 effectiveness. The order must include an explanation  
45 50 of why the evidence in the record supports each  
46 1 finding of fact and why the evidence in the record  
46 2 that is contrary to a finding does not preclude it.  
46 3 Findings of fact, if set forth in language that is no  
46 4 more than mere repetition or paraphrase of the  
46 5 relevant provision of law, must also be accompanied by  
46 6 a concise and explicit statement of each of the  
46 7 underlying facts in the record that support those  
46 8 findings. Each conclusion of law must be supported by  
46 9 cited authority or by a reasoned explanation. If a  
46 10 party has submitted proposed findings of fact,  
46 11 conclusions of law, or policy reasons, the order must  
46 12 include a ruling on the proposed findings. The order  
46 13 must also include a statement of the available  
46 14 procedures and time limits for seeking reconsideration  
46 15 or other administrative relief from that final or  
46 16 initial order. An initial order must include a  
46 17 statement of any circumstances under which the initial  
46 18 order, without further notice, may become a final

46 19 order.

46 20 4. Findings of fact must be based exclusively upon  
46 21 the evidence of record in the adjudicative proceeding  
46 22 and on matters officially noticed in that proceeding.  
46 23 Findings must be based upon the kind of evidence on  
46 24 which reasonably prudent persons are accustomed to  
46 25 rely in the conduct of their serious affairs and may  
46 26 be based upon such evidence even if it would be  
46 27 inadmissible in a civil trial. The presiding  
46 28 officer's experience, technical competence, and  
46 29 specialized knowledge may be utilized in evaluating  
46 30 evidence, but only in accordance with section  
46 31 17A.4212, subsection 5. Unless provided otherwise by  
46 32 another provision of law, findings of fact shall be  
46 33 based upon a preponderance of the evidence and the  
46 34 burden of proof shall be on the proponent of the  
46 35 agency action requested.

46 36 5. If a person serving or designated to serve as  
46 37 presiding officer becomes unavailable, for any reason,  
46 38 before issuance of the final order or initial order, a  
46 39 substitute presiding officer must be appointed as  
46 40 provided in section 17A.4202. The substitute  
46 41 presiding officer shall use any existing record and  
46 42 may conduct any further proceedings appropriate in the  
46 43 interests of justice; but if demeanor of witnesses is  
46 44 a substantial factor and the original presiding  
46 45 officer is unavailable the portions of the hearing  
46 46 involving demeanor heard by the original presiding  
46 47 officer shall be heard again by the new presiding  
46 48 officer.

46 49 6. The presiding officer may allow the parties a  
46 50 designated amount of time after conclusion of the  
47 1 hearing for the submission of proposed findings.

47 2 7. A final order or initial order must be issued  
47 3 in writing within ninety days after the later of the  
47 4 conclusion of the hearing or after submission of  
47 5 proposed findings in accordance with subsection 6, or  
47 6 the timely submission of any post-hearing briefs,  
47 7 unless this period is waived, extended with the  
47 8 written consent of all parties, or extended for good  
47 9 cause shown. Violation of this subsection may not be  
47 10 relied on as a basis for the invalidation of an order  
47 11 in any circumstances where that result would prejudice  
47 12 any party other than the agency.

47 13 8. The presiding officer shall cause copies of the  
47 14 final order or initial order to be mailed or otherwise  
47 15 delivered to each party within two working days from  
47 16 the time the order is issued.

47 17 Sec. 55. NEW SECTION. 17A.4216 REVIEW OF INITIAL  
47 18 ORDER EXCEPTIONS TO REVIEWABILITY.

47 19 1. The agency head, upon its own motion may, and  
47 20 upon appeal by any party shall, review an initial  
47 21 order, except to the extent that any of the following  
47 22 apply:

47 23 a. A provision of law precludes or limits agency  
47 24 review of the initial order.

47 25 b. The agency head, in the exercise of discretion  
47 26 conferred by a provision of law, does any of the  
47 27 following:

47 28 (1) Determines to review some but not all issues,  
47 29 or not to exercise any review.

47 30 (2) Delegates its authority to review the initial  
47 31 order to one or more persons.

47 32 (3) Authorizes one or more persons to review the  
47 33 initial order, subject to further review by the agency  
47 34 head.

47 35 2. Unless provided otherwise by statute, a

47 36 petition for appeal from an initial order must be  
47 37 filed with the agency head, or with any person  
47 38 designated for this purpose by rule of the agency,  
47 39 within twenty days after issuance of the initial order  
47 40 or within such lesser time period that exceeds ten  
47 41 days, as established by rule of the agency. If the  
47 42 agency head on its own motion decides to review an  
47 43 initial order, the agency head shall give written  
47 44 notice of its intention to review the initial order  
47 45 within a time period established by rule of the agency  
47 46 that is no longer than twenty days after its issuance.  
47 47 The time period for a party to file a petition for  
47 48 appeal or for the agency head to give notice of its  
47 49 intention to review an initial order on the agency  
47 50 head's own motion is tolled by the submission of a  
48 1 timely petition for reconsideration of the initial  
48 2 order pursuant to section 17A.4218, and a new time  
48 3 period starts to run upon disposition of the petition  
48 4 for reconsideration. If an initial order is subject  
48 5 both to a timely petition for reconsideration and to a  
48 6 petition for appeal or to review by the agency head on  
48 7 its own motion, the petition for reconsideration must  
48 8 be disposed of first, unless the agency head  
48 9 determines that action on the petition for  
48 10 reconsideration has been unreasonably delayed.

48 11 3. The petition for appeal must state its basis.  
48 12 If the agency head on its own motion gives notice of  
48 13 its intent to review an initial order, the agency head  
48 14 shall identify the issues that it intends to review.

48 15 4. The presiding officer for the review of an  
48 16 initial order shall exercise all the decision-making  
48 17 power that the presiding officer would have had to  
48 18 issue a final order had the presiding officer presided  
48 19 over the hearing, except to the extent that the issues  
48 20 subject to review are limited by a provision of law or  
48 21 by the presiding officer upon notice to all parties.

48 22 5. The presiding officer shall afford each party  
48 23 an opportunity to present briefs and may afford each  
48 24 party an opportunity to present oral argument.

48 25 6. Before issuing a final order, the presiding  
48 26 officer may cause a transcript to be prepared, at the  
48 27 agency's expense, of such portions of the proceeding  
48 28 under review as the presiding officer considers  
48 29 necessary.

48 30 7. The presiding officer may issue a final order  
48 31 disposing of the proceeding or may remand the matter  
48 32 for further proceedings with instructions to the  
48 33 person who issued the initial order. Upon remanding a  
48 34 matter, the presiding officer may order such temporary  
48 35 relief as is authorized and appropriate.

48 36 8. A final order or an order remanding the matter  
48 37 for further proceedings must be issued in writing  
48 38 within sixty days after receipt of briefs and oral  
48 39 argument unless that period is waived, extended with  
48 40 the written consent of all parties, extended for good  
48 41 cause shown, or extended by rule for that class of  
48 42 cases for an additional period of not longer than  
48 43 thirty days.

48 44 9. A final order or an order remanding the matter  
48 45 for further proceedings under this section must  
48 46 identify any difference between this order and the  
48 47 initial order and must include, or incorporate by  
48 48 express reference to the initial order, all the  
48 49 matters required by section 17A.4215, subsection 3.

48 50 10. The presiding officer shall cause copies of  
49 1 the final order or order remanding the matter for  
49 2 further proceedings to be mailed or otherwise

49 3 delivered to each party within two working days from  
49 4 the time the order is issued.

49 5 Sec. 56. NEW SECTION. 17A.4217 STAY.

49 6 A party may submit to the presiding officer a  
49 7 petition for stay of effectiveness of an initial or  
49 8 final order within twenty days after its issuance  
49 9 unless otherwise provided by statute or stated in the  
49 10 initial or final order. The presiding officer may  
49 11 take action on the petition for stay, either before or  
49 12 after the effective date of the initial or final  
49 13 order. A petition for a stay is deemed to have been  
49 14 denied if the presiding officer does not dispose of it  
49 15 within ten days after the filing of the petition.

49 16 Sec. 57. NEW SECTION. 17A.4218 RECONSIDERATION.

49 17 Unless otherwise provided by statute or rule the  
49 18 following apply:

49 19 1. Any party, within twenty days after issuance of  
49 20 an initial or final order, may file a petition for  
49 21 reconsideration of that order, stating the specific  
49 22 grounds upon which relief is requested. The filing of  
49 23 the petition is not a prerequisite for seeking  
49 24 administrative or judicial review. A copy of the  
49 25 application for reconsideration shall be timely mailed  
49 26 by the presiding officer to all parties of record not  
49 27 joining in the application.

49 28 2. The petition must be disposed of by the same  
49 29 person or persons who issued the initial or final  
49 30 order, if available.

49 31 3. The presiding officer shall issue a written  
49 32 order denying the petition, or granting the petition  
49 33 and dissolving or modifying the initial or final  
49 34 order, or setting the matter for further proceedings.  
49 35 The petition may be granted, in whole or in part, only  
49 36 if the presiding officer states, in the written order,  
49 37 findings of fact, conclusions of law, and policy  
49 38 reasons for the decision if it is an exercise of the  
49 39 agency's discretion, to justify the order. The  
49 40 petition is deemed to have been denied if the  
49 41 presiding officer does not dispose of it within twenty  
49 42 days after the filing of the petition.

49 43 Sec. 58. NEW SECTION. 17A.4219 REVIEW BY  
49 44 SUPERIOR AGENCY.

49 45 If, pursuant to statute, an agency may review the  
49 46 final order of another agency, the review is deemed to  
49 47 be a continuous proceeding as if before a single  
49 48 agency. Except to the extent another statute provides  
49 49 otherwise, the final order of the first agency is  
49 50 treated as an initial order and the second agency  
50 1 functions as though it were reviewing an initial order  
50 2 in accordance with section 17A.4216.

50 3 Sec. 59. NEW SECTION. 17A.4220 EFFECTIVENESS OF  
50 4 ORDERS.

50 5 1. Unless a later date is stated in a final order  
50 6 or a stay is granted, a final order is effective  
50 7 twenty days after issuance, except for any of the  
50 8 following:

50 9 a. A party shall not be required to comply with a  
50 10 final order unless the party has been served with or  
50 11 has actual knowledge of the final order.

50 12 b. A final order shall not be invoked for any  
50 13 purpose against any person unless the agency has made  
50 14 the final order available for public inspection and  
50 15 copying or the person has actual knowledge of the  
50 16 final order.

50 17 c. A final order may become effective on a  
50 18 specified date stated in the order that is earlier  
50 19 than twenty days after its issuance if any of the

50 20 following exist:

50 21 (1) Another statute authorizes the agency to set  
50 22 an earlier effective date for that order.

50 23 (2) The order only confers a benefit or relieves a  
50 24 restriction on the parties other than the agency  
50 25 issuing the order.

50 26 (3) The earlier effective date is necessary to  
50 27 avoid an immediate danger to the public health,  
50 28 safety, or welfare.

50 29 2. Unless a later date is stated in an initial  
50 30 order or a stay is granted, the time when an initial  
50 31 order becomes a final order in accordance with section  
50 32 17A.4215 is determined as follows:

50 33 a. When the initial order is issued, if  
50 34 administrative review is unavailable.

50 35 b. When the agency head issues an order stating,  
50 36 after a petition for appeal has been filed, that  
50 37 review will not be exercised, if discretion is  
50 38 available to make a determination to this effect.

50 39 c. Twenty days after issuance of the initial  
50 40 order, if within that period, no party has filed a  
50 41 petition for appeal and the agency head has not given  
50 42 written notice of its intention to exercise review.

50 43 3. Unless a later date is stated in an initial  
50 44 order or a stay is granted, an initial order that  
50 45 becomes a final order in accordance with subsection 2  
50 46 and section 17A.4215 is effective twenty days after  
50 47 becoming a final order, except for any of the  
50 48 following:

50 49 a. A party shall not be required to comply with  
50 50 the final order unless the party has been served with  
51 1 or has actual knowledge of the initial order or of an  
51 2 order stating that review will not be exercised.

51 3 b. An initial order shall not be invoked for any  
51 4 purpose against any person unless the agency has made  
51 5 the initial order available for public inspection and  
51 6 copying or the person has actual knowledge of the  
51 7 initial order or of an order stating that review will  
51 8 not be exercised.

51 9 c. An initial order that becomes a final order may  
51 10 become effective on a specified date stated in the  
51 11 order that is earlier than twenty days after it  
51 12 becomes a final order if it satisfies the requirements  
51 13 of subsection 1, paragraph "a", "b", or "c".

51 14 4. This section does not preclude an agency from  
51 15 taking immediate action to protect the public interest  
51 16 in accordance with section 17A.4501.

51 17 Sec. 60. NEW SECTION. 17A.4221 AGENCY RECORD.

51 18 1. An agency shall maintain an official record of  
51 19 each adjudicative proceeding under this part for a  
51 20 period of at least three years from the later of the  
51 21 date of the final agency decision in that case or the  
51 22 date any proceedings for judicial review of that case  
51 23 became final.

51 24 2. The agency record consists only of all of the  
51 25 following:

51 26 a. Notices of all proceedings.

51 27 b. Any prehearing order.

51 28 c. Any motions, pleadings, briefs, petitions,  
51 29 requests, and intermediate rulings.

51 30 d. Evidence received or considered.

51 31 e. A statement of matters officially noticed.

51 32 f. Proffers of proof and objections and rulings  
51 33 thereon.

51 34 g. Proposed findings, requested orders, and  
51 35 exceptions.

51 36 h. The record prepared for the presiding officer

51 37 at the hearing, together with any transcript of all or  
51 38 part of the hearing considered before final  
51 39 disposition of the proceeding.  
51 40 i. Any final order, initial order, or order on  
51 41 reconsideration.  
51 42 j. Staff memoranda or data submitted to the  
51 43 presiding officer, unless prepared and submitted by  
51 44 personal assistants and not inconsistent with section  
51 45 17A.4213, subsection 2.  
51 46 k. Matters placed on the record after an ex parte  
51 47 communication.  
51 48 3. Except to the extent that this chapter or  
51 49 another statute provides otherwise, the agency record  
51 50 constitutes the exclusive basis for agency action in  
52 1 adjudicative proceedings under this part and for  
52 2 judicial review thereof.

52 3 PART 3

52 4 OFFICE OF ADMINISTRATIVE HEARINGS

52 5 Sec. 61. NEW SECTION. 17A.4301 OFFICE OF  
52 6 ADMINISTRATIVE HEARINGS CREATION, POWERS, DUTIES.

52 7 1. An independent office of administrative  
52 8 hearings is created to be headed by a director  
52 9 appointed by the governor and confirmed by the senate.  
52 10 The director serves at the pleasure of the governor.  
52 11 2. The office shall employ administrative law  
52 12 judges as necessary to conduct proceedings required by  
52 13 this chapter or any other provision of law.  
52 14 Administrative law judges employed by the office shall  
52 15 not perform duties inconsistent with their duties and  
52 16 responsibilities as administrative law judges and  
52 17 shall not be located in offices within the agencies  
52 18 for which they act as presiding officers.  
52 19 Administrative law judges shall be covered by the  
52 20 merit system provisions of chapter 19A. Subject to  
52 21 the approval of the department of personnel, the  
52 22 office shall, insofar as practicable, provide for  
52 23 different classes of administrative law judges with  
52 24 different salary scales. The office shall also  
52 25 facilitate, insofar as practicable, specialization by  
52 26 its administrative law judges so that particular  
52 27 judges may become expert in presiding over cases in  
52 28 particular agencies.

52 29 3. If the office cannot furnish one of its  
52 30 administrative law judges in response to an agency  
52 31 request, the director shall designate in writing a  
52 32 full-time employee of an agency other than the  
52 33 requesting agency to serve as administrative law judge  
52 34 for the proceeding, but only with the consent of the  
52 35 employing agency. The designee must possess the same  
52 36 qualifications required of administrative law judges  
52 37 employed by the office.

52 38 4. The director may furnish administrative law  
52 39 judges on a contract basis to any governmental entity  
52 40 to conduct any proceeding not subject to this chapter.

52 41 5. After the effective date of this Act, a person  
52 42 shall not be newly employed by the office as an  
52 43 administrative law judge to preside over formal  
52 44 adjudicative hearings unless that person has a license  
52 45 to practice law in this state.

52 46 6. The office shall adopt rules pursuant to this  
52 47 chapter to do all of the following:

52 48 a. To establish qualifications for administrative  
52 49 law judges employed by the office, and, subject to the  
52 50 approval of the department of personnel, procedures by  
53 1 which candidates for a position as an administrative  
53 2 law judge in the office will be considered for  
53 3 employment and the manner in which public notice of

53 4 vacancies for positions as administrative law judges  
53 5 in the office will be given.

53 6 b. To establish procedures for agencies to request  
53 7 and for the director to assign administrative law  
53 8 judges employed by the office; however, an agency  
53 9 shall not select or reject any individual  
53 10 administrative law judge for any proceeding except in  
53 11 accordance with this chapter.

53 12 c. To establish procedures and adopt forms,  
53 13 consistent with this chapter and other provisions of  
53 14 law, to govern administrative law judges employed by  
53 15 the office, but any rules adopted under this paragraph  
53 16 shall be applicable to a particular adjudicative  
53 17 proceeding only to the extent that they are not  
53 18 inconsistent with the rules of the agency under whose  
53 19 authority that proceeding is conducted.

53 20 d. To establish standards and procedures for the  
53 21 evaluation, training, promotion, and discipline by the  
53 22 office of administrative law judges employed by the  
53 23 office.

53 24 e. To establish, consistent with the provisions of  
53 25 this chapter, a code of administrative judicial  
53 26 conduct that is similar in function and substantially  
53 27 equivalent to the Iowa code of judicial conduct, to  
53 28 govern the actions of all persons who act as presiding  
53 29 officers under the authority of section 17A.4202,  
53 30 subsection 1.

53 31 f. To facilitate the performance of the  
53 32 responsibilities conferred upon the office by this  
53 33 chapter.

53 34 7. The director may do all of the following:

53 35 a. Maintain a staff of reporters and other  
53 36 personnel.

53 37 b. Administer the provisions of this section and  
53 38 rules adopted under its authority.

53 39 8. The office may charge agencies for services  
53 40 rendered and the payment received shall be considered  
53 41 repayment receipts as defined in section 8.2.

#### 53 42 PART 4

#### 53 43 CONFERENCE ADJUDICATIVE HEARING

53 44 Sec. 62. NEW SECTION. 17A.4401 CONFERENCE  
53 45 ADJUDICATIVE HEARING APPLICABILITY.

53 46 A conference adjudicative hearing may be used if  
53 47 its use in the circumstances does not violate any  
53 48 provision of law and the matter is entirely within one  
53 49 or more categories for which the agency by rule has  
53 50 adopted this part. However, those categories may  
54 1 include only the following:

54 2 1. A matter in which there is no disputed issue of  
54 3 material fact.

54 4 2. A matter in which there is a disputed issue of  
54 5 material fact, if the matter involves one or more of  
54 6 the following:

54 7 a. A monetary amount of not more than one thousand  
54 8 dollars. In determining whether a matter involves  
54 9 only a monetary amount of one thousand dollars or  
54 10 less, a presumption arises that, if a claimant  
54 11 prevails on the merits, the claimant will subsequently  
54 12 be qualified for and entitled to the amount of any  
54 13 periodic payments claimed for the maximum period  
54 14 allowed by law and that claimant may aggregate the  
54 15 amount of those subsequent payments for purposes of  
54 16 determining the monetary amount involved in the matter  
54 17 at issue.

54 18 b. A disciplinary sanction against a student which  
54 19 does not involve expulsion or suspension for more than  
54 20 ten days from an educational institution.



54 21 c. A disciplinary sanction against a public  
54 22 employee which does not involve discharge or  
54 23 suspension for more than ten days from employment.

54 24 d. A disciplinary sanction against a licensee  
54 25 which does not involve revocation, suspension,  
54 26 annulment, withdrawal, or amendment of a license, or a  
54 27 reprimand or warning against an occupational or  
54 28 professional licensee which may reasonably be deemed  
54 29 to affect the economic or professional status or  
54 30 reputation of that licensee.

54 31 e. A matter as to which there is no constitutional  
54 32 or statutory right, prior to the issuance of an order,  
54 33 to an opportunity for an evidentiary hearing that is  
54 34 required to be determined on the record of that  
54 35 proceeding.

54 36 Sec. 63. NEW SECTION. 17A.4402 CONFERENCE  
54 37 ADJUDICATIVE HEARING PROCEDURES.

54 38 The procedures of this chapter pertaining to formal  
54 39 adjudicative hearings apply to a conference  
54 40 adjudicative hearing, except to the following extent:

54 41 1. If a matter is initiated as a conference  
54 42 adjudicative hearing, a prehearing conference shall  
54 43 not be held.

54 44 2. The provisions of section 17A.4210 do not apply  
54 45 to conference adjudicative hearings insofar as those  
54 46 provisions authorize the issuance and enforcement of  
54 47 subpoenas and discovery orders, but do apply to  
54 48 conference adjudicative hearings insofar as those  
54 49 provisions authorize the presiding officer to issue  
54 50 protective orders at the request of any party or upon  
55 1 the presiding officer's motion.

55 2 3. Section 17A.4211, subsections 1 and 2, do not  
55 3 apply except for the following:

55 4 a. The presiding officer shall regulate the course  
55 5 of the proceedings.

55 6 b. Only the parties may testify and present  
55 7 written exhibits.

55 8 c. The parties may offer comments on the issues  
55 9 and cross examine each other with respect to any  
55 10 factual disputes.

55 11 4. The provisions of section 17A.4215, subsection  
55 12 4, requiring findings of fact to be based exclusively  
55 13 on the evidence of record and on matters officially  
55 14 noticed, and section 17A.4221 do not apply; instead,  
55 15 the provisions of section 17A.4601 apply.

55 16 Sec. 64. NEW SECTION. 17A.4403 CONFERENCE  
55 17 ADJUDICATIVE HEARING PROPOSED PROOF.

55 18 1. If the presiding officer has reason to believe  
55 19 that material facts are in dispute, the presiding  
55 20 officer may require any party to state the identity of  
55 21 the witnesses or other sources through whom the party  
55 22 would propose to present proof if the proceeding were  
55 23 converted to a formal adjudicative hearing, but if  
55 24 disclosure of any fact, allegation, or source is  
55 25 privileged or expressly prohibited by any provision of  
55 26 law, the presiding officer may require the party to  
55 27 indicate that confidential facts, allegations, or  
55 28 sources are involved, but not to disclose the  
55 29 confidential facts, allegations, or sources.

55 30 2. If a party has reason to believe that essential  
55 31 facts must be obtained in order to permit an adequate  
55 32 presentation of the case, the party may inform the  
55 33 presiding officer regarding the general nature of the  
55 34 facts and the sources from which the party would  
55 35 propose to obtain those facts if the proceeding were  
55 36 converted to a formal adjudicative hearing.

55 38 EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS

55 39 Sec. 65. NEW SECTION. 17A.4501 EMERGENCY

55 40 ADJUDICATIVE PROCEEDINGS.

55 41 1. An agency may use emergency adjudicative  
55 42 proceedings in a situation involving an immediate  
55 43 danger to the public health, safety, or welfare  
55 44 requiring immediate agency action.

55 45 2. The agency may take only such action as is  
55 46 necessary to prevent or avoid the immediate danger to  
55 47 the public health, safety, or welfare that justifies  
55 48 use of emergency adjudication.

55 49 3. The agency shall issue an order, including a  
55 50 brief statement of findings of fact, conclusions of  
56 1 law, and policy reasons for the decision if it is an  
56 2 exercise of the agency's discretion, to justify the  
56 3 determination of an immediate danger and the agency's  
56 4 decision to take the specific action.

56 5 4. The agency shall give such notice as is  
56 6 practicable to persons who are required to comply with  
56 7 the order. The order is effective when issued.

56 8 5. After issuing an order pursuant to this  
56 9 section, the agency shall proceed as quickly as  
56 10 feasible to complete any proceedings that would be  
56 11 required if the matter did not involve an immediate  
56 12 danger.

56 13 6. The agency record consists of any documents  
56 14 regarding the matter that were considered or prepared  
56 15 by the agency. The agency shall maintain these  
56 16 documents as its official record.

56 17 7. Unless otherwise required by a provision of  
56 18 law, the agency record need not constitute the  
56 19 exclusive basis for agency action in emergency  
56 20 adjudicative proceedings or for judicial review  
56 21 thereof.

56 22 Sec. 66. NEW SECTION. 17A.4502 SUMMARY

56 23 ADJUDICATIVE PROCEEDINGS APPLICABILITY.

56 24 An agency may use summary adjudicative proceedings  
56 25 if all of the following apply:

56 26 1. The use of those proceedings in the  
56 27 circumstances does not violate any provision of law.

56 28 2. The protection of the public interest does not  
56 29 require the agency to give notice and an opportunity  
56 30 to participate to persons other than the parties.

56 31 3. The matter is entirely within one or more  
56 32 categories for which the agency by rule has adopted  
56 33 this section and sections 17A.4503 to 17A.4505;  
56 34 however, those categories may include only the  
56 35 following:

56 36 a. A monetary amount of not more than one hundred  
56 37 dollars.

56 38 b. A disciplinary sanction against a student which  
56 39 does not involve expulsion or suspension for more than  
56 40 ten days from an educational institution, or a  
56 41 reprimand, warning, disciplinary report, or other  
56 42 similar sanction without continuing impact against a  
56 43 public employee.

56 44 c. The denial of an application after the  
56 45 applicant has abandoned the application.

56 46 d. The denial of an application for admission to  
56 47 an educational institution or for employment by an  
56 48 agency.

56 49 e. The denial, in whole or in part, of an  
56 50 application if the applicant has an opportunity for  
57 1 administrative review in accordance with section  
57 2 17A.4504.

57 3 f. A matter that is resolved on the sole basis of  
57 4 inspections, examinations, or tests.

57 5 g. The acquisition, leasing, or disposal of  
57 6 property or the procurement of goods or services by  
57 7 contract.

57 8 h. A matter as to which there is no disputed issue  
57 9 of material fact and as to which, even if there were  
57 10 such a disputed issue of fact, there would be no  
57 11 constitutional or statutory right, prior to the  
57 12 issuance of an order, to an opportunity for an  
57 13 evidentiary hearing required to be determined on the  
57 14 record of that proceeding.

57 15 i. A matter that does not qualify for treatment as  
57 16 a conference adjudicative hearing under section  
57 17 17A.4401, subsection 2, paragraphs "a" through "e",  
57 18 and as to which there is no constitutional or  
57 19 statutory right, prior to the issuance of an order, to  
57 20 an opportunity for an evidentiary hearing that is  
57 21 required to be determined on the record of that  
57 22 proceeding.

57 23 Sec. 67. NEW SECTION. 17A.4503 SUMMARY  
57 24 ADJUDICATIVE PROCEEDINGS PROCEDURES.

57 25 1. The agency head, one or more members of the  
57 26 agency head, one or more administrative law judges  
57 27 assigned by the office of administrative hearings in  
57 28 accordance with section 17A.4301, or, unless  
57 29 prohibited by law, one or more other persons  
57 30 designated by the agency head in the discretion of the  
57 31 agency head, may be the presiding officer. Unless  
57 32 prohibited by law, a person exercising authority over  
57 33 the matter is the presiding officer.

57 34 2. If the proceeding involves a monetary matter or  
57 35 a suspension, reprimand, warning, disciplinary report,  
57 36 or other similar sanction, against a student or public  
57 37 employee all of the following apply:

57 38 a. The presiding officer, before taking action,  
57 39 shall give each party an opportunity to be informed of  
57 40 the agency's view of the matter and to explain the  
57 41 party's view of the matter.

57 42 b. The presiding officer, at the time any  
57 43 unfavorable action is taken, shall give each party a  
57 44 brief statement of the reasons for the action.

57 45 3. An order issued in a proceeding that involves a  
57 46 monetary matter must be in writing. An order in any  
57 47 other summary adjudicative proceeding may be oral or  
57 48 written.

57 49 4. The agency, by reasonable means, shall furnish  
57 50 to each party notification of the order in a summary  
58 1 adjudicative proceeding. Notification must at least  
58 2 include a statement of the agency's action.

58 3 Sec. 68. NEW SECTION. 17A.4504 ADMINISTRATIVE  
58 4 REVIEW OF SUMMARY ADJUDICATIVE PROCEEDINGS  
58 5 APPLICABILITY.

58 6 Except to the extent prohibited by any provision of  
58 7 law, an agency, on its own motion, may conduct an  
58 8 administrative review of an order resulting from  
58 9 summary adjudicative proceedings, and shall conduct  
58 10 this review upon the written or oral request of a  
58 11 party if the agency receives the request within ten  
58 12 days after furnishing notification under section  
58 13 17A.4503, subsection 4.

58 14 Sec. 69. NEW SECTION. 17A.4505 ADMINISTRATIVE  
58 15 REVIEW OF SUMMARY ADJUDICATIVE PROCEEDINGS  
58 16 PROCEDURES.

58 17 Unless otherwise provided by statute:

58 18 1. An agency need not furnish notification of the  
58 19 pendency of administrative review to any person who  
58 20 did not request the review, but the agency shall not  
58 21 take any action on review less favorable to any party

58 22 than the original order without giving that party  
58 23 notice and an opportunity to explain that party's view  
58 24 of the matter.

58 25 2. The reviewing officer, in the discretion of the  
58 26 agency head, may be any person who could have presided  
58 27 at the summary adjudicative proceeding, but the  
58 28 reviewing officer must be one who is authorized to  
58 29 grant appropriate relief upon review.

58 30 3. The reviewing officer shall give each party an  
58 31 opportunity to explain the party's view of the matter  
58 32 unless the party's view is apparent from the written  
58 33 materials in the file submitted to the reviewing  
58 34 officer. The reviewing officer shall make any  
58 35 inquiries necessary to ascertain whether the  
58 36 proceeding must be converted to a conference  
58 37 adjudicative hearing or a formal adjudicative hearing.

58 38 4. The reviewing officer may issue an order  
58 39 disposing of the proceeding in any manner that was  
58 40 available to the presiding officer at the summary  
58 41 adjudicative proceeding or the reviewing officer may  
58 42 remand the matter for further proceedings, with or  
58 43 without conversion to a conference adjudicative  
58 44 hearing or a formal adjudicative hearing.

58 45 5. If the order under review is or should have  
58 46 been in writing, the order on review must be in  
58 47 writing, including a brief statement of findings of  
58 48 fact, conclusions of law, and policy reasons for the  
58 49 decision if it is an exercise of the agency's  
58 50 discretion, to justify the order, and a notice of any  
59 1 further available administrative review.

59 2 6. A request for administrative review is deemed  
59 3 to have been denied if the reviewing officer does not  
59 4 dispose of the matter or remand it for further  
59 5 proceedings within twenty days after the request is  
59 6 submitted.

#### 59 7 PART 6

59 8 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS

59 9 Sec. 70. NEW SECTION. 17A.4601 AGENCY RECORD OF  
59 10 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDINGS AND  
59 11 ADMINISTRATIVE REVIEW.

59 12 1. The agency record consists of any documents  
59 13 regarding the matter that were submitted by a party  
59 14 to, or were considered or prepared by the presiding  
59 15 officer for, that conference or summary adjudicative  
59 16 proceeding or by the presiding or reviewing officer  
59 17 for any subsequent agency review. The agency shall  
59 18 maintain these documents as its official record.

59 19 2. Unless otherwise required by a provision of  
59 20 law, the agency record need not constitute the  
59 21 exclusive basis for agency action in conference or  
59 22 summary adjudicative proceedings or for judicial  
59 23 review thereof.

#### 59 24 ARTICLE 5

59 25 JUDICIAL REVIEW AND CIVIL ENFORCEMENT

#### 59 26 PART 1

#### 59 27 JUDICIAL REVIEW

59 28 Sec. 71. NEW SECTION. 17A.5101 EXCLUSIVITY OF  
59 29 JUDICIAL REVIEW PROVISIONS RELATIONSHIP BETWEEN  
59 30 JUDICIAL REVIEW PROVISIONS OF THIS CHAPTER AND  
59 31 ANCILLARY PROCEDURAL REQUIREMENTS OF OTHER LAW AND  
59 32 SUPERIOR JUDICIAL REMEDIES.

59 33 Except as expressly provided otherwise by another  
59 34 statute referring to this chapter by name or number,  
59 35 this chapter establishes the exclusive means of  
59 36 judicial review of agency action, except for any of  
59 37 the following:

59 38 1. The provisions of this chapter for judicial

59 39 review do not apply to litigation in which the sole  
59 40 issue is a claim for money damages or compensation and  
59 41 the agency whose action is at issue does not have  
59 42 statutory authority to determine the claim.

59 43 2. Ancillary procedural matters, including  
59 44 intervention, class actions, consolidation, joinder,  
59 45 severance, transfer, protective orders, and other  
59 46 relief from disclosure of privileged or confidential  
59 47 material, are governed, to the extent not inconsistent  
59 48 with this chapter, by other applicable law.

59 49 3. If the relief available under other sections of  
59 50 this chapter is not equal or substantially equivalent  
60 1 to the relief otherwise available under law, the  
60 2 relief otherwise available and the related procedures  
60 3 supersede and supplement this chapter to the extent  
60 4 necessary for their effectuation. The applicable  
60 5 provisions of this chapter and other law must be  
60 6 combined to govern a single proceeding or, if the  
60 7 court orders, two or more separate proceedings, with  
60 8 or without transfer to other courts, but no type of  
60 9 relief may be sought in a combined proceeding after  
60 10 expiration of the time limit for doing so.

60 11 Sec. 72. NEW SECTION. 17A.5102 FINAL AGENCY  
60 12 ACTION REVIEWABLE.

60 13 1. A person who qualifies under this chapter  
60 14 regarding standing in section 17A.5106, exhaustion of  
60 15 administrative remedies in section 17A.5107, and time  
60 16 for filing the petition for review in section  
60 17 17A.5108, and other applicable provisions of law  
60 18 regarding bond, compliance, and other preconditions is  
60 19 entitled to judicial review of final agency action,  
60 20 whether or not the person has sought judicial review  
60 21 of any related nonfinal agency action.

60 22 2. For purposes of this section and section  
60 23 17A.5103:

60 24 a. "Final agency action" means the whole or a part  
60 25 of any agency action other than nonfinal agency  
60 26 action.

60 27 b. "Nonfinal agency action" means the whole or a  
60 28 part of an agency determination, investigation,  
60 29 proceeding, hearing, conference, or other process that  
60 30 the agency intends or is reasonably believed to intend  
60 31 to be preliminary, preparatory, procedural, or  
60 32 intermediate with regard to subsequent agency action  
60 33 of that agency or another agency.

60 34 Sec. 73. NEW SECTION. 17A.5103 NONFINAL AGENCY  
60 35 ACTION REVIEWABLE.

60 36 A person is entitled to judicial review of nonfinal  
60 37 agency action only if all of the following apply:

60 38 1. It appears likely that the person will qualify  
60 39 under section 17A.5102 for judicial review of the  
60 40 related final agency action.

60 41 2. Postponement of judicial review would result in  
60 42 an inadequate remedy or irreparable harm  
60 43 disproportionate to the public benefit derived from  
60 44 postponement.

60 45 Sec. 74. NEW SECTION. 17A.5104 JURISDICTION  
60 46 VENUE.

60 47 1. The district court shall conduct judicial  
60 48 review.

60 49 2. Venue shall be in the Polk county district  
60 50 court or the district court for the county in which  
61 1 the petitioner resides or has its principal place of  
61 2 business. When a proceeding for judicial review has  
61 3 been commenced, a court may, in the interest of  
61 4 justice, transfer the proceeding to the district court  
61 5 for another county.

61 6 Sec. 75. NEW SECTION. 17A.5105 FORM OF ACTION  
61 7 SERVICE CONTENTS OF PETITION.

61 8 Judicial review is initiated by filing a petition  
61 9 for review in the appropriate district court. A  
61 10 petition may seek any type of relief available under  
61 11 section 17A.5101, subsection 3, and section 17A.5117.

61 12 Sec. 76. NEW SECTION. 17A.5106 STANDING.

61 13 1. The following persons have standing to obtain  
61 14 judicial review of final or nonfinal agency action:

61 15 a. A person to whom the agency action is  
61 16 specifically directed.

61 17 b. A person who was a party to the agency  
61 18 proceedings that led to the agency action.

61 19 c. If the challenged agency action is a rule, a  
61 20 person subject to that rule or an association whose  
61 21 members are subject to that rule.

61 22 d. A person eligible for standing under another  
61 23 provision of law.

61 24 e. A person otherwise aggrieved or adversely  
61 25 affected by the agency action. For purposes of this  
61 26 paragraph, a person does not have standing as one  
61 27 otherwise aggrieved or adversely affected unless all  
61 28 of the following apply:

61 29 (1) The agency action has prejudiced or is likely  
61 30 to prejudice that person.

61 31 (2) That person's asserted interests are arguably  
61 32 among those that the agency was required by law to  
61 33 consider when it engaged in the agency action  
61 34 challenged.

61 35 (3) A judgment in favor of that person would  
61 36 substantially eliminate or redress the prejudice to  
61 37 that person caused or likely to be caused by the  
61 38 agency action.

61 39 2. The administrative rules review committee of  
61 40 the general assembly, which is required to exercise  
61 41 general and continuing oversight over administrative  
61 42 rules, may petition for judicial review of any rule.

61 43 Sec. 77. NEW SECTION. 17A.5107 EXHAUSTION OF  
61 44 ADMINISTRATIVE REMEDIES.

61 45 A person may file a petition for judicial review  
61 46 under this chapter only after exhausting all  
61 47 administrative remedies available within the agency  
61 48 whose action is being challenged and within any other  
61 49 agency authorized to exercise administrative review,  
61 50 except for any of the following:

62 1 1. A petitioner for judicial review of a rule need  
62 2 not have participated in the rulemaking proceeding  
62 3 upon which that rule is based, or have petitioned for  
62 4 its amendment or repeal.

62 5 2. A petitioner for judicial review need not  
62 6 exhaust administrative remedies to the extent that  
62 7 this chapter or any other statute states that  
62 8 exhaustion is not required.

62 9 3. The court may relieve a petitioner of the  
62 10 requirement to exhaust any or all administrative  
62 11 remedies, to the extent that the administrative  
62 12 remedies are inadequate, or requiring their exhaustion  
62 13 would result in irreparable harm disproportionate to  
62 14 the public benefit derived from requiring exhaustion.

62 15 Sec. 78. NEW SECTION. 17A.5108 TIME FOR FILING  
62 16 PETITION FOR REVIEW.

62 17 Subject to other requirements of this chapter or of  
62 18 another statute:

62 19 1. A petition for judicial review of a rule may be  
62 20 filed at any time, except as limited by section  
62 21 17A.3113, subsection 2.

62 22 2. A petition for judicial review of an order is

62 23 not timely unless filed within thirty days after  
62 24 issuance of the order, but the time is extended during  
62 25 the pendency of the petitioner's timely attempts to  
62 26 exhaust administrative remedies, if the attempts are  
62 27 not clearly frivolous or repetitious.

62 28 3. A petition for judicial review of agency action  
62 29 other than a rule or order is not timely unless filed  
62 30 within thirty days after the agency action, but the  
62 31 time is extended if any of the following apply:

62 32 a. During the pendency of the petitioner's timely  
62 33 attempts to exhaust administrative remedies, if the  
62 34 attempts are not clearly frivolous or repetitious.

62 35 b. During any period that the petitioner did not  
62 36 know and was under no duty to discover, or did not  
62 37 know and was under a duty to discover but could not  
62 38 reasonably have discovered, that the agency had taken  
62 39 the action or that the agency action had a sufficient  
62 40 effect to confer standing upon the petitioner to  
62 41 obtain judicial review under this chapter.

62 42 Sec. 79. NEW SECTION. 17A.5109 PETITION FOR  
62 43 REVIEW FILING AND CONTENTS.

62 44 1. A petition for review must be filed with the  
62 45 clerk of the district court and must name the agency  
62 46 as respondent.

62 47 2. A petition for review must set forth all of the  
62 48 following:

62 49 a. The name and mailing address of the petitioner.

62 50 b. The name and mailing address of the agency  
63 1 whose action is at issue.

63 2 c. Identification of the specific agency action at  
63 3 issue, together with a duplicate copy, summary, or  
63 4 brief description of the agency action.

63 5 d. Identification of persons who were parties in  
63 6 any adjudicative proceedings that led to the agency  
63 7 action.

63 8 e. Facts to demonstrate that the petitioner is  
63 9 entitled to obtain judicial review.

63 10 f. Facts on which venue is based.

63 11 g. The specific grounds on which relief is sought  
63 12 and the petitioner's reasons for believing that relief  
63 13 should be granted.

63 14 h. A request for relief, specifying the type and  
63 15 extent of relief requested.

63 16 A petition for review that is in substantial  
63 17 compliance with the requirements of this subsection  
63 18 shall not be dismissed solely for failure to satisfy  
63 19 its requirements.

63 20 Sec. 80. NEW SECTION. 17A.5110 PETITION FOR  
63 21 REVIEW SERVICE AND NOTIFICATION NOTICE OF  
63 22 INTERVENTION.

63 23 1. Within ten days after the filing of a petition  
63 24 for judicial review of agency action, the petitioner  
63 25 shall serve a file stamped copy of the petition upon  
63 26 the agency in the manner provided by the rules of  
63 27 civil procedure for the personal service of an  
63 28 original notice or shall mail a file stamped copy of  
63 29 the petition to the agency by restricted certified  
63 30 mail.

63 31 2. Within ten days after the filing of a petition  
63 32 for judicial review of agency action in an  
63 33 adjudicative proceeding, the petitioner shall also  
63 34 give notice of the petition for review to each other  
63 35 party of record in that adjudicative proceeding either  
63 36 by serving a file stamped copy of the petition upon  
63 37 that party in the manner provided by the rules of  
63 38 civil procedure for the personal service of an  
63 39 original notice or by restricted certified mail.

63 40 3. The personal service or mailing required by  
63 41 this section shall be jurisdictional and may be made  
63 42 on the party or the party's attorney of record in the  
63 43 proceeding before the agency. A mailing shall be  
63 44 addressed to the parties or their attorneys of record  
63 45 at their last known mailing address. Proof of mailing  
63 46 shall be by the return receipt from the restricted  
63 47 certified mail.

63 48 4. Any party of record in an adjudicative  
63 49 proceeding before an agency who wishes to intervene  
63 50 and participate in the judicial review proceeding must  
64 1 file an appearance in the court indicating that  
64 2 intention within forty-five days from the date the  
64 3 petition is filed.

64 4 Sec. 81. NEW SECTION. 17A.5111 STAY AND OTHER  
64 5 TEMPORARY REMEDIES PENDING FINAL DISPOSITION.

64 6 1. Unless precluded by law, the agency may grant a  
64 7 stay on appropriate terms or other temporary remedies  
64 8 during the pendency of judicial review.

64 9 2. A party may file a motion in the reviewing  
64 10 court, during the pendency of judicial review, seeking  
64 11 interlocutory review of the agency's action on an  
64 12 application for stay or other temporary remedies.

64 13 3. If the agency has found that its action on an  
64 14 application for stay or other temporary remedies is  
64 15 justified to protect against a substantial threat to  
64 16 the public health, safety, or welfare, the court may  
64 17 grant relief only upon a finding that all of the  
64 18 following apply:

64 19 a. The applicant is likely to prevail when the  
64 20 court finally disposes of the matter.

64 21 b. Without relief the applicant will suffer  
64 22 irreparable injury.

64 23 c. The grant of relief to the applicant will not  
64 24 substantially harm other parties to the proceedings.

64 25 d. The type of threat to the public health,  
64 26 safety, or welfare relied on by the agency is not  
64 27 sufficiently serious to justify the agency's action in  
64 28 the circumstances.

64 29 4. If subsection 3 does not apply, the court shall  
64 30 grant relief if it finds that the agency's action on  
64 31 the application for stay or other temporary remedies  
64 32 was unreasonable in the circumstances.

64 33 5. If the court determines that relief should be  
64 34 granted from the agency's action on an application for  
64 35 stay or other temporary remedies, the court may remand  
64 36 the matter to the agency with directions to deny a  
64 37 stay, to grant a stay on appropriate terms, or to  
64 38 grant other temporary remedies, or the court may issue  
64 39 an order denying a stay, granting a stay on  
64 40 appropriate terms, or granting other temporary  
64 41 remedies.

64 42 Sec. 82. NEW SECTION. 17A.5112 LIMITATION ON NEW  
64 43 ISSUES.

64 44 A person may obtain judicial review of an issue  
64 45 that was not raised before the agency, only to the  
64 46 extent of any of the following:

64 47 1. The agency did not have authority to grant an  
64 48 adequate remedy based on a determination of the issue  
64 49 involved because the issue or remedy was not within  
64 50 the jurisdiction of the agency.

65 1 2. The person did not know and was under no duty  
65 2 to discover, or did not know and was under a duty to  
65 3 discover but could not reasonably have discovered,  
65 4 facts giving rise to the issue.

65 5 3. The agency action subject to judicial review is  
65 6 a rule and the person is challenging only the validity



65 7 of that rule and has not been a party in adjudicative  
65 8 proceedings which provided an adequate opportunity to  
65 9 raise the issue.

65 10 4. The agency action subject to judicial review is  
65 11 an order and the person was not notified of the  
65 12 adjudicative proceeding in compliance with any  
65 13 provision of law or was notified but was not permitted  
65 14 to participate in that adjudicative proceeding.

65 15 5. The interests of justice would be served by  
65 16 judicial resolution of an issue arising from any of  
65 17 the following:

65 18 a. A change in controlling law occurring after the  
65 19 agency action.

65 20 b. Agency action occurring after the person  
65 21 exhausted the last feasible opportunity for seeking  
65 22 relief from the agency.

65 23 Sec. 83. NEW SECTION. 17A.5113 JUDICIAL REVIEW  
65 24 OF FACTS CONFINED TO RECORD FOR JUDICIAL REVIEW AND  
65 25 ADDITIONAL EVIDENCE TAKEN PURSUANT TO THIS CHAPTER.

65 26 Judicial review of disputed issues of fact must be  
65 27 confined to the agency record for judicial review as  
65 28 defined in this chapter, supplemented by additional  
65 29 evidence taken pursuant to this chapter.

65 30 Sec. 84. NEW SECTION. 17A.5114 NEW EVIDENCE  
65 31 TAKEN BY COURT OR AGENCY BEFORE FINAL DISPOSITION.

65 32 1. The court may receive evidence, in addition to  
65 33 that contained in the agency record for judicial  
65 34 review, only if it relates to the validity of the  
65 35 agency action at the time it was taken and is needed  
65 36 to decide disputed issues regarding any of the  
65 37 following:

65 38 a. Improper constitution as a decision-making  
65 39 body, or improper motive or grounds for  
65 40 disqualification, of those taking the agency action.

65 41 b. Unlawfulness of procedure or of decision-making  
65 42 process.

65 43 c. Any material fact that was not required by  
65 44 provision of law to be determined exclusively on an  
65 45 agency record of a type reasonably suitable for  
65 46 judicial review.

65 47 2. The court may remand a matter to the agency,  
65 48 before final disposition of a petition for review,  
65 49 with directions that the agency conduct fact-finding  
65 50 and other proceedings the court considers necessary  
66 1 and that the agency take such further action on the  
66 2 basis thereof as the court directs, if any of the  
66 3 following apply:

66 4 a. The agency was required by this chapter or any  
66 5 other provision of law to base its action exclusively  
66 6 on a record of a type reasonably suitable for judicial  
66 7 review, but the agency failed to prepare or preserve  
66 8 an adequate record.

66 9 b. The court finds that all of the following  
66 10 apply:

66 11 (1) New evidence has become available that relates  
66 12 to the validity of the agency action at the time it  
66 13 was taken, that one or more of the parties did not  
66 14 know and was under no duty to discover, or did not  
66 15 know and was under a duty to discover but could not  
66 16 reasonably have discovered, until after the agency  
66 17 action.

66 18 (2) The interests of justice would be served by  
66 19 remand to the agency.

66 20 c. The agency improperly excluded or omitted  
66 21 evidence from the record.

66 22 d. A relevant provision of law changed after the  
66 23 agency action and the court determines that the new

66 24 provision may control the outcome.  
66 25 Sec. 85. NEW SECTION. 17A.5115 AGENCY RECORD FOR  
66 26 JUDICIAL REVIEW CONTENTS, PREPARATION, TRANSMITTAL,  
66 27 COST.  
66 28 1. Within thirty days after service of the  
66 29 petition, or within further time allowed by the court  
66 30 or by other provision of law, the agency shall  
66 31 transmit to the court the original or a certified copy  
66 32 of the agency record for judicial review of the agency  
66 33 action, consisting of any agency documents expressing  
66 34 the agency action, other documents identified by the  
66 35 agency as having been considered by it before its  
66 36 action and used as a basis for its action, and any  
66 37 other material described in this chapter as the agency  
66 38 record for the type of agency action at issue, subject  
66 39 to the provisions of this section.  
66 40 2. If part of the record has been preserved  
66 41 without a transcript, the agency shall prepare a  
66 42 transcript for inclusion in the record transmitted to  
66 43 the court, except for portions that the parties  
66 44 stipulate to omit in accordance with subsection 4.  
66 45 3. The agency may charge the petitioner with the  
66 46 reasonable cost of preparing any necessary copies and  
66 47 transcripts for transmittal to the court. A failure  
66 48 by the petitioner to pay any of this cost to the  
66 49 agency does not relieve the agency from the  
66 50 responsibility for timely preparation of the record  
67 1 and transmittal to the court.  
67 2 4. By stipulation of all parties to the review  
67 3 proceedings, the record may be shortened, summarized,  
67 4 or organized.  
67 5 5. The court may tax the cost of preparing  
67 6 transcripts and copies for the record in accordance  
67 7 with any of the following:  
67 8 a. Against a party who unreasonably refuses to  
67 9 stipulate to shorten, summarize, or organize the  
67 10 record.  
67 11 b. As provided by section 17A.5117.  
67 12 c. In accordance with any other provision of law.  
67 13 6. Additions to the record pursuant to section  
67 14 17A.5114 must be made as ordered by the court.  
67 15 7. The court may require or permit subsequent  
67 16 corrections or additions to the record.  
67 17 Sec. 86. NEW SECTION. 17A.5116 SCOPE OF REVIEW  
67 18 GROUNDS FOR INVALIDITY.  
67 19 1. Except to the extent that this chapter provides  
67 20 otherwise, in suits for judicial review of agency  
67 21 action all of the following apply:  
67 22 a. The burden of demonstrating the required  
67 23 prejudice and the invalidity of agency action is on  
67 24 the party asserting invalidity.  
67 25 b. The validity of agency action must be  
67 26 determined in accordance with the standards of review  
67 27 provided in this section, as applied to the agency  
67 28 action at the time that action was taken.  
67 29 2. The court shall make a separate and distinct  
67 30 ruling on each material issue on which the court's  
67 31 decision is based.  
67 32 3. The court shall grant relief from agency action  
67 33 if it determines that substantial rights of the person  
67 34 seeking judicial relief have been prejudiced because  
67 35 the agency action is any of the following:  
67 36 a. Unconstitutional on its face or as applied or  
67 37 is based upon a provision of law that is  
67 38 unconstitutional on its face or as applied.  
67 39 b. Beyond the authority delegated to the agency by  
67 40 any provision of law or in violation of any provision

67 41 of law.

67 42 c. Based upon an erroneous interpretation of a  
67 43 provision of law whose interpretation has not clearly  
67 44 been vested by a provision of law in the discretion of  
67 45 the agency.

67 46 d. Based upon a procedure or decision-making  
67 47 process prohibited by law or was taken without  
67 48 following the prescribed procedure or decision-making  
67 49 process.

67 50 e. The product of decision making undertaken by  
68 1 persons who were improperly constituted as a decision-  
68 2 making body, were motivated by an improper purpose, or  
68 3 were subject to disqualification.

68 4 f. Based upon a determination of fact clearly  
68 5 vested by a provision of law in the discretion of the  
68 6 agency that is not supported by substantial evidence  
68 7 in the record before the court when that record is  
68 8 viewed as a whole. For purposes of this paragraph the  
68 9 following terms have the following meanings:

68 10 (1) "Substantial evidence" means the quantity and  
68 11 quality of evidence that would be deemed sufficient by  
68 12 a neutral, detached, and reasonable person, to  
68 13 establish the fact at issue when the consequences  
68 14 resulting from the establishment of that fact are  
68 15 understood to be serious and of great importance.

68 16 (2) "Record before the court" means the agency  
68 17 record for judicial review, as defined by this  
68 18 chapter, supplemented by any additional evidence  
68 19 received by the court under the provisions of this  
68 20 chapter.

68 21 (3) "When that record is viewed as a whole" means  
68 22 that the adequacy of the evidence in the record before  
68 23 the court to support a particular finding of fact must  
68 24 be judged in light of all the relevant evidence in the  
68 25 record that detracts from that finding as well as all  
68 26 of the relevant evidence that supports it, including  
68 27 any determinations of veracity by the presiding  
68 28 officer who personally observed the demeanor of the  
68 29 witnesses and the agency's explanation of why the  
68 30 evidence in the record supports its finding of fact  
68 31 and why the evidence in the record that is contrary to  
68 32 its finding does not preclude that finding.

68 33 g. Action other than a rule that is inconsistent  
68 34 with a rule of the agency.

68 35 h. Action other than a rule that is inconsistent  
68 36 with the agency's prior practice or precedents, unless  
68 37 the agency has justified that inconsistency by stating  
68 38 credible reasons sufficient to indicate a fair and  
68 39 rational basis for the inconsistency.

68 40 i. The product of reasoning that is so illogical  
68 41 as to render it wholly irrational.

68 42 j. The product of a decision-making process in  
68 43 which the agency did not consider a relevant and  
68 44 important matter relating to the propriety or  
68 45 desirability of the action in question that a rational  
68 46 decision maker in similar circumstances would have  
68 47 considered prior to taking that action.

68 48 k. Not required by law and its negative impact on  
68 49 the private rights affected is so grossly  
68 50 disproportionate to the benefits accruing to the  
69 1 public interest from that action that it must  
69 2 necessarily be deemed to lack any foundation in  
69 3 rational agency policy.

69 4 l. Based upon an irrational, illogical, or wholly  
69 5 unjustifiable interpretation of a provision of law  
69 6 whose interpretation has clearly been vested by a  
69 7 provision of law in the discretion of the agency.

69 8 m. Based upon an irrational, illogical, or wholly  
69 9 unjustifiable application of law to fact that has  
69 10 clearly been vested by a provision of law in the  
69 11 discretion of the agency.

69 12 n. Otherwise unreasonable, arbitrary, capricious,  
69 13 or an abuse of discretion.

69 14 In making the determinations required by paragraphs  
69 15 "a" through "n" of this subsection, the court:

69 16 (1) Shall not give any deference to the view of  
69 17 the agency with respect to whether particular matters  
69 18 have been vested by a provision of law in the  
69 19 discretion of the agency.

69 20 (2) Should not give any deference to the view of  
69 21 the agency with respect to particular matters that  
69 22 have not been vested by a provision of law in the  
69 23 discretion of the agency.

69 24 (3) Shall give appropriate deference to the view  
69 25 of the agency with respect to particular matters that  
69 26 have been vested by a provision of law in the  
69 27 discretion of the agency.

69 28 Sec. 87. NEW SECTION. 17A.5117 TYPE OF RELIEF.

69 29 1. The court may award damages or compensation  
69 30 only to the extent expressly authorized by another  
69 31 provision of law.

69 32 2. The court may grant other appropriate relief,  
69 33 whether mandatory, injunctive, or declaratory;  
69 34 preliminary or final; temporary or permanent;  
69 35 equitable or legal. In granting relief, the court may  
69 36 order agency action required by law, order agency  
69 37 exercise of discretion required by law, set aside or  
69 38 modify agency action, enjoin or stay the effectiveness  
69 39 of agency action, remand the matter for further  
69 40 proceedings, render a declaratory judgment, or take  
69 41 any other action that is authorized and appropriate.

69 42 3. The court may also grant necessary ancillary  
69 43 relief to redress the effects of agency action  
69 44 wrongfully taken or withheld, including the taxation  
69 45 of costs, but the court may award attorney's fees or  
69 46 witness fees only to the extent expressly authorized  
69 47 by other law.

69 48 4. If the court sets aside or modifies agency  
69 49 action or remands the matter to the agency for further  
69 50 proceedings, the court may make any interlocutory  
70 1 order it finds necessary to preserve the interests of  
70 2 the parties and the public pending further proceedings  
70 3 or agency action.

70 4 Sec. 88. NEW SECTION. 17A.5118 REVIEW BY HIGHER  
70 5 COURT.

70 6 Final decisions of the district court on petitions  
70 7 for review of agency action are reviewable by appeal  
70 8 to the supreme court as in other civil cases although  
70 9 the appeal may be taken regardless of the amount  
70 10 involved. On appeal, the supreme court, or court of  
70 11 appeals if the case is referred by the supreme court  
70 12 to the court of appeals, shall reverse, modify, or  
70 13 vacate the decision of the district court only if the  
70 14 reviewing court determines that the district court  
70 15 applied an incorrect legal standard or unreasonably  
70 16 applied a correct legal standard.

#### 70 17 PART 2

#### 70 18 CIVIL ENFORCEMENT

70 19 Sec. 89. NEW SECTION. 17A.5201 PETITION BY  
70 20 AGENCY FOR CIVIL ENFORCEMENT OF RULE OR ORDER.

70 21 1. In addition to other remedies provided by law,  
70 22 an agency may seek enforcement of its rule or order by  
70 23 filing, under this Part, a petition for civil  
70 24 enforcement in the district court.

70 25 2. The petition must name, as defendants, each  
70 26 alleged violator against whom the agency seeks to  
70 27 obtain civil enforcement.

70 28 3. Venue shall be in the district court for the  
70 29 county in which defendant resides or has its principal  
70 30 place of business, or with the consent of the  
70 31 defendant, in the Polk County district court. When a  
70 32 proceeding for enforcement has been commenced, the  
70 33 court may, in the interest of justice, transfer the  
70 34 proceeding to a district court for another county.

70 35 4. A petition for civil enforcement filed by an  
70 36 agency may request, and the court may grant,  
70 37 declaratory relief, temporary or permanent injunctive  
70 38 relief, any other civil remedy provided by law, or any  
70 39 combination of the foregoing.

70 40 Sec. 90. NEW SECTION. 17A.5202 PETITION BY  
70 41 QUALIFIED PERSON FOR CIVIL ENFORCEMENT OF AGENCY'S  
70 42 ORDER.

70 43 1. Any person authorized by constitution or  
70 44 statute to seek judicial enforcement of an order of a  
70 45 specified agency, and any person who would qualify  
70 46 under this chapter as having standing to obtain  
70 47 judicial review of an agency's failure to enforce its  
70 48 order may file a petition for civil enforcement of  
70 49 that order, but the action shall not be commenced  
70 50 until or under any of the following circumstances:

71 1 a. Until at least sixty days after the petitioner  
71 2 has given notice of the alleged violation and of the  
71 3 petitioner's intent to seek civil enforcement to the  
71 4 agency head concerned, to the attorney general, and to  
71 5 each alleged violator against whom the petitioner  
71 6 seeks civil enforcement.

71 7 b. If the agency has filed and is diligently  
71 8 prosecuting a petition for civil enforcement of the  
71 9 same order against the same defendant.

71 10 c. If a petition for review of the same order has  
71 11 been filed and is pending in court.

71 12 2. The petition must name, as defendants, the  
71 13 agency whose order is sought to be enforced and each  
71 14 alleged violator against whom the petitioner seeks  
71 15 civil enforcement.

71 16 3. The agency whose order is sought to be enforced  
71 17 may move to dismiss on the grounds that the petition  
71 18 fails to qualify under this section or that  
71 19 enforcement would be contrary to the policy of the  
71 20 agency. The court shall grant the motion to dismiss  
71 21 unless the petitioner demonstrates that the petition  
71 22 qualifies under this section and the agency's failure  
71 23 to enforce its order is based on an exercise of  
71 24 discretion that is improper on one or more of the  
71 25 grounds provided in section 17A.5116, subsection 3,  
71 26 paragraph "h".

71 27 4. Except to the extent expressly authorized by  
71 28 any provision of law, a petition for civil enforcement  
71 29 filed under this section shall not request, and the  
71 30 court shall not grant, any monetary payment apart from  
71 31 taxable costs.

71 32 Sec. 91. NEW SECTION. 17A.5203 DEFENSES  
71 33 LIMITATION ON NEW ISSUES AND NEW EVIDENCE.

71 34 A defendant, who would be qualified under section  
71 35 17A.5106, subsection 1, section 17A.5107, and section  
71 36 17A.5108 to do so in a proceeding for judicial review,  
71 37 may assert, in a proceeding for civil enforcement any  
71 38 of the following:

71 39 1. That the rule or order sought to be enforced is  
71 40 invalid on any of the grounds stated in section  
71 41 17A.5116. If that defense is raised, the court may

71 42 consider issues and receive evidence only within the  
71 43 limitations provided by sections 17A.5112, 17A.5113,  
71 44 and 17A.5114.

71 45 2. Any of the following defenses on which the  
71 46 court, to the extent necessary for the determination  
71 47 of the matter, may consider new issues or take new  
71 48 evidence:

- 71 49 a. The rule or order does not apply to the party.
- 71 50 b. The party has not violated the rule or order.
- 72 1 c. The party has violated the rule or order but  
72 2 has subsequently complied, but a party who establishes  
72 3 this defense is not necessarily relieved from any  
72 4 sanction provided by law for past violations.
- 72 5 d. Any other defense allowed by law.

72 6 Sec. 92. NEW SECTION. 17A.5204 INCORPORATION OF  
72 7 CERTAIN PROVISIONS ON JUDICIAL REVIEW.

72 8 Proceedings for civil enforcement are governed by  
72 9 section 17A.5101, subsection 2, and section 17A.5115  
72 10 concerning judicial review, as modified where  
72 11 necessary to adapt them to those proceedings.

72 12 Sec. 93. NEW SECTION. 17A.5205 REVIEW BY HIGHER  
72 13 COURT.

72 14 Final decisions of the district court on petitions  
72 15 for civil enforcement of agency action are reviewable  
72 16 by appeal to the supreme court as in other civil  
72 17 cases, although the appeal may be taken regardless of  
72 18 the amount involved. On appeal, the supreme court, or  
72 19 court of appeals if the case is referred by the  
72 20 supreme court to the court of appeals, shall reverse,  
72 21 modify, or vacate the decision of the district court  
72 22 only if the reviewing court determines that the  
72 23 district court applied an incorrect legal standard or  
72 24 unreasonably applied a correct legal standard.

72 25 Sec. 94. Section 2B.17, subsection 4, Code 1997,  
72 26 is amended to read as follows:

72 27 4. The Iowa administrative code and the Iowa  
72 28 administrative bulletin shall be cited as provided in  
72 29 section

~~17A.6~~

~~17A.2101.~~

72 30 Sec. 95. Section 2C.9, subsection 1, Code 1997, is  
72 31 amended to read as follows:

72 32 1. Investigate, on complaint or on the citizens'  
72 33 aide's own motion, any administrative action of any  
72 34 agency, without regard to the finality of the  
72 35 administrative action, except that the citizens' aide  
72 36 shall not investigate the complaint of an employee of  
72 37 an agency in regard to that employee's employment  
72 38 relationship with the agency. A communication or  
72 39 receipt of information made pursuant to the powers  
72 40 prescribed in this chapter shall not be considered an  
72 41 ex parte communication as described in the provisions  
72 42 of section

~~17A.17~~

~~17A.4213.~~

72 43 Sec. 96. Section 10A.101, subsection 1, Code 1997,  
72 44 is amended to read as follows:

72 45 1. "Administrator" means the

~~chief administrative~~

72 46

~~law judge,~~

~~chief inspector, chief investigator, chief~~

72 47 auditor, or the person administering a division of the  
72 48 department.

72 49 Sec. 97. Section [10A.104](#), subsection 5, Code 1997,  
72 50 is amended to read as follows:

73 1 5. Adopt rules deemed necessary for the  
73 2 implementation and administration of this chapter in  
73 3 accordance with chapter 17A

~~73 4 , including rules governing~~

73 4

~~73 5 hearing and appeal proceedings~~

73 5 Sec. 98. Section [10A.106](#), Code 1997, is amended to  
73 6 read as follows:

73 7 10A.106 DIVISIONS OF THE DEPARTMENT.

73 8 The department is comprised of the following  
73 9 divisions:

73 10

~~73 11 1. Appeals and fair hearings division.~~

73 11

~~73 12 2.~~

~~73 13 1. Audits division.~~

73 12

~~73 14 3.~~

~~73 15 2. Investigations division.~~

73 13

~~73 16 4.~~

~~73 17 3. Inspections division.~~

73 14 The allocation of departmental duties to the  
73 15 divisions of the department in sections

~~73 16 10A.202,~~

73 16 10A.302, 10A.402, and 10A.502 does not prohibit the  
73 17 director from reallocating departmental duties within  
73 18 the department.

73 19 Sec. 99. Section [10A.601](#), subsection 7, Code 1997,  
73 20 is amended to read as follows:

73 21 7. An application for

~~73 22 rehearing~~

~~73 23 reconsideration~~

73 22 before the appeal board shall be filed pursuant to  
73 23 section

~~73 24 17A.16~~

~~73 25 17A.4218, unless otherwise provided in~~

73 24 chapter 19A, 80, 88, 89A, 91C, 96, or 97B. A petition  
73 25 for judicial review of a decision of the appeal board  
73 26 shall be filed pursuant to

~~73 27 section 17A.19~~

~~73 28 the~~

73 27 provisions for judicial review in chapter 17A, article  
73 28 5. The appeal board may be represented in any such  
73 29 judicial review by an attorney who is a regular  
73 30 salaried employee of the appeal board or who has been  
73 31 designated by the appeal board for that purpose, or at  
73 32 the appeal board's request, by the attorney general.  
73 33 Notwithstanding the petitioner's residency requirement

73 34 in section

~~17A.19, subsection 2~~

- ~~17A.5104~~, a petition

73 35 for judicial review may be filed in the district court  
73 36 of the county in which the petitioner was last  
73 37 employed or resides, provided that if the petitioner  
73 38 does not reside in this state, the action shall be  
73 39 brought in the district court of Polk county, Iowa,  
73 40 and any other party to the proceeding before the  
73 41 appeal board shall be named in the petition.  
73 42 Notwithstanding the thirty-day requirement in section  
73 43

~~17A.19, subsection 6~~

- ~~17A.5115~~, the appeal board shall,

73 44 within sixty days after filing of the petition for  
73 45 judicial review or within a longer period of time  
73 46 allowed by the court, transmit to the reviewing court  
73 47 the original or a certified copy of the entire records  
73 48 of a contested case. The appeal board may also  
73 49 certify to the court, questions of law involved in any  
73 50 decision by the appeal board. Petitions for judicial  
74 1 review and the questions so certified shall be given  
74 2 precedence over all other civil cases except cases  
74 3 arising under the workers' compensation law of this  
74 4 state. No bond shall be required for entering an  
74 5 appeal from any final order, judgment, or decree of  
74 6 the district court to the supreme court.  
74 7 Sec. 100. Section [21.6](#), subsection 1, Code 1997,  
74 8 is amended to read as follows:  
74 9 1. The remedies provided by this section against  
74 10 state governmental bodies shall be in addition to  
74 11 those provided by section

~~17A.19~~

- ~~17A.5117~~. Any

74 12 aggrieved person, taxpayer to, or citizen of, the  
74 13 state of Iowa, or the attorney general or county  
74 14 attorney, may seek judicial enforcement of the  
74 15 requirements of this chapter. Suits to enforce this  
74 16 chapter shall be brought in the district court for the  
74 17 county in which the governmental body has its  
74 18 principal place of business.  
74 19 Sec. 101. Section [22.7](#), subsection 15, Code 1997,  
74 20 is amended to read as follows:  
74 21 15. Information concerning the procedures to be  
74 22 used to control disturbances at adult correctional  
74 23 institutions. Such information shall also be exempt  
74 24 from public inspection under

~~section 17A.3~~

- ~~sections~~

74 25 [17A.2101](#) and [17A.2102](#). As used in this subsection  
74 26 disturbance means a riot or a condition that can  
74 27 reasonably be expected to cause a riot.  
74 28 Sec. 102. Section [22.8](#), subsection 4, paragraph f,  
74 29 Code 1997, is amended to read as follows:  
74 30 f. The rights and remedies provided by this  
74 31 section are in addition to any rights and remedies  
74 32 provided by

~~section 17A.19~~

- ~~chapter 17A, article 5~~.

74 33 Sec. 103. Section [22.9](#), unnumbered paragraph 2,  
74 34 Code 1997, is amended to read as follows:  
74 35 An agency within the meaning of section



~~17A.2,~~

74 36

~~subsection 1~~

- 17A.1102 shall adopt as a rule, in each  
74 37 situation where this section is believed applicable,  
74 38 its determination identifying those particular  
74 39 provisions of this chapter that must be waived in the  
74 40 circumstances to prevent the denial of federal funds,  
74 41 services, or information.  
74 42 Sec. 104. Section 22.10, subsection 1, Code 1997,  
74 43 is amended to read as follows:  
74 44 1. The rights and remedies provided by this  
74 45 section are in addition to any rights and remedies  
74 46 provided by

~~section 17A.19~~

- chapter 17A, article 5.  
74 47 Any aggrieved person, any taxpayer to or citizen of  
74 48 the state of Iowa, or the attorney general or any  
74 49 county attorney, may seek judicial enforcement of the  
74 50 requirements of this chapter in an action brought  
75 1 against the lawful custodian and any other persons who  
75 2 would be appropriate defendants under the  
75 3 circumstances. Suits to enforce this chapter shall be  
75 4 brought in the district court for the county in which  
75 5 the lawful custodian has its principal place of  
75 6 business.  
75 7 Sec. 105. Section 68B.2, subsection 13, paragraph  
75 8 b, subparagraph (8), Code 1997, is amended to read as  
75 9 follows:  
75 10 (8) Persons whose activities are limited to  
75 11 submitting data, views, or arguments in writing, or  
75 12 requesting an opportunity to make an oral presentation  
75 13 under section

~~17A.4, subsection 1~~

- 17A.3104.  
75 14 Sec. 106. Section 68B.31, subsection 8, Code 1997,  
75 15 is amended to read as follows:  
75 16 8. If a hearing on the complaint is ordered the  
75 17 ethics committee shall receive all admissible  
75 18 evidence, determine any factual or legal issues  
75 19 presented during the hearing, and make findings of  
75 20 fact based upon evidence received. Hearings shall be  
75 21 conducted in the manner prescribed for adjudicative  
75 22 proceedings in

~~section 17A.12~~

- chapter 17A, article 4.  
75 23 The rules of evidence applicable under section

~~17A.14~~

-  
75 24 17A.4212 shall also apply in hearings before the  
75 25 ethics committee. Clear and convincing evidence shall  
75 26 be required to support a finding that the member of  
75 27 the general assembly or lobbyist before the general  
75 28 assembly has committed a violation of this chapter.  
75 29 Parties to a complaint may, subject to the approval of  
75 30 the ethics committee, negotiate for settlement of  
75 31 disputes that are before the ethics committee. Terms  
75 32 of any negotiated settlements shall be publicly  
75 33 recorded. If a complaint is filed or initiated less  
75 34 than ninety days before the election for a state

75 35 office, for which the person named in the complaint is  
75 36 the incumbent officeholder, the ethics committee  
75 37 shall, if possible, set the hearing at the earliest  
75 38 available date so as to allow the issue to be resolved  
75 39 before the election. An extension of time for a  
75 40 hearing may be granted when both parties mutually  
75 41 agree on an alternate date for the hearing. The  
75 42 ethics committee shall make every effort to hear all  
75 43 ethics complaints within three months of the date that  
75 44 the complaints are filed. However, after three months  
75 45 from the date of the filing of the complaint,  
75 46 extensions of time for purposes of preparing for  
75 47 hearing may only be granted by the ethics committee  
75 48 when the party charged in the complaint with the  
75 49 ethics violation consents to an extension. If the  
75 50 party charged does not consent to an extension, the  
76 1 ethics committee shall not grant any extensions of  
76 2 time for preparation prior to hearing. All complaints  
76 3 alleging a violation of this chapter or the code of  
76 4 ethics shall be heard within nine months of the filing  
76 5 of the complaint. Final dispositions of violations,  
76 6 which the ethics committee has found to have been  
76 7 established by clear and convincing evidence, shall be  
76 8 made within thirty days of the conclusion of the  
76 9 hearing on the complaint.

76 10 Sec. 107. Section [68B.34](#), Code 1997, is amended to  
76 11 read as follows:

76 12 68B.34 INVESTIGATION BY INDEPENDENT SPECIAL  
76 13 COUNSEL PROBABLE CAUSE.

76 14 The purpose of an investigation by the independent  
76 15 special counsel is to determine whether there is  
76 16 probable cause to proceed with an adjudicatory hearing  
76 17 on the matter. In conducting investigations and  
76 18 holding hearings, the independent special counsel may  
76 19 require by subpoena the attendance and testimony of  
76 20 witnesses and may subpoena books, papers, records, and  
76 21 any other real evidence relating to the matter before  
76 22 the independent special counsel. The independent  
76 23 special counsel shall have the additional authority  
76 24 provided in section

~~17A.13~~

- [17A.4210](#). If the

76 25 independent special counsel determines at any stage in  
76 26 the proceedings that take place prior to hearing that  
76 27 the complaint is without merit, the independent  
76 28 special counsel shall report that determination to the  
76 29 appropriate ethics committee and the complaint shall  
76 30 be dismissed and the complainant and the party charged  
76 31 shall be notified. If, after investigation, the  
76 32 independent special counsel determines evidence exists  
76 33 which, if proven, would support a finding of a  
76 34 violation of this chapter, a finding of probable cause  
76 35 shall be made and reported to the ethics committee,  
76 36 and a hearing shall be ordered by the ethics committee  
76 37 as provided in section 68B.31. Independent special  
76 38 counsel investigations are not meetings of a  
76 39 governmental body within the meaning of chapter 21,  
76 40 and records and information obtained by independent  
76 41 special counsel during investigations are confidential  
76 42 until disclosed to a legislative ethics committee  
76 43 under section 68B.31.

76 44 Sec. 108. Section [80A.17](#), subsection 1, unnumbered  
76 45 paragraphs 2 and 3, Code 1997, are amended to read as  
76 46 follows:

76 47 Pursuant to section

~~17A.19, subsection 6~~

- 17A.5115,

76 48 the department, upon an appeal by the licensee of the  
76 49 decision by the department shall transmit the entire  
76 50 record of the contested case to the reviewing court.  
77 1 Notwithstanding section

~~17A.19, subsection 6~~

77 2 17A.5115, if a waiver of privilege has been  
77 3 involuntary and evidence has been received at a  
77 4 disciplinary hearing, the court shall order withheld  
77 5 the identity of the individual whose privilege was  
77 6 waived.  
77 7 Sec. 109. Section 86.17, subsection 1, Code 1997,  
77 8 is amended to read as follows:  
77 9 1. A deputy industrial commissioner may preside  
77 10 over any

~~contested case~~

- adjudicative proceeding

77 11 brought under this chapter, or chapter 85 or 85A in  
77 12 the manner provided by chapter 17A. The deputy  
77 13 commissioner or the commissioner may make such  
77 14 inquiries and investigation in

~~contested case~~

77 15 adjudicative proceedings as shall be deemed necessary,  
77 16 consistent with the provisions of section

~~17A.17~~

77 17 17A.4213.  
77 18 Sec. 110. Section 86.19, subsection 2, Code 1997,  
77 19 is amended to read as follows:  
77 20 2. Notwithstanding the requirements of section  
77 21

~~17A.12~~

- 17A.4211, subsection

~~7~~

- 4, a certified shorthand  
77 22 reporter, appointed by the presiding officer in

~~a~~

77 23

~~contested case~~

- an adjudicative proceeding or by the  
77 24 industrial commissioner in an appeal proceeding, may  
77 25 maintain and thus have the responsibility for the  
77 26 recording or stenographic notes for the period  
77 27 required by section

~~17A.12~~

- 17A.4211, subsection

~~7~~

- 4.  
77 28 Sec. 111. Section 86.24, subsections 2 and 3, Code  
77 29 1997, are amended to read as follows:  
77 30 2. In addition to the provisions of

~~section 17A.15~~

77 31 sections 17A.4215 and 17A.4216, the industrial  
77 32 commissioner may affirm, modify, or reverse the  
77 33 decision of a deputy commissioner or the commissioner  
77 34 may remand the decision to the deputy commissioner for  
77 35 further proceedings.  
77 36 3. In addition to the provisions of

~~section 17A.15~~

77 37 sections 17A.4215 and 17A.4216, the industrial  
77 38 commissioner, on appeal, may limit the presentation of  
77 39 evidence as provided by rule.  
77 40 Sec. 112. Section 86.42, Code 1997, is amended to  
77 41 read as follows:  
77 42 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.  
77 43 Any party in interest may present a certified copy  
77 44 of an order or decision of the commissioner, from  
77 45 which a timely petition for judicial review has not  
77 46 been filed or if judicial review has been filed, which  
77 47 has not had execution or enforcement stayed as  
77 48 provided in section

~~17A.19, subsection 5~~

~~17A.5111, or~~

77 49 an order or decision of a deputy commissioner from  
77 50 which a timely appeal has not been taken within the  
78 1 agency and which has become final by the passage of  
78 2 time as provided by rule and section

~~17A.15~~

~~17A.4220,~~

78 3 or an agreement for settlement approved by the  
78 4 commissioner, and all papers in connection therewith,  
78 5 to the district court where judicial review of the  
78 6 agency action may be commenced. The court shall  
78 7 render a decree or judgment and cause the clerk to  
78 8 notify the parties. The decree or judgment, in the  
78 9 absence of a petition for judicial review or if  
78 10 judicial review has been commenced, in the absence of  
78 11 a stay of execution or enforcement of the decision or  
78 12 order of the industrial commissioner, or in the  
78 13 absence of an act of any party which prevents a  
78 14 decision of a deputy industrial commissioner from  
78 15 becoming final, has the same effect and in all  
78 16 proceedings in relation thereto is the same as though  
78 17 rendered in a suit duly heard and determined by the  
78 18 court.  
78 19 Sec. 113. Section 89.5, subsection 4, Code 1997,  
78 20 is amended by striking the subsection.  
78 21 Sec. 114. Section 99A.6, unnumbered paragraph 2,  
78 22 Code 1997, is amended to read as follows:  
78 23 Judicial review of actions of the issuing  
78 24 authorities may be sought in accordance with the terms  
78 25 of the Iowa administrative procedure Act.  
78 26 Municipalities acting as issuing authorities shall be  
78 27 deemed state agencies solely for the purposes of  
78 28 bringing their actions under this chapter within the  
78 29 terms

~~of section 17A.19~~

~~for judicial review in chapter~~

78 30 17A, article 5. If the licensee has not filed a  
78 31 petition for judicial review in district court,  
78 32 revocation shall date from the thirty-first day  
78 33 following the date of the order of the issuing  
78 34 authority. If the licensee has filed a petition for

78 35 judicial review, revocation shall date from the  
78 36 thirty-first day following entry of the order of the  
78 37 district court, if action by the district court is  
78 38 adverse to the licensee.  
78 39 Sec. 115. Section 123.37, unnumbered paragraph 2,  
78 40 Code 1997, is amended to read as follows:  
78 41 The administrator may compromise and settle  
78 42 doubtful and disputed claims for taxes imposed under  
78 43 this chapter or for taxes of doubtful collectibility,  
78 44 notwithstanding section 7D.9. The administrator may  
78 45 enter into informal settlements as permitted pursuant  
78 46 to section

~~17A.10~~

- 17A.1106, to compromise and settle  
78 47 doubtful and disputed claims for taxes imposed under  
78 48 this chapter. The administrator may make a claim  
78 49 under a licensee's or permittee's penal bond for taxes  
78 50 of doubtful collectibility. Whenever a compromise or  
79 1 settlement is made, the administrator shall make a  
79 2 complete record of the case showing the tax assessed,  
79 3 reports and audits, if any, the licensee's or  
79 4 permittee's grounds for dispute or contest, together  
79 5 with all evidence of the dispute or contest, and the  
79 6 amounts, conditions, and settlement or compromise of  
79 7 the dispute or contest.  
79 8 Sec. 116. Section 135.70, Code 1997, is amended to  
79 9 read as follows:  
79 10 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.  
79 11 The council's decision on an application for  
79 12 certificate of need, when announced pursuant to  
79 13 section 135.69, is a final decision. Any dissatisfied  
79 14 party who is an affected person with respect to the  
79 15 application, and who participated or sought  
79 16 unsuccessfully to participate in the formal review  
79 17 procedure prescribed by section 135.66, may request a  
79 18

~~rehearing~~

- reconsideration in accordance with

~~chapter~~

79 19

~~17A~~

- section 17A.4218 and rules of the department. If  
79 20 a

~~rehearing~~

- reconsideration is not requested or an  
79 21 affected party remains dissatisfied after the request  
79 22 for

~~rehearing~~

- reconsideration, an appeal may be taken  
79 23 in the manner provided by chapter 17A.  
79 24 Notwithstanding the Iowa administrative procedure Act,  
79 25 chapter 17A, a request for

~~rehearing~~

- reconsideration  
79 26 is not required, prior to

~~appeal under section 17A.19~~

-  
79 27 the filing of a petition for judicial review as

79 28 provided in chapter 17A, article 5.

79 29 Sec. 117. Section 135C.2, subsection 3, paragraph  
79 30 d, Code 1997, is amended to read as follows:

79 31 d. Notwithstanding the limitations set out in this  
79 32 subsection regarding rules for intermediate care  
79 33 facilities for persons with mental retardation, the  
79 34 department shall consider the federal interpretive  
79 35 guidelines issued by the federal health care financing  
79 36 administration when interpreting the department's  
79 37 rules for intermediate care facilities for persons  
79 38 with mental retardation. This use of the guidelines  
79 39 is not subject to the rulemaking provisions of  
79 40 sections

~~17A.4 and 17A.5~~

~~chapter 17A, article 3, but~~

79 41 the guidelines shall be published in the Iowa  
79 42 administrative bulletin and the Iowa administrative  
79 43 code.

79 44 Sec. 118. Section 139C.2, subsection 3, Code 1997,  
79 45 is amended to read as follows:

79 46 3. The department shall establish an expert review  
79 47 panel to determine on a case-by-case basis under what  
79 48 circumstances, if any, a health care provider  
79 49 determined to be infected with HIV or HBV practicing  
79 50 outside the hospital setting or referred to the panel  
80 1 by a hospital, may perform exposure-prone procedures.  
80 2 If a health care provider determined to be infected  
80 3 with HIV or HBV does not comply with the determination  
80 4 of the expert review panel, the panel shall report the  
80 5 noncompliance to the examining board with jurisdiction  
80 6 over the health care provider. A determination of an  
80 7 expert review panel pursuant to this section is a  
80 8 final agency action

~~appealable~~

~~subject to judicial~~

80 9 review pursuant to

~~section 17A.19~~

~~chapter 17A, article~~

80 10 5.

80 11 Sec. 119. Section 147A.5, subsection 3, Code 1997,  
80 12 is amended to read as follows:

80 13 3. The department may deny an application for  
80 14 authorization, or may place on probation, suspend, or  
80 15 revoke existing authorization if the department finds  
80 16 reason to believe the program has not been or will not  
80 17 be operated in compliance with this subchapter and the  
80 18 rules adopted pursuant to this subchapter, or that  
80 19 there is insufficient assurance of adequate protection  
80 20 for the public. The denial or period of probation,  
80 21 suspension, or revocation shall be effected and  
80 22 judicial review may be

~~appealed~~

~~sought~~ as provided

~~by~~

80 23

~~section 17A.12~~

~~for adjudicative proceedings under~~

80 24 chapter 17A, article 5.

80 25 Sec. 120. Section 147A.7, subsection 2, Code 1997,  
80 26 is amended to read as follows:

80 27 2. If clinical issues are involved, the matter  
80 28 shall be referred to the board for completion of the  
80 29 investigation and the conduct of any disciplinary  
80 30 proceeding pursuant to chapter 17A. The findings of  
80 31 the board shall be the final decision for purposes of  
80 32 section

~~17A.15~~

- ~~17A.4215~~ and shall be enforced by the  
80 33 department.

80 34 Sec. 121. Section [148C.6A](#), Code 1997, is amended  
80 35 to read as follows:

80 36 148C.6A APPEAL TO BOARD OF MEDICAL EXAMINERS IN  
80 37 CONTESTED CASES INVOLVING DISCIPLINE.

80 38 Pursuant to section

~~17A.15~~

- ~~17A.4219~~, a decision of  
80 39 the board in

~~a contested case~~

- ~~an adjudicative~~

80 40 ~~proceeding~~ involving discipline of a person licensed  
80 41 as a physician assistant may be appealed to the board  
80 42 of medical examiners.

80 43 Sec. 122. Section [161A.4](#), subsection 1, unnumbered  
80 44 paragraph 1, Code 1997, is amended to read as follows:

80 45 1. The soil conservation division is established  
80 46 within the department to perform the functions  
80 47 conferred upon it in chapters 161A through 161C, 161E,  
80 48 161F, 207, and 208. The division shall be  
80 49 administered in accordance with the policies of the  
80 50 state soil conservation committee, which shall advise  
81 1 the division and which shall approve administrative  
81 2 rules proposed by the division for the administration  
81 3 of chapters 161A through 161C, 161E, 161F, 207, and  
81 4 208 before the rules are adopted pursuant to section  
81 5

~~17A.5~~

- ~~17A.3115~~. If a difference exists between the  
81 6 committee and secretary regarding the content of a  
81 7 proposed rule, the secretary shall notify the  
81 8 chairperson of the committee of the difference within  
81 9 thirty days from the committee's action on the rule.  
81 10 The secretary and the committee shall meet to resolve  
81 11 the difference within thirty days after the secretary  
81 12 provides the committee with notice of the difference.

81 13 Sec. 123. Section [163.30](#), subsection 3, unnumbered  
81 14 paragraph 3, Code 1997, is amended to read as follows:

81 15 A permittee shall not represent more than one  
81 16 dealer. Failure of a licensee or permittee to comply  
81 17 with this chapter or a rule made pursuant to this  
81 18 chapter is cause for revocation by the secretary of  
81 19 the permit or license after notice to the alleged  
81 20 offender and the holding of a hearing by the  
81 21 secretary. Rules shall be made in accordance with  
81 22 chapter 17A. A rule, the violation of which is made  
81 23 the basis for revocation, except temporary emergency  
81 24 rules, shall first have been approved after public  
81 25 hearing as provided in section

~~17A.4~~

- ~~17A.3104~~ after

81 26 giving twenty days' notice of the hearing as follows:

81 27 Sec. 124. Section [169.5](#), subsection 9, paragraph  
81 28 e, Code 1997, is amended to read as follows:

81 29 e. Hold hearings on all matters properly brought  
81 30 before the board and administer oaths, receive  
81 31 evidence, make the necessary determinations, and enter  
81 32 orders consistent with the findings. The board may  
81 33 require by subpoena the attendance and testimony of  
81 34 witnesses and the production of papers, records, or  
81 35 other documentary evidence and commission depositions.  
81 36 An administrative law judge may be appointed pursuant  
81 37 to

~~section 17A.11, subsection 3~~

~~chapter 17A, article~~

81 38 4, to perform those functions which properly repose in  
81 39 an administrative law judge.

81 40 Sec. 125. Section 169.5, subsection 9, paragraph  
81 41 i, Code 1997, is amended to read as follows:

81 42 i. Adopt, amend, or repeal rules relating to the  
81 43 standards of conduct for, testing of, and revocation  
81 44 or suspension of certificates issued to veterinary  
81 45 assistants. However, a certificate shall not be  
81 46 suspended or revoked by less than a two-thirds vote of  
81 47 the entire board in a proceeding conducted in  
81 48 compliance with

~~section 17A.12~~

~~chapter 17A, article 4.~~

81 49 Sec. 126. Section 169.15, Code 1997, is amended to  
81 50 read as follows:

82 1 169.15 APPEAL.

82 2 Any party aggrieved by a decision of the board may

82 3

~~appeal the matter to the district court~~

~~petition for~~

82 4 judicial review as provided in

~~section 17A.19~~

~~chapter~~

82 5 17A, article 5.

82 6 Sec. 127. Section 172D.1, subsection 14, Code  
82 7 1997, is amended to read as follows:

82 8 14. "Rule of the department" means a rule as

82 9 defined in section

~~17A.2~~

~~17A.1102~~ which materially

82 10 affects the operation of a feedlot and which has been  
82 11 adopted by the department. The term includes a rule  
82 12 which was in effect prior to July 1, 1975. Except as  
82 13 specifically provided in section 172D.3, subsection 2,  
82 14 paragraph "b", subparagraph (5)1 and paragraph "c",  
82 15 subparagraph (5)1 nothing in this chapter shall be  
82 16 deemed to empower the department to make any rule.

82 17 Sec. 128. Section 200.3, subsection 20, Code 1997,  
82 18 is amended to read as follows:

82 19 20. "Rule" means a rule as defined in section

82 20

~~17A.2~~

~~17A.1102~~ which materially affects the operation

82 21 of an anhydrous ammonia plant. The term includes a  
82 22 rule which was in effect prior to July 1, 1984.

82 23 Sec. 129. Section 203C.10, unnumbered paragraph 2,  
82 24 Code 1997, is amended to read as follows:

82 25 If upon the filing of the information or complaint  
82 26 the department finds that the licensee has failed to  
82 27 meet the warehouse operator's obligation or otherwise



82 28 has violated or failed to comply with the provisions  
82 29 of this chapter or any rule

~~promulgated~~

- adopted under

82 30 this chapter, and if the department finds that the  
82 31 public health, safety or welfare imperatively requires  
82 32 emergency action, then the department without hearing  
82 33 may order a summary suspension of the license in the  
82 34 manner provided in section

~~17A.18~~

- 17A.4105. When so

82 35 ordered, a copy of the order of suspension shall be  
82 36 served upon the licensee at the time the information  
82 37 or complaint is served as provided in this section.  
82 38 Sec. 130. Section 207.14, subsection 2, unnumbered  
82 39 paragraph 2, Code 1997, is amended to read as follows:  
82 40 If upon expiration of the time as fixed the  
82 41 administrator finds in writing that the violation has  
82 42 not been abated, the administrator, notwithstanding  
82 43

~~section 17A.18~~

- sections 17A.4105 and 17A.4501, shall

82 44 immediately order a cessation of coal mining and  
82 45 reclamation operations relating to the violation until  
82 46 the order is modified, vacated, or terminated by the  
82 47 administrator pursuant to procedures outlined in this  
82 48 section. In the order of cessation issued by the  
82 49 administrator under this subsection, the administrator  
82 50 shall include the steps necessary to abate the  
83 1 violation in the most expeditious manner possible.  
83 2 Sec. 131. Section 207.15, subsection 5, unnumbered  
83 3 paragraph 2, Code 1997, is amended to read as follows:  
83 4 Notwithstanding section

~~17A.20~~

- 17A.5118, an appeal

83 5 bond shall be required for an appeal of a judgment  
83 6 assessing a civil penalty.  
83 7 Sec. 132. Section 216.15, subsection 3, paragraph  
83 8 b, Code 1997, is amended to read as follows:  
83 9 b. For purposes of this chapter, an administrative  
83 10 law judge issuing a determination of probable cause or  
83 11 no probable cause under this section is exempt from  
83 12

~~section 17A.17~~

- sections 17A.4213 and 17A.4214.

83 13 Sec. 133. Section 216.17, subsection 1, unnumbered  
83 14 paragraphs 2 and 3, Code 1997, are amended to read as  
83 15 follows:  
83 16 For purposes of the time limit for filing a  
83 17 petition for judicial review under the Iowa  
83 18 administrative procedure Act, specified by section  
83 19

~~17A.19~~

- 17A.5108, the issuance of a final decision of

83 20 the commission under this chapter occurs on the date  
83 21 notice of the decision is mailed by certified mail, to  
83 22 the parties.  
83 23 Notwithstanding the time limit provided in section  
83 24

~~17A.19, subsection 3~~

- 17A.5108, a petition for judicial  
83 25 review of no-probable-cause decisions and other final  
83 26 agency actions which are not of general applicability  
83 27 must be filed within thirty days of the issuance of  
83 28 the final agency action.  
83 29 Sec. 134. Section 216.17, subsection 6, Code 1997,  
83 30 is amended to read as follows:  
83 31 6. In the enforcement proceeding the court shall  
83 32 determine its order on the same basis as it would in a  
83 33 proceeding reviewing commission action under section  
83 34

~~17A.19, subsection 8~~

- 17A.5117.  
83 35 Sec. 135. Section 217.30, subsection 8, Code 1997,  
83 36 is amended to read as follows:  
83 37 8. The provisions of this section shall take  
83 38 precedence over section

~~17A.12~~

- 17A.4211, subsection

~~7~~

-  
83 39 4.  
83 40 Sec. 136. Section 225C.29, Code 1997, is amended  
83 41 to read as follows:  
83 42 225C.29 COMPLIANCE.  
83 43 Except for a violation of section 225C.28B,  
83 44 subsection 2, the sole remedy for violation of a rule  
83 45 adopted by the commission to implement sections  
83 46 225C.25 through 225C.28B shall be by a proceeding for  
83 47 compliance initiated by request to the division  
83 48 pursuant to chapter 17A. Any decision of the division  
83 49 shall be in accordance with due process of law and is  
83 50 subject to

~~appeal to the Iowa district court~~  
- judicial

84 1 review pursuant to

~~sections 17A.19 and 17A.20~~

- chapter

84 2 17A, article 5, and appeal pursuant to section  
84 3 17A.5118 by any aggrieved party. Either the division  
84 4 or a party in interest may apply to the Iowa district  
84 5 court for an order to enforce the decision of the  
84 6 division. Any rules adopted by the commission to  
84 7 implement sections 225C.25 through 225C.28B do not  
84 8 create any right, entitlement, property or liberty  
84 9 right or interest, or private cause of action for  
84 10 damages against the state or a political subdivision  
84 11 of the state or for which the state or a political  
84 12 subdivision of the state would be responsible. Any  
84 13 violation of section 225C.28B, subsection 2, shall  
84 14 solely be subject to the enforcement by the  
84 15 commissioner of insurance and penalties granted by  
84 16 chapter 507B for a violation of section 507B.4,  
84 17 subsection 7.

84 18 Sec. 137. Section 229.23, subsection 3, Code 1997,  
84 19 is amended to read as follows:

84 20 3. In addition to protection of the person's  
84 21 constitutional rights, enjoyment of other legal,  
84 22 medical, religious, social, political, personal and  
84 23 working rights and privileges which the person would  
84 24 enjoy if the person were not so hospitalized or  
84 25 detained, so far as is possible consistent with

84 26 effective treatment of that person and of the other  
84 27 patients of the hospital. If the patient's rights are  
84 28 restricted, the physician's direction to that effect  
84 29 shall be noted on the patient's record. The  
84 30 department of human services shall, in accordance with  
84 31 chapter 17A establish rules setting forth the specific  
84 32 rights and privileges to which persons so hospitalized  
84 33 or detained are entitled under this section

~~and the~~

84 34

~~exceptions provided by section 17A.2, subsection 10,~~

84 35

~~paragraphs "a" and "k", shall not be applicable to the~~

84 36

~~rules so established~~

- The patient or the patient's

84 37 next of kin or friend shall be advised of these rules  
84 38 and be provided a written copy upon the patient's  
84 39 admission to or arrival at the hospital.

84 40 Sec. 138. Section [249A.3](#), subsection 11, paragraph  
84 41 b, Code 1997, is amended to read as follows:

84 42 b. The department shall exercise the option  
84 43 provided in 42 U.S.C. } 1396p(c) to provide a period  
84 44 of ineligibility for medical assistance due to a  
84 45 transfer of assets by a noninstitutionalized  
84 46 individual or the spouse of a noninstitutionalized  
84 47 individual. For noninstitutionalized individuals, the  
84 48 number of months of ineligibility shall be equal to  
84 49 the total, cumulative uncompensated value of all  
84 50 assets transferred by the individual or the  
85 1 individual's spouse on or after the look-back date  
85 2 specified in 42 U.S.C. } 1396p(c)(1)(B)(i), divided by  
85 3 the average monthly cost to a private patient for  
85 4 nursing facility services in Iowa at the time of  
85 5 application. The services for which  
85 6 noninstitutionalized individuals shall be made  
85 7 ineligible shall include any long-term care services  
85 8 for which medical assistance is otherwise available.  
85 9 Notwithstanding

~~section 17A.4~~

- ~~sections 17A.3103~~

85 10 ~~through 17A.3107~~, the department may adopt rules  
85 11 providing a period of ineligibility for medical  
85 12 assistance due to a transfer of assets by a  
85 13 noninstitutionalized individual or the spouse of a  
85 14 noninstitutionalized individual without notice of  
85 15 opportunity for public comment, to be effective  
85 16 immediately upon filing under section

~~17A.5~~

- ~~17A.3115~~,

85 17 subsection 2, paragraph "b", subparagraph (1).  
85 18 Sec. 139. Section [252.27](#), unnumbered paragraph 2,  
85 19 Code 1997, is amended to read as follows:  
85 20 The board shall record its proceedings relating to  
85 21 the provision of assistance to specific persons under  
85 22 this chapter. A person who is aggrieved by a decision  
85 23 of the board may

~~— appeal~~

- seek judicial review of the  
85 24 decision as if it were

~~— a contested case~~

- an

85 25 adjudicative proceeding before an agency and as if the  
85 26 person had exhausted administrative remedies in  
85 27 accordance with the procedures and standards

~~— in~~

85 28

~~— section 17A.19, subsections 2 to 8 except paragraphs~~

85 29

~~— "b" and "c" of subsection 8, and section 17A.20~~

- for

85 30 judicial review in chapter 17A, article 5, except for  
85 31 section 17A.5116, subsection 3, paragraphs "b" and  
85 32 "g", and for appeal in section 17A.5118.

85 33 Sec. 140. Section [252J.8](#), subsection 4, paragraph  
85 34 d, Code 1997, is amended to read as follows:

85 35 d. If the licensing authority's rules and  
85 36 procedures conflict with the additional requirements  
85 37 of this section, the requirements of this section  
85 38 shall apply. Notwithstanding section

~~— 17A.18~~

- 17A.4105,

85 39 the obligor does not have a right to a hearing before  
85 40 the licensing authority to contest the authority's  
85 41 actions under this chapter but may request a court  
85 42 hearing pursuant to section 252J.9 within thirty days  
85 43 of the provision of notice under this section.

85 44 Sec. 141. Section [256B.6](#), unnumbered paragraph 3,  
85 45 Code 1997, is amended to read as follows:

85 46 Notwithstanding

~~— section 17A.11~~

- chapter 17A, article

85 47 4, the state board of education shall adopt rules for  
85 48 the appointment of an impartial administrative law  
85 49 judge for special education appeals. The rules shall  
85 50 comply with federal statutes and regulations.

86 1 Sec. 142. Section [261B.3](#), subsection 2, Code 1997,  
86 2 is amended to read as follows:

86 3 2. The secretary may request additional  
86 4 information as necessary to enable the secretary to  
86 5 determine the accuracy and completeness of the  
86 6 information contained in the registration application.  
86 7 If the secretary believes that false, misleading, or  
86 8 incomplete information has been submitted in  
86 9 connection with an application for registration, the  
86 10 secretary may deny registration. The secretary shall  
86 11 conduct a hearing on the denial if a hearing is  
86 12 requested by a school. The secretary may withhold an  
86 13 acknowledgment of document filed pending the outcome  
86 14 of the hearing. Upon a finding after the hearing that  
86 15 information contained in the registration application  
86 16 is false, misleading, or incomplete, the secretary  
86 17 shall deny an acknowledgment of document filed to the  
86 18 school. The secretary shall make the final decision  
86 19 on each registration. However, the decision of the  
86 20 secretary is subject to judicial review in accordance

86 21 with

~~section 17A.19~~

~~chapter 17A, article 5.~~

86 22 Sec. 143. Section [262.69](#), unnumbered paragraph 3,  
86 23 Code 1997, is amended to read as follows:

86 24 Notwithstanding the provisions of chapter 17A, a  
86 25 proceeding conducted by the state board of regents or  
86 26 an institution governed by the state board of regents  
86 27 to determine the validity of an assessment of a  
86 28 violation of traffic control and parking rules is not  
86 29

~~a contested case~~

~~an adjudicative proceeding~~ as defined

86 30 in section

~~17A.2, subsection 5~~

~~17A.1102.~~

86 31 Sec. 144. Section [267.6](#), Code 1997, is amended to  
86 32 read as follows:

86 33 267.6 IOWA ADMINISTRATIVE PROCEDURE ACT.

86 34 The provisions of chapter 17A shall not apply to  
86 35 the council or any actions taken by it, except that  
86 36 any recommendations adopted by the council pursuant to  
86 37 section 267.5, subsection 3, and any rules adopted by  
86 38 the council shall be adopted, amended, or repealed  
86 39 only after compliance with the provisions of

~~sections~~

~~-~~

86 40

~~17A.4, 17A.5, and 17A.6~~

~~chapter 17A, article 3.~~

86 41 Sec. 145. Section [272C.6](#), subsection 4, unnumbered  
86 42 paragraphs 2 and 3, Code 1997, are amended to read as  
86 43 follows:

86 44 Pursuant to the provisions of section

~~17A.19,~~

~~-~~

86 45

~~subsection 6~~

~~17A.5115~~, a licensing board upon

~~an~~

~~-~~

86 46

~~appeal~~

~~seeking of judicial review~~ by the licensee of

86 47 the decision by the licensing board, shall transmit

86 48 the entire record of the

~~contested case~~

~~adjudicative~~

86 49 proceeding to the reviewing court.

86 50 Notwithstanding the provisions of section

~~17A.19,~~

~~-~~

87 1

~~subsection 6~~

~~17A.5115~~, if a waiver of privilege has

87 2 been involuntary and evidence has been received at a  
87 3 disciplinary hearing, the court shall order withheld  
87 4 the identity of the individual whose privilege was  
87 5 waived.

87 6 Sec. 146. Section [316.9](#), subsection 4, Code 1997,  
87 7 is amended to read as follows:

87 8 4. A person aggrieved by a determination as to  
87 9 eligibility for assistance or a payment authorized by  
87 10 this chapter, or the amount of a payment, upon  
87 11 application may have the matter reviewed. Rules  
87 12 governing reviews shall provide for a prompt one-step  
87 13 uncomplicated fact-finding process. Such a review is  
87 14 an appeal of an agency action as defined in section  
87 15

~~17A.2, subsection 2~~

~~- 17A.1102, and is not~~

~~- a contested~~

~~-~~  
87 16

~~- case~~

~~- an adjudicative proceeding.~~ The decision  
87 17 rendered shall be the displacing agency's final agency  
87 18 action.

87 19 Sec. 147. Section [321.52](#), subsection 3, unnumbered  
87 20 paragraph 2, Code 1997, is amended to read as follows:

87 21 However, upon application the department upon a  
87 22 showing of good cause may issue a certificate of title  
87 23 after the fourteen-day period for a junked vehicle for  
87 24 which a junking certificate has been issued. For  
87 25 purposes of this subsection, "good cause" means that  
87 26 the junking certificate was obtained by mistake or  
87 27 inadvertence. If a person's application to the  
87 28 department is denied, the person may make application  
87 29 for a certificate of title under the bonding procedure  
87 30 as provided in section [321.24](#), if the vehicle  
87 31 qualifies as an antique vehicle under section [321.115](#),  
87 32 subsection 1, or the person may seek judicial review  
87 33 as provided under

~~- sections 17A.19 and 17A.20~~

~~- chapter~~

87 34 ~~17A, article 5, and appellate review under section~~  
87 35 ~~17A.5118.~~

87 36 Sec. 148. Section [321.253A](#), subsection 1, Code  
87 37 1997, is amended to read as follows:

87 38 1. The department shall place and maintain  
87 39 directional signs upon primary highways which provide  
87 40 information about historic sites which are located on  
87 41 land owned or managed by an agency as defined in  
87 42 section

~~- 17A.2~~

~~- 17A.1102.~~ The signs shall conform to

87 43 the manual of uniform traffic devices. However, the  
87 44 directional signs are not subject to requirements  
87 45 applicable to tourist-oriented directional signs.

87 46 Sec. 149. Section [321.556](#), subsections 1 and 2,  
87 47 Code 1997, are amended to read as follows:

87 48 1. If, upon review of the record of convictions of  
87 49 any person, the department determines that the person  
87 50 appears to be a habitual offender, the department  
88 1 shall immediately notify the person in writing and  
88 2 afford the licensee an opportunity for a hearing. The  
88 3 notice shall direct the person named in the notice to

88 4 appear for hearing and show cause why the person  
88 5 should not be barred from operating a motor vehicle on  
88 6 the highways of this state. The notice shall meet the  
88 7 requirements of section

~~17A.12~~

- 17A.4206 and shall be

88 8 served in the manner provided in that section.  
88 9 Service of notice on any nonresident of this state may  
88 10 be made in the same manner as provided in sections  
88 11 321.498 through 321.506. A peace officer stopping a  
88 12 person for whom a notice to appear for hearing has  
88 13 been issued under the provisions of this section may  
88 14 personally serve the notice upon forms approved by the  
88 15 department to satisfy the notice requirements of this  
88 16 section. A peace officer may confiscate the motor  
88 17 vehicle license of a person if the license has been  
88 18 revoked or has been suspended subsequent to a hearing  
88 19 and the person has not forwarded the motor vehicle  
88 20 license to the department as required.  
88 21 2. The hearing shall be conducted as provided

~~in~~

88 22

~~section 17A.12~~

- for an adjudicative proceeding in

88 23 chapter 17A, article 4, before the department in the  
88 24 county where the alleged events occurred, unless the  
88 25 director and the person agree that the hearing may be  
88 26 held in some other county, or the hearing may be held  
88 27 by telephone conference at the discretion of the  
88 28 agency conducting the hearing. The hearing shall be  
88 29 recorded and its scope shall be limited to the issue  
88 30 of whether the person notified is a habitual offender.  
88 31 Sec. 150. Section 321.560, Code 1997, is amended  
88 32 to read as follows:  
88 33 321.560 PERIOD OF REVOCATION.  
88 34 A license to operate a motor vehicle in this state  
88 35 shall not be issued to any person declared to be a  
88 36 habitual offender under section 321.555, subsection 1,  
88 37 for a period of not less than two years nor more than  
88 38 six years from the date of the final decision of the  
88 39 department under section

~~17A.19~~

- 17A.4215 or the date

88 40 on which the district court upholds the final decision  
88 41 of the department, whichever occurs later. However, a  
88 42 temporary restricted permit may be issued to a person  
88 43 declared to be a habitual offender under section  
88 44 321.555, subsection 1, paragraph "c", pursuant to  
88 45 section 321.215, subsection 2. A license to operate a  
88 46 motor vehicle in this state shall not be issued to any  
88 47 person declared to be a habitual offender under  
88 48 section 321.555, subsection 2, for a period of one  
88 49 year from the date of the final decision of the  
88 50 department under section

~~17A.19~~

- 17A.4215 or the date

89 1 on which the district court upholds the final decision  
89 2 of the department, whichever occurs later. The  
89 3 department shall adopt rules under chapter 17A which  
89 4 establish a point system which shall be used to  
89 5 determine the period for which a person who is

89 6 declared to be a habitual offender under section  
89 7 321.555, subsection 1, shall not be issued a license.  
89 8 Sec. 151. Section [368.22](#), unnumbered paragraph 4,  
89 9 and subsections 1, 2, and 3, Code 1997, are amended to  
89 10 read as follows:  
89 11 The judicial review provisions of this section and  
89 12 chapter 17A, [article 5](#), shall be the exclusive means  
89 13 by which a person or party who is aggrieved or  
89 14 adversely affected by agency action may seek judicial  
89 15 review of that agency action. The court's review on  
89 16 appeal of a decision is limited to questions relating  
89 17 to jurisdiction, regularity of proceedings, and  
89 18 whether the decision appealed from is arbitrary,  
89 19 unreasonable, or without substantial supporting  
89 20 evidence. The court may reverse and remand a decision  
89 21 of the board or a committee, with appropriate  
89 22 directions. The following

~~portions of section 17A.19~~

89 23 provisions of chapter 17A are not applicable to this  
89 24 chapter:  
89 25 1.

~~The part of subsection 2 which relates to where~~

89 26

~~proceedings for judicial review shall be instituted.~~

89 27 Section 17A.5104, subsection 2.  
89 28 2.

~~Subsection 5.~~

~~Section 17A.5111.~~  
89 29 3.

~~Subsection 8.~~

~~Section 17A.5116.~~

89 30 4. Section 17A.5117.  
89 31 Sec. 152. Section [421.17](#), subsection 20,  
89 32 unnumbered paragraph 2, Code 1997, is amended to read  
89 33 as follows:  
89 34 The provisions of

~~sections 17A.10 to 17A.18~~

~~chapter~~

89 35 17A, article 4, relating to

~~contested cases~~

89 36 adjudicative proceedings shall not apply to any  
89 37 matters involving the equalization of valuations of  
89 38 classes of property as authorized by this chapter and  
89 39 chapter 441. This exemption shall not apply to a  
89 40 hearing before the state board of tax review.  
89 41 Sec. 153. Section [422.21](#), unnumbered paragraph 5,  
89 42 Code 1997, is amended to read as follows:  
89 43 The director shall determine for the 1989 and each  
89 44 subsequent calendar year the annual and cumulative  
89 45 inflation factors for each calendar year to be applied  
89 46 to tax years beginning on or after January 1 of that  
89 47 calendar year. The director shall compute the new  
89 48 dollar amounts as specified to be adjusted in section  
89 49 422.5 by the latest cumulative inflation factor and  
89 50 round off the result to the nearest one dollar. The  
90 1 annual and cumulative inflation factors determined by



90 2 the director are not rules as defined in section  
90 3

~~17A.2, subsection 10~~

~~17A.1102.~~ The director shall

90 4 determine for the 1990 calendar year and each  
90 5 subsequent calendar year the annual and cumulative  
90 6 standard deduction factors to be applied to tax years  
90 7 beginning on or after January 1 of that calendar year.  
90 8 The director shall compute the new dollar amounts of  
90 9 the standard deductions specified in section 422.9,  
90 10 subsection 1, by the latest cumulative standard  
90 11 deduction factor and round off the result to the  
90 12 nearest ten dollars. The annual and cumulative  
90 13 standard deduction factors determined by the director  
90 14 are not rules as defined in section

~~17A.2, subsection~~

90 15

~~10~~

~~17A.1102.~~

90 16 Sec. 154. Section [422.53](#), subsection 5, Code 1997,  
90 17 is amended to read as follows:  
90 18 5. If the holder of a permit fails to comply with  
90 19 any of the provisions of this division or any order or  
90 20 rule of the department adopted under this division or  
90 21 is substantially delinquent in the payment of a tax  
90 22 administered by the department or the interest or  
90 23 penalty on the tax, or if the person is a corporation  
90 24 and if any officer having a substantial legal or  
90 25 equitable interest in the ownership of the corporation  
90 26 owes any delinquent tax of the permit-holding  
90 27 corporation, or interest or penalty on the tax,  
90 28 administered by the department, the director may  
90 29 revoke the permit. The director shall send notice by  
90 30 mail to a permit holder informing that person of the  
90 31 director's intent to revoke the permit and of the  
90 32 permit holder's right to a hearing on the matter. If  
90 33 the permit holder petitions the director for a hearing  
90 34 on the proposed revocation, after giving ten days'  
90 35 notice of the time and place of the hearing in  
90 36 accordance with section

~~17A.18, subsection 3~~

~~17A.4105,~~

90 37 the matter may be heard and a decision rendered. The  
90 38 director may restore permits after revocation. The  
90 39 director shall adopt rules setting forth the period of  
90 40 time a retailer must wait before a permit may be  
90 41 restored or a new permit may be issued. The waiting  
90 42 period shall not exceed ninety days from the date of  
90 43 the revocation of the permit.  
90 44 Sec. 155. Section [424.5](#), subsection 6, Code 1997,  
90 45 is amended to read as follows:  
90 46 6. To revoke a permit the director shall serve  
90 47 notice as required by section

~~17A.18~~

~~17A.4105~~ to the

90 48 permit holder informing that person of the director's  
90 49 intent to revoke the permit and of the permit holder's  
90 50 right to a hearing on the matter. If the permit  
91 1 holder petitions the director for a hearing on the  
91 2 proposed revocation, after giving ten days' notice of  
91 3 the time and place of the hearing in accordance with

91 4 section

~~17A.18, subsection 3~~

- ~~17A.4105~~, the matter may

91 5 be heard and a decision rendered. The director may  
91 6 restore permits after revocation. The director shall  
91 7 adopt rules setting forth the period of time a  
91 8 depositor must wait before a permit may be restored or  
91 9 a new permit may be issued. The waiting period shall  
91 10 not exceed ninety days from the date of the revocation  
91 11 of the permit.

91 12 Sec. 156. Section [441.21](#), subsection 11, Code  
91 13 1997, is amended to read as follows:

91 14 11. The percentage of actual value computed by the  
91 15 director for agricultural property, residential  
91 16 property, commercial property, industrial property and  
91 17 property valued by the department of revenue and  
91 18 finance pursuant to chapters 428, 433, 434, 436, 437,  
91 19 and 438 and used to determine assessed values of those  
91 20 classes of property does not constitute a rule as  
91 21 defined in section

~~17A.2, subsection 10~~

- ~~17A.1102~~.

91 22 Sec. 157. Section [441.49](#), unnumbered paragraph 7,  
91 23 Code 1997, is amended to read as follows:

91 24 Tentative and final equalization orders issued by  
91 25 the director of revenue and finance are not rules as  
91 26 defined in section

~~17A.2, subsection 7~~

- ~~17A.1102~~.

91 27 Sec. 158. Section [455B.105](#), subsection 9, Code  
91 28 1997, is amended to read as follows:

91 29 9. Upon request of at least four members of the  
91 30 commission before adopting or modifying a rule, the  
91 31 director shall prepare and publish with the notice  
91 32 required under section

~~17A.4~~

- ~~17A.3103~~, subsection 1,

91 33

~~paragraph "a"~~,

- a comprehensive estimate of the

91 34 economic impact of the proposed rule or modification.

91 35 Sec. 159. Section [455B.446](#), subsection 4, Code  
91 36 1997, is amended to read as follows:

91 37 4. Notice of the hearing in the form provided in  
91 38 section

~~17A.12, subsection 2,~~

- ~~17A.4206~~ shall be

91 39 published in a newspaper of general circulation in  
91 40 each city and county in which the proposed site is  
91 41 located once a week for two consecutive weeks with the  
91 42 second publication being at least twenty days prior to  
91 43 the date of the hearing.

91 44 Sec. 160. Section [455G.4](#), subsection 3, paragraph  
91 45 b, Code 1997, is amended by striking the paragraph.

91 46 Sec. 161. Section [476.6](#), subsection 19, paragraph  
91 47 c, Code 1997, is amended to read as follows:

91 48 c. The board shall conduct

~~contested case~~

-

91 49 adjudicative proceedings for review of energy

91 50 efficiency plans and budgets filed by gas and electric  
92 1 utilities required to be rate-regulated under this  
92 2 chapter. The board may approve, reject, or modify the  
92 3 plans and budgets. Notwithstanding the provisions of  
92 4 section 17A.19, subsection 5, in an application for  
92 5 judicial review of the board's decision concerning a  
92 6 utility's energy efficiency plan or budget, the  
92 7 reviewing court shall not order a stay. Whenever a  
92 8 request to modify an approved plan or budget is filed  
92 9 subsequently by the office of consumer advocate or a  
92 10 gas or electric utility required to be rate-regulated  
92 11 under this chapter, the board shall promptly initiate  
92 12 a formal proceeding if the board determines that any  
92 13 reasonable ground exists for investigating the  
92 14 request. The formal proceeding may be initiated at  
92 15 any time by the board on its own motion.  
92 16 Implementation of board-approved plans or budgets  
92 17 shall be considered continuous in nature and shall be  
92 18 subject to investigation at any time by the board or  
92 19 the office of the consumer advocate.  
92 20 Sec. 162. Section [476A.1](#), subsection 1, Code 1997,  
92 21 is amended to read as follows:  
92 22 1. "Agency" means an agency as defined in section  
92 23

~~17A.2, subsection 1~~  
~~17A.1102.~~

92 24 Sec. 163. Section [476A.4](#), subsection 3, Code 1997,  
92 25 is amended to read as follows:  
92 26 3. Notice of the proceeding in the form provided  
92 27 in section

~~17A.12, subsection 2,~~  
~~17A.4206 shall be~~

92 28 published in a newspaper of general circulation in  
92 29 each county in which the proposed site is located once  
92 30 a week for two consecutive weeks with the second  
92 31 publication being at least twenty days prior to the  
92 32 date of the hearing. The board shall be responsible  
92 33 for publication and delivery of notices required by  
92 34 this section.  
92 35 Sec. 164. Section [479.29](#), subsection 1, Code 1997,  
92 36 is amended to read as follows:  
92 37 1. The board shall, pursuant to chapter 17A, adopt  
92 38 rules establishing standards for the protection of  
92 39 underground improvements during the construction of  
92 40 pipelines, to protect soil conservation and drainage  
92 41 structures from being permanently damaged by pipeline  
92 42 construction and for the restoration of agricultural  
92 43 lands after pipeline construction. To ensure that all  
92 44 interested persons are informed of this rulemaking  
92 45 procedure and are afforded a right to participate, the  
92 46 board shall schedule an opportunity for oral  
92 47 presentations on the proposed rulemaking, and, in  
92 48 addition to the requirements of

~~section 17A.4~~  
~~sections~~

92 49 [17A.3103](#) and [17A.3104](#), shall distribute copies of the  
92 50 notice of intended action and opportunity for oral  
93 1 presentations to each county board of supervisors.  
93 2 Any county board of supervisors may, under the  
93 3 provisions of chapter 17A, and subsequent to the  
93 4 rulemaking proceedings, petition under those  
93 5 provisions for additional rulemaking to establish  
93 6 standards to protect soil conservation practices,  
93 7 structures and drainage structures within that county.

93 8 Upon the request of the petitioning county the board  
93 9 shall schedule a hearing to consider the merits of the  
93 10 petition. Rules adopted under this section shall not  
93 11 apply within the boundaries of a city, unless the land  
93 12 is used for agricultural purposes.

93 13 Sec. 165. Section [479A.14](#), subsection 1, Code  
93 14 1997, is amended to read as follows:

93 15 1. The board shall adopt rules establishing  
93 16 standards to protect underground improvements during  
93 17 the construction of pipelines, to protect soil  
93 18 conservation and drainage structures from being  
93 19 permanently damaged by pipeline construction, and for  
93 20 the restoration of agricultural lands after pipeline  
93 21 construction. To ensure that all interested persons  
93 22 are informed of this rulemaking procedure and are  
93 23 afforded a right to participate, the board shall  
93 24 schedule an opportunity for oral presentations on the  
93 25 proposed rulemaking and, in addition to the  
93 26 requirements of

~~section 17A.4~~

~~sections 17A.3103 and~~

93 27 [17A.3104](#), shall distribute copies of the notice of  
93 28 intended action and opportunity for oral presentations  
93 29 to each county board of supervisors. A county board  
93 30 of supervisors may, under chapter 17A and subsequent  
93 31 to the rulemaking proceedings, petition for additional  
93 32 rulemaking to establish standards to protect soil  
93 33 conservation practices, structures, and drainage  
93 34 structures within that county. Upon the request of  
93 35 the petitioning county, the board shall schedule a  
93 36 hearing to consider the merits of the petition. Rules  
93 37 adopted under this section do not apply within the  
93 38 boundaries of a city, unless the land is used for  
93 39 agricultural purposes.

93 40 Sec. 166. Section [479B.20](#), subsection 1, Code  
93 41 1997, is amended to read as follows:

93 42 1. The board, pursuant to chapter 17A, shall adopt  
93 43 rules establishing standards for the protection of  
93 44 underground improvements during the construction of  
93 45 pipelines or underground storage facilities, to  
93 46 protect soil conservation and drainage structures from  
93 47 being permanently damaged by construction of the  
93 48 pipeline or underground storage facility, and for the  
93 49 restoration of agricultural lands after pipeline or  
93 50 underground storage facility construction. To ensure  
94 1 that all interested persons are informed of this  
94 2 rulemaking procedure and are afforded a right to  
94 3 participate, the board shall schedule an opportunity  
94 4 for oral presentations on the proposed rulemaking,  
94 5 and, in addition to the requirements of

~~section 17A.4~~

94 6 ~~sections 17A.3103 and 17A.3104~~, shall distribute  
94 7 copies of the notice of intended action and  
94 8 opportunity for oral presentations to each county  
94 9 board of supervisors. Any county board of supervisors  
94 10 may, under the provisions of chapter 17A, and  
94 11 subsequent to the rulemaking proceedings, petition  
94 12 under those provisions for additional rulemaking to  
94 13 establish standards to protect soil conservation  
94 14 practices, structures, and drainage structures within  
94 15 that county. Upon the request of the petitioning  
94 16 county, the board shall schedule a hearing to consider  
94 17 the merits of the petition. Rules adopted under this  
94 18 section shall not apply within the boundaries of a

94 19 city unless the land is used for agricultural  
94 20 purposes.  
94 21 Sec. 167. Section [514B.4A](#), subsection 2, Code  
94 22 1997, is amended to read as follows:  
94 23 2. Rules proposed by the commissioner for adoption  
94 24 for the direct provision of health care services by a  
94 25 health maintenance organization, shall be forwarded by  
94 26 the commissioner to the director of public health for  
94 27 review, comment, and recommendation, prior to  
94 28 submission to the administrative rules coordinator  
94 29 pursuant to section

~~17A.4~~

~~17A.3103.~~

94 30 Sec. 168. Section [519A.4](#), subsection 1, unnumbered  
94 31 paragraph 1, Code 1997, is amended to read as follows:  
94 32 The association shall submit a plan of operation to  
94 33 the commissioner, together with any amendments  
94 34 necessary or suitable to assure the fair, reasonable,  
94 35 and equitable administration of the association  
94 36 consistent with sections 519A.2 to 519A.13. The plan  
94 37 of operation and any amendments thereto shall become  
94 38 effective only after

~~promulgation~~

~~adoption of the plan~~

94 39 or amendment by the commissioner as a rule pursuant to  
94 40

~~section 17A.4~~

~~chapter 17A, article 3:~~ Provided that

94 41 the initial plan may in the discretion of the  
94 42 commissioner become effective immediately upon filing  
94 43 with the secretary of state pursuant to section

~~17A.5~~

94 44 [17A.3115](#), subsection 2, paragraph "b", subparagraph  
94 45 (1).

94 46 Sec. 169. Section [524.228](#), subsection 4, Code  
94 47 1997, is amended to read as follows:

94 48 4. A hearing provided for in this section shall be  
94 49 presided over by an administrative law judge appointed  
94 50 in accordance with

~~section 17A.11~~

~~chapter 17A, article~~

95 1 4. The hearing shall be private, unless the  
95 2 superintendent determines after full consideration of  
95 3 the views of the party afforded the hearing, that a  
95 4 public hearing is necessary to protect the public  
95 5 interest. After the hearing, and within thirty days  
95 6 after the case has been submitted for decision, the  
95 7 superintendent shall review the proposed order of the  
95 8 administrative law judge and render a final decision,  
95 9 including findings of fact upon which the decision is  
95 10 predicated, and issue and serve upon each party to the  
95 11 proceeding an order consistent with this section.

95 12 Sec. 170. Section [533.6A](#), subsection 4, Code 1997,  
95 13 is amended to read as follows:

95 14 4. A hearing provided for in this section shall be  
95 15 presided over by an administrative law judge appointed  
95 16 in accordance with

~~section 17A.11~~

~~chapter 17A, article~~

95 17 4. The hearing shall be private, unless the

95 18 superintendent determines after full consideration of  
95 19 the views of the party afforded the hearing, that a  
95 20 public hearing is necessary to protect the public  
95 21 interest. After the hearing, and within thirty days  
95 22 after the case has been submitted for decision, the  
95 23 superintendent shall review the proposed order of the  
95 24 administrative law judge and render a final decision,  
95 25 including findings of fact upon which the decision is  
95 26 predicated, and issue and serve upon each party to the  
95 27 proceeding an order consistent with this section.

95 28 Sec. 171. Section [534.405](#), unnumbered paragraph 7,  
95 29 Code 1997, is amended to read as follows:

95 30 Actions taken by the superintendent under this  
95 31 section are not subject to section

~~17A.18, subsection~~

95 32

~~3~~

~~17A.4105.~~

95 33 Sec. 172. Section [535B.7](#), subsection 2, unnumbered  
95 34 paragraph 1, Code 1997, is amended to read as follows:

95 35 The administrator may order an emergency suspension  
95 36 of a licensee's license pursuant to section

~~17A.18,~~

95 37

~~subsection 2~~

~~17A.4501.~~ A written order containing the

95 38 facts or conduct which warrants the emergency action  
95 39 shall be timely sent to the licensee by restricted  
95 40 certified mail. Upon issuance of the suspension  
95 41 order, the licensee must also be notified of the right  
95 42 to an evidentiary hearing. A suspension proceeding  
95 43 shall be promptly instituted and determined.

95 44 Sec. 173. Section [542B.27](#), subsection 6, Code  
95 45 1997, is amended to read as follows:

95 46 6. A person aggrieved by the imposition of a civil  
95 47 penalty under this section may seek judicial review in  
95 48 accordance with

~~section 17A.19~~

~~chapter 17A, article 5.~~

95 49 Sec. 174. Section [544A.15](#), subsection 3, paragraph  
95 50 f, Code 1997, is amended to read as follows

96 1 f. A person aggrieved by the imposition of a civil  
96 2 penalty under this subsection may seek judicial review  
96 3 in accordance with

~~section 17A.19~~

~~chapter 17A, article~~

96 4 ~~5.~~

96 5 Sec. 175. Section [904.602](#), subsection 9,  
96 6 unnumbered paragraph 2, Code 1997, is amended to read  
96 7 as follows:

96 8 These records are exempt from the public inspection  
96 9 requirements in

~~section 17A.3~~

~~sections 17A.2101,~~

96 10 ~~17A.2102,~~ and

~~section~~

~~22.2.~~

96 11 Sec. 176. Section [906.3](#), Code 1997, is amended to  
96 12 read as follows:  
96 13 906.3 DUTIES OF PAROLE BOARD.  
96 14 The board of parole shall adopt rules regarding a  
96 15 system of paroles from correctional institutions, and  
96 16 shall direct, control, and supervise the  
96 17 administration of the system of paroles. The board of  
96 18 parole shall consult with the director of the  
96 19 department of corrections on rules regarding a system  
96 20 of work release and shall assist in the direction,  
96 21 control, and supervision of the work release system.  
96 22 The board shall determine which of those persons who  
96 23 have been committed to the custody of the director of  
96 24 the Iowa department of corrections, by reason of their  
96 25 conviction of a public offense, shall be released on  
96 26 parole or work release. The grant or denial of parole  
96 27 or work release is not

~~a contested case~~

~~an~~

96 28 adjudicative proceeding as defined in section

~~17A.2~~

96 29 17A.1102.

96 30 Sec. 171.

96 31 1. Sections 17A.1 through 17A.33, Code 1997, are  
96 32 repealed.

96 33 2. Sections 10A.201 and 10A.202, Code 1997, are  
96 34 repealed.

96 35 Sec. 177. EFFECTIVE DATE. This Act takes effect  
96 36 July 1, 1998."

96 37

96 38

96 39

96 40 MILLAGE of Scott

96 41 HF 667.302 77

96 42 ec/cf/28